

SUBJECT: Family and Medical Leave	NUMBER:	60.000.15
DIVISION: Human Resource Services Division	EFFECTIVE DATE:	01/25/09
APPROVED: Signature on file with Human Resource Services Division		

POLICY STATEMENT: Oregon state government provides leave to employees in accordance with the Federal Family and Medical Leave Act (FMLA) and the Oregon Family Leave Act (OFLA).

AUTHORITY: Federal Family and Medical Leave Act (FMLA), as amended, 29 USC §§ 2601 through et seq; Section 585 of the National Defense Authorization Act for FY 2008; federal regulations 29 CFR Part 825; Oregon Family Leave Act (OFLA), as amended, ORS 659A.150 through 659A.186; ORS, 659A.306; OAR 839-009-0200 through 839-009-0365; OAR 166-300-0010 through 166-300-0045 and 101-030-0005 through 101-030-0027; the Americans with Disabilities Act (ADA), as amended (including the ADA Amendments Act), 42 USC § 12101 et seq; the Fair Labor Standards Act (FLSA), as amended, 29 USC 207 et seq; and the Uniform Services Employment and Reemployment Rights Act (USERRA), as amended, 38 USC 4301-4335.

APPLICABILITY: All state employees, including state temporary employees, in accordance with provisions of federal and state leave laws covered by this policy.

ATTACHMENTS: BOLI poster, Oregon Family Leave Act, Notice to Employers and Employees
U.S. Department of Labor (DOL) poster, Employee Rights Under the Family and Medical Leave Act
Medical Certification (PD 615A)
FMLA Military Healthcare Certification (PD 615B)
Qualifying Exigency Certification (PD 615C)
Public Employees' Benefit Board FMLA-OFLA Benefit Matrix

DEFINITIONS:

- (1) See State HR Policy 10.000.01 Definitions and OAR 105-010-0000.
- (2) 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.
- (3) Agency: (For the purpose of this policy) the word "agency" includes the appointing authority, the human resource staff, and individuals designated by the appointing authority to administer the agency's Family and Medical Leave program.
- (4) Subsequent sections of the policy include other definitions.

POLICY

- (1) **FMLA and OFLA Leaves are not Optional.** Under federal law (FMLA) and Oregon state law (OFLA), an agency grants an eligible employee time off to care for the employee's own serious health condition (Section (14)(b)) or that of a family member (Section (14)(c)), and for Parental leave (Section (14)(d)). Under FMLA only, the agency grants an eligible employee time off for FMLA Military Caregiver leave (Section (15)) and for FMLA Qualifying Exigency leave (Section (16)). Under OFLA only, the agency grants an eligible employee time off for Sick Child leave (Section (14)(e)) to provide care to a child with a non-serious health condition requiring home care.
- (a) An agency follows Sections (1)-(13) for all FMLA and OFLA leave. Additionally:
- (A) Section (14) gives specific information about FMLA and OFLA leave for the employee's own serious health condition, the serious health condition of the employee's family member, for Parental leave and for OFLA Sick Child leave.
 - (B) Section (15) gives specific information about FMLA Military Caregiver leave.
 - (C) Section (16) gives specific information about FMLA Qualifying Exigency leave.
 - (D) A solid black line separates each of the sections mentioned above.
- (2) **Prohibition of Retaliation:** 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 FMLA or OFLA leave.
- (3) **Required Posting:** The agency informs employees about FMLA and OFLA by hanging 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 agency give information about FMLA to employees upon hire. Giving the employee a copy of the FMLA poster suffices. The agency may use additional methods of informing employees about FMLA and OFLA.
- (4) **Eligibility for FMLA and OFLA Leave:** The agency determines eligibility for leave. The same eligibility requirements apply to all employees for all types of FMLA and OFLA leave and are not pro-rated for part-time employees.
- (A) Eligibility for FMLA requires the employee be employed by Oregon state government 12 consecutive months or non-consecutive months with no more than a seven-year break in service, and work at least 1250 hours during the 12-month period just prior to the date the leave begins.
 - (B) Eligibility for OFLA requires the employee be employed by Oregon state government at least 180 calendar days just prior to the date the leave begins and work an average of 25 hours per week during the 180-day period. OFLA Parental leave does not require the employee work 25 hours per week.
 - (C) To determine eligibility, the agency counts the hours the employee actually worked at the agency (not paid leave), hours worked in another state agency, hours worked for Oregon state government as a temporary employee, and military leave time (per federal USERRA law and State HR Policy 60.000.25 Military Leave.)
- (5) **Types of FMLA and OFLA Leave Schedules:**
- (a) Continuous Leave: Leave taken in a block of time. For example, an employee takes six weeks of leave due to illness.
 - (b) Intermittent Leave: Leave taken sporadically. For example, an employee misses five days of work a month due to a health condition.
 - (c) 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.

- (6) **Employee Requirements for Notifying an Agency of the Need for FMLA or OFLA Leave:** An employee provides notice to the agency at least 30 calendar days in advance for a planned absence. An employee is not required to specifically state the leave is for FMLA or OFLA purposes, but must provide sufficient information to indicate the reason for leave may qualify for FMLA or OFLA. An agency asks for more information as necessary to determine if the leave qualifies as FMLA or OFLA.
- (a) In the event of a medical emergency or other unforeseeable event, an employee (or his or her family member if the employee is physically unable) must notify the agency as soon as possible.
 - (b) An employee must follow agency notification (call-in) procedures for unplanned absences for intermittent leave (already approved), or to care for an ill child. An employee must state the absence is for FMLA or OFLA, or to care for an ill child.
- (7) **Agency's Response to Employee Notification of Need for FMLA or OFLA Leave:** Under most circumstances, the agency provides an initial response within five business days to an employee's request for leave or notification of an employee's need for leave that qualifies under FMLA or OFLA.
- (a) The agency's initial written response to the employee includes:
 - (A) Eligibility notification addressing whether the employee is eligible for FMLA, OFLA or both leaves. If the employee is not eligible for FMLA leave, the notice provides at least one reason why the employee is ineligible. For example, the employee has not worked enough hours to qualify.
 - (B) A notice of the employee's rights and responsibilities under FMLA or OFLA addressing:
 - (i) Any requirement to provide a request for more information or for medical or military certification, and the consequences for failing to provide the required certification.
 - (ii) Notice the leave may count as FMLA, OFLA or both, and a description of the leave year used to calculate FMLA and OFLA (for example, rolling backward).
 - (iii) The requirement to use paid leave according to this policy or an applicable collective bargaining agreement.
 - (iv) Insurance premium payment information, including the potential requirement to repay insurance premiums paid by the agency if the employee does not return to work.
 - (v) If the agency will require the employee requesting leave for his or her own serious health condition to provide a fitness for duty certification before returning to work. The fitness for duty certificate 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.
 - (vi) The employee's reinstatement rights.
 - (b) **Designation Notice:** Once an agency has enough information to determine whether an absence qualifies as FMLA, OFLA or both leaves, an agency designates or denies FMLA, OFLA or both leaves. Under most circumstances, the agency notifies the employee of the decision in writing within five business days after obtaining sufficient information to make the determination. If leave is denied, an agency lists at least one reason for the denial. To designate OFLA Sick Child leave follow provisions in Section (7)(b)(D).
 - (A) The designation notice includes:
 - (i) Whether the leave is FMLA, OFLA or both.

- (ii) The amount of weeks, days or hours of leave that will count against the employee's FMLA and OFLA entitlements if leave is taken in a block of time or as a predictable reduced schedule. (If the 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 agency must provide a notice of the amount counted against FMLA upon the employee's request, but no more often than every 30 days and only when leave was taken during those 30 days. (Not required for OFLA-only designations.)
 - (iii) The requirement to use paid leave according to this policy or an applicable collective bargaining agreement.
 - (iv) If the agency will require the employee requesting leave for his or her own serious health condition to provide a fitness for duty certification before returning to work. The fitness for duty certificate 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.
- (B) An agency may designate or deny FMLA or OFLA leave in the initial response if the agency has enough information to make the determination and follows provisions in Section (7)(b).
 - (C) An agency may, at its option, retroactively designate FMLA, OFLA or both leaves to the start of the absence when the retroactive designation does not result in individualized harm or injury to the employee or when the agency and the employee agree.
 - (D) When designating OFLA Sick Child leave the agency sends written notification to the employee stating whether the employee is eligible for 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 Sick Child leave in a 12-month period.
- (8) **Use of Paid Leave:** FMLA and OFLA are unpaid leave entitlements. However, this policy requires an employee use available paid leave while on FMLA and OFLA before using leave without pay. The agency counts all paid and unpaid leave used during FMLA and OFLA leave toward the employee's FMLA and OFLA entitlement. The following exceptions apply to the requirement to use paid leave:
- (a) A represented employee may, at the employee's option, reserve paid leave as permitted under an applicable collective bargaining agreement. An employee follows procedures in an applicable collective bargaining agreement to notify an agency of his or her desire to reserve paid leave.
 - (b) A management service or unrepresented employee may, at his or her option, reserve up to 40 hours of his or her sick leave, vacation or a combination of both. (Does not apply to reduced schedule or intermittent leave.) He or she must notify an agency in advance of the leave whether the employee wishes to reserve leave.
 - (c) An employee receiving disability benefits while on FMLA and OFLA is not required to use his or her paid leave for the period of time the employee is receiving payment from a disability provider. (Note: A disability benefit provider may have a requirement to exhaust leave prior to receiving benefits. It is the employee's responsibility to apply for benefits and comply with any leave use requirements of the disability benefit provider.) The employee must notify an agency in advance of the leave whether the employee is receiving disability payments and whether the employee will reserve his or her paid leave.
 - (d) An employee may choose to use or reserve compensatory time while on FMLA and OFLA leave. An employee must notify an agency in advance of the leave whether the employee wishes to use his or her compensatory time. Compensatory time used counts toward the employee's FMLA and OFLA entitlement unless disallowed by an applicable collective bargaining agreement.
- (9) **Insurance:** During months when an employee uses FMLA, the agency pays its share of health care contributions for the employee's medical, dental and basic employee-only life insurance.
- (a) An employee may be required to reimburse an agency for 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, recurrence, or onset of a serious health condition of the employee or employee's family member, a continuation, recurrence, or onset of a serious illness or injury of a covered servicemember or other circumstances beyond the employee's control.

- (b) 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 the employee wishes to continue.
- (c) 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. The employee may self-pay some insurance premiums under COBRA, if the employee wishes the insurance to continue. The employee receives information about self-paying insurance through a third-party administrator.
- (d) 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.
- (e) Refer to the attached "Public Employees' Benefit Board FMLA-OFLA Benefit Matrix" for the effect on an employee's insurance when returning from FMLA or OFLA leave.

(10)Effect on Seniority, Salary Increases and Recognized Service Date: Use of FMLA and OFLA does not affect an employee's seniority, eligibility for salary increases or the employee's recognized service date. The agency 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.

(11)Returning From Leave: An agency may, at its option, require an employee returning from leave for his or her own serious health condition to provide a statement from a health care provider certifying the employee is able to return to work, whether the employee has any job-related restrictions, and the duration of any restrictions.

- (a) An agency must restore an employee returning 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, an agency returns the employee to an equivalent position with equivalent pay, benefits and other terms and conditions of employment. The following exceptions apply:
 - (A) If an agency eliminates the employee's position through layoff, the agency treats the employee as if the employee was not on FMLA, OFLA or both leaves and treats the employee the same as similarly situated employees, following agency policy or applicable collective bargaining agreement.
 - (B) An agency restores a temporary or limited duration employee to the extent the employee's placement or position still exists.
 - (C) If an 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 leaves, with or without reasonable accommodation, the employee may be subject to termination under applicable law, rule, policy or CBA.
 - (D) After an employee's FMLA and OFLA leave is exhausted, an agency has no obligation to continue employment of an employee who is unable to return to the position held prior to FMLA and OFLA or is unable to perform an essential function of the position with or without reasonable accommodation. The following exceptions apply:
 - (i) Requests by employees who are unable to return to work after exhausting their FMLA and OFLA leave entitlement and still have sick leave, must follow the provisions of State HR Policy 60.000.01 Sick Leave with Pay, an applicable agency policy, or an applicable collective bargaining agreement and notify the agency if they will continue their absence.

- (ii) An agency, at its option, may grant an employee's request to extend an absence when continuing leave does not impose undue hardship for an agency and continuing leave complies with law, policy, applicable collective bargaining agreement, and reasonable accommodation provisions of the Americans with Disabilities Act Amendments Act (ADAAA). An agency may request certification verifying the need for continued leave.

(12)FMLA and OFLA Recordkeeping: An agency maintains records documenting FMLA and OFLA leave taken by employees following the recordkeeping requirements and purging schedules of OAR 166-300-0035(3)(5)(6). An agency keeps FMLA and OFLA medical records in a locked file separate from an employee's personnel file.

(13) Refer to the appropriate federal and state laws for situations regarding family and medical leave not covered in the policy.

(14)FMLA and OFLA Serious Health Condition and Sick Child leave: Under FMLA and OFLA, eligible employees (Section (4)), receive protected leave to tend to the employee's own serious health condition, the serious health condition of a family member, or for Parental leave. OFLA also provides protected leave to provide care for the employee's minor child with a non-serious health condition that requires home care (Sick Child leave). An employee's leave entitlement and the definitions of serious health condition, family member, Parental leave and Sick Child leave, follow.

- (a) Except as otherwise described in this policy, an eligible employee's entitlement to FMLA and OFLA leave is up to 12 weeks (480 hours for a full time (40-hour per week) employee) during a 12-month time-period, regardless of the number of qualifying reasons for the leave.
 - (A) An agency prorates the hourly entitlement for part-time employees. For example, entitlement for a part-time employee working 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 time-period.
 - (B) An agency ends leave for a limited duration and temporary employee if the employee's assignment expires prior to exhausting his or her leave entitlement.
 - (C) An agency uses a rolling backward year to determine the employee's total entitlement. This means an agency looks backward on the calendar for one year from the first day of the requested leave. The agency reduces the employee's 12-week 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 (Section (15)) or FMLA Qualifying Exigency leave (Section (16)). The agency reduces the employee's 12-week OFLA entitlement by any OFLA leave used in the previous 12 months for the employee's own or a family member's serious health condition, Parental leave or Sick Child leave.
 - (D) An employee's entitlement under OFLA extends beyond 12 weeks under the following circumstances:
 - (i) A female employee taking any amount of OFLA leave for her own pregnancy-related disability may take up to an additional 12 weeks of OFLA leave in the same leave year for any OFLA-qualifying purpose.
 - (ii) A male or female 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.
 - (E) Entitlement when spouses and family members work for Oregon state government:
 - (i) Spouses who are both employed by Oregon state government share the FMLA entitlement for Parental leave and to care for a parent with a serious health condition. Under special circumstances, an agency (or agencies) may lift the requirement that spouses share the entitlement. (Note: The FMLA Military Caregiver leave 26-week entitlement is shared by spouses (Section (15)), the FMLA Qualifying Exigency leave entitlement (Section (16)) is not shared.)

- (ii) 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) Under special circumstances, an agency (or agencies) may grant permission to use leave at the same time.
- (F) An agency designates both FMLA and OFLA leave when the employee is entitled to and eligible for both leaves, except:
 - (i) An agency 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 State HR Policy 50.020.05 Early Return to Work of Injured Workers, an agency immediately designates OFLA leave if the employee meets eligibility and purpose requirements. If the denial is reversed upon appeal, an agency restores the designated OFLA hours to the employee. (For a definition of compensable injury, see ORS 656.005(7).)
 - (ii) An agency grants FMLA leave to an employee whose absence results from a workers' compensation claim if the employee meets eligibility and purpose requirements of FMLA.
- (b) **Definition of Serious Health Condition:** An illness, injury, impairment, or physical or mental condition that involves one or more of the following:
 - (A) Hospital care: Inpatient care (i.e., an overnight stay) in a hospital, hospice, or residential medical care facility, including any period of incapacity or subsequent treatment in connection with or as a consequence of inpatient care.
 - (B) Absence plus treatment: A period of incapacity of more than three consecutive calendar days, including any subsequent treatment or period of incapacity relating to the same condition, that also involves one or both of the following:
 - (i) Treatment received in person, two or more times by a health care provider, a nurse, or a physician's assistant under direct supervision of a health care provider, or a provider of health care services (e.g., physical therapist) under orders of or referred by a health care provider.
 - (ii) Treatment by a health care provider on at least one occasion resulting in a regimen of continuing treatment under the supervision of the health care provider.
 - (C) Any period of incapacity for pregnancy, pregnancy-related illness, or for prenatal care (pregnancy disability). The following absences related to pregnancy disability qualify:
 - (i) Part-day or full-day absences for severe morning sickness.
 - (ii) Periods of bed rest ordered by the physician of the pregnant employee.
 - (iii) A reduced work schedule because of pregnancy complications.
 - (iv) Routine prenatal visits to the doctor.

- (v) Pregnancy disability: If the employee is incapacitated due to pregnancy or childbirth. (Pregnancy is a temporary condition and not a covered disability that requires reasonable accommodation under the Americans with Disabilities Act Amendments Act (ADAAA).) Note: An employee may take FMLA and OFLA leave if needed to care for a pregnant family member who is experiencing pregnancy disability.
- (D) Chronic conditions. A chronic condition is one which:
- (i) Requires periodic in-person treatments by a health care provider, or by a nurse or physician's assistant under direct supervision of a health care provider.
 - (ii) Continues over an extended period of time, including recurring episodes of a single underlying condition.
 - (iii) May cause episodic rather than a continuing period of incapacity; for example, asthma, diabetes, epilepsy.
- (E) Permanent or long-term conditions requiring supervision: A period of incapacity that is permanent or long-term due to a condition for which treatment is potentially ineffective. The employee or family member is under supervision of a health care provider, not necessarily receiving active treatment. Examples are Alzheimer's disease, a severe stroke, the terminal stages of a disease.
- (F) Multiple treatments (non-chronic conditions): Any period of absence to receive multiple treatments (including any period of recovery) by a health care provider or by a provider of health care services under orders of, or on referral by a health care provider for one or both of the following reasons:
- (i) Restorative surgery after an accident or other injury.
 - (ii) For a condition that in the absence of treatment or medical intervention, will likely result in a period of incapacity of more than three consecutive calendar days. For example: chemotherapy or radiation for cancer, physical therapy for severe arthritis, dialysis for kidney disease.
- (G) Other definitions relevant to whether a condition qualifies as a serious health condition:
- (i) Incapacity: The inability to work, attend school or perform other regular daily activities due to a serious health condition or treatment for or recovery from a serious health condition.
 - (ii) Treatment: Includes examinations to determine if a serious health condition exists and for evaluations of the condition. The definition does not include routine physical examinations, eye examinations or dental examinations.
 - (iii) Regimen of Continuing Treatment: Includes a course of prescription medication such as an antibiotic or physical therapy requiring special equipment to resolve or alleviate the health condition. A regimen of continuing treatment does not include taking over-the-counter medications such as aspirin, antihistamines or salves, bed-rest, drinking fluids, exercise, and other similar activities that could be initiated without a visit to a health care provider.
- (c) **Definition of Family Member:**
- (A) 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.
 - (B) Son or Daughter (Child): A biological, adopted, foster or stepchild, a legal ward, or a child of an employee standing in loco parentis who is 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.
 - (C) Spouse: A husband or wife as defined under Oregon state law.

- (D) Under OFLA only, the term “family member” also includes the employee’s: grandparent or grandchild, parent-in-law, same-sex domestic partner and parent of same-sex domestic partner. Also included in the definition is the biological, adopted, foster or stepchild of a same-sex domestic partner.
- (E) Under OFLA only, the definition of “child” includes non-disabled children age 18 and older for the purposes of leave for a serious health condition.
- (d) **Definition of Parental leave:** Leave to care for the employee’s newborn, newly adopted child or newly placed foster child. The employee must complete Parental leave within 12 months of the birth, adoption or placement of the foster child. Parental leave following the birth, adoption, or placement must be taken in a continuous block of time unless the agency in its discretion permits an employee to take Parental leave intermittently or on a reduced schedule. Use of intermittent or reduced schedule leave requires that the employee and the agency find a schedule that meets the agency’s needs as well as the employee’s desire for intermittent or reduced schedule leave. The law allows an employee to take Parental leave in increments prior to the adoption or placement of a foster child if the employee’s absence from work is required for the placement for adoption or foster care to proceed.
- (e) **Definition of Sick Child leave (OFLA Only):** Absences 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.
- (f) **Medical Certification:** An agency may, at its option, require an employee to provide medical certification from a health care provider (Section (14)(h)) verifying the need for leave for a serious health condition for the employee or the employee’s family member. If requiring medical certification, the agency gives the Medical Certification PD 615A (attached) to the employee. An agency may not 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 agency 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 they are unable to provide the certification in 15 days.
- (i) If an employee refuses to or does not provide a required medical certification per FMLA and OFLA statutes and applicable collective bargaining agreement, the agency may deny the FMLA or OFLA leave. Denied FMLA and OFLA leave is not protected under the FMLA and OFLA statutes.
- (ii) An agency 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, an agency advises an employee in writing what additional information is needed to make the certification complete and sufficient. An agency 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 agency needs authentication or clarification of a Medical Certification, after following Section (14)(f)(B) an agency designee may, at the agency’s option, contact the employee’s health care provider for the purposes of authentication or clarification of the Medical Certification, 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 agency 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 agency needs authentication or clarification of a Medical Certification, a health care provider representing the agency 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 agency designee and does not otherwise clarify the certification (if needed), FMLA and OFLA leave may be denied.

- (E) If an agency has reason to doubt the validity of a Medical Certification for an employee's serious health condition, an agency may, at its option, require a second opinion under FMLA and OFLA statutes. If the second opinion conflicts, an agency 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, an agency 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) An agency pays uninsured expenses related to required Medical Certifications. An employee must submit receipts for uninsured expenses following the agency's policy regarding reimbursement.
 - (H) An agency 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.
- (g) **Medical Recertification:** An agency may require updated medical information under the following circumstances:
- (A) An employee requests an extension of leave.
 - (B) Circumstances (including the duration or frequency of absences) described in the previous certification changed significantly.
 - (C) The agency receives information casting doubt on the employee's stated reason for the absence.
 - (D) To determine if the employee must reimburse the agency for health care contributions paid on the employee's behalf, if the employee does not return to work following FMLA or OFLA leave.
 - (E) Every six months for an ongoing condition in connection with an absence.
 - (F) 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 circumstances apply.
- (h) **Definition of Health Care Provider:** A person performing within the scope of his or her professional license or certification with primary responsibility to provide health care to an eligible employee or family member.
- (A) Health Care Provider includes: a doctor of medicine or osteopathy authorized to practice medicine or surgery, podiatrists, clinical social workers, optometrists, chiropractors (limited to manual manipulation of the spine to correct subluxation shown to exist by x-ray,) nurse practitioners, nurse midwives and Christian Science practitioners.
 - (B) For additional health care providers recognized by FMLA and OFLA, see the Federal Family and Medical Leave Act 29 USC §§ 2601 through 2654 and Federal Regulations Part 825; 659.479 through 659.494, and Oregon Family Leave Act ORS 659A.150 through 659A.186.

(15) **Military Caregiver Leave:** Under FMLA only, eligible employees receive protected leave to care for a spouse, parent, son, daughter, or next of kin who is a covered servicemember with a serious injury or illness incurred in the line of duty on active duty. Leave entitlement and the definitions of spouse, parent, son, daughter, next of kin,

covered servicemember, active duty, and serious injury or illness, follow.

- (a) **Entitlement:** An eligible employee's entitlement for FMLA Military Caregiver leave is limited to 26 weeks of leave in a single 12-month period, and includes (and is not in addition to) time used for other FMLA-qualifying purposes during the 12-month period. The "single 12 month period" is applied on a per-covered-servicemember, per injury basis. This means, an employee has a one-time entitlement to care for the covered servicemember per injury or illness. 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.
- (A) An agency prorates the hourly entitlement for part-time employees. For example, an employee working 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 time-period.
- (B) Leave for a limited duration and temporary employee ends if the employee's assignment expires prior to exhausting his or her FMLA Military Caregiver leave entitlement.
- (C) For the purposes of FMLA Military Caregiver leave only, the agency 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 the leave. The employee has one year from the first day of the leave to use the 26-week leave entitlement. 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 agency does not reduce the employee's entitlement to FMLA Military Caregiver leave by FMLA leave used prior to the start of the Military Caregiver leave.
- (b) **Definitions:**
- (A) Spouse: The husband or wife of the employee as defined by Oregon state law.
- (B) 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.
- (C) 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 limit under the definition of a son or daughter for FMLA Military Caregiver leave.
- (D) Next of Kin: The nearest blood relative of a covered servicemember (other than the spouse, son, daughter or parent), in the following priority order:
- (i) A blood relative designated in writing by the servicemember, as his or her nearest blood relative.
 - (ii) Blood relatives who have been granted legal custody of the servicemember by court decree or statutory provisions.
 - (iii) Brothers and Sisters.
 - (iv) Grandparents.
 - (v) Aunts and Uncles.
 - (vi) First Cousins.
 - (vii) See 29 CFR 825.122(d) for further detail.
- (E) Covered Servicemember: 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.

- (F) 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.
 - (G) Serious Injury or Illness: An injury or illness 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.
- (c) An agency may, at its option, require an employee to provide a certification of military status and a health care certification of a Covered Servicemember's serious injury or illness to verify the need for FMLA Military Caregiver leave. If requiring certification, the agency gives the employee the FMLA Military Healthcare Certification PD 615B (attached) with the initial response (Section (7)).
- (A) The FMLA Military Healthcare Certification must be completed by a United States Department of Defense (DOD) health care provider, a United States Department of Veterans Affairs (VA) health care provider, a DOD Tricare network authorized private health care provider, or a DOD non-network Tricare authorized private health care provider. Under certain circumstances, the agency will accept "Invitational Travel Orders" or "Invitational Travel Authorization" in lieu of a FMLA Military Healthcare Certification.
 - (B) An employee must provide a required FMLA Military Healthcare Certification, within 15 days after the agency requests the certification. In some extenuating circumstances, the agency allows more than 15 days, when despite the employee's diligent efforts the employee is unable to provide the certification in 15 days.
 - (C) If an employee refuses to or does not provide a required FMLA Military Healthcare Certification the agency may deny the FMLA Military Caregiver leave. Denied FMLA Military Caregiver leave is not protected under FMLA.
 - (D) If the FMLA Military Healthcare Certification is incomplete or insufficient, the agency advises the employee in writing what additional information is needed to make the certification complete and sufficient. The agency allows the employee up to seven calendar days to obtain a complete and sufficient certification.
 - (E) An agency does not request recertification of a Covered Servicemember illness or injury and does not request second and third medical opinions.
 - (F) An agency may recoup from the employee insurance payments made on the employee's behalf where the employee is not entitled to insurance.
- (d) Spouses who are both employed by Oregon state government share the FMLA entitlement for FMLA Military Caregiver leave. Under special circumstances, an agency (or agencies) may lift the requirement that spouses share the entitlement. (Note: FMLA Parental leave and leave to care for a parent with a serious health condition (Section (14)) is also shared. The FMLA Qualifying Exigency leave entitlement (Section (16)) is not shared.)
- (e) An agency also designates OFLA leave when the condition also qualifies as OFLA leave to provide care for a family member with a serious health condition, following the provision of OFLA.
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- (16) **FMLA Qualifying Exigency Leave:** Under FMLA only, eligible employees receive protected 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. The leave entitlement, what qualifies as an exigency, and the definitions of spouse, parent, son, daughter and active duty, follow.

- (a) **Entitlement:** An eligible employee's entitlement for FMLA Qualifying Exigency leave is limited to 12 weeks (480 hours for a full-time (40 hour per week) employee) of leave in a 12-month time-period. The FMLA Qualifying Exigency leave entitlement is not in addition to the 12-week entitlement for FMLA for a serious health condition or for Parental leave (Section (14)). Instead, the FMLA Qualifying Exigency is another reason why an employee may use his or her 12-week FMLA entitlement.
- (A) An agency prorates the hourly entitlement for part-time employees. For example, entitlement for a part-time employee working 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 time-period.
- (B) Leave for a limited duration and temporary employee ends if the employee's assignment expires prior to exhausting his or her leave entitlement.
- (C) An agency uses a rolling backward year to determine the employee's leave entitlement. This means an agency looks backward on the calendar for one year from the first day of the requested leave. The agency reduces the employee's 12-week FMLA entitlement by any FMLA leave used in the previous 12 months for FMLA Qualifying Exigency leave, FMLA for the employee's own or a family member's serious health condition and Parental leave (Section (14)), and FMLA Military Caregiver leave (Section (15)).
- (b) **Qualifying Exigency:** The following circumstances are considered qualifying exigencies (additional detail is contained in 29 CFR 825.126):
- (A) Short-notice deployment: Notice that a covered military member will be deployed within seven days or less. An employee 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. The employee must begin the leave within seven days of the deployment notice received by the military member.
- (B) Military events and activities related to deployment.
- (C) Arranging for alternative childcare or schools or providing care on an urgent, immediate need basis because of the deployment. For example: The deployed military member normally provides the childcare so the employee uses FMLA Qualifying Exigency leave while arranging for new childcare. The deployed military member normally transports the child to school so the employee uses FMLA Qualifying Exigency leave while arranging for alternate transportation for the child. The deployed military member normally stays home with a sick child so instead the employee stays home with the sick child using FMLA Qualifying Exigency leave. (Note: the last example potentially qualifies also under OFLA Sick Child leave.)
- (D) Attending meetings with the school or daycare staff when the meetings are necessary due to circumstances arising from the deployment. For example: The deployed military member normally attends parent-required school or daycare-related conferences and meetings so instead the employee attends using FMLA Qualified Exigency leave.
- (E) Financial and legal arrangements related to the military member's deployment.
- (F) Counseling for the employee, or for the employee to attend with the military member or the child of the military member, as the need arises from the deployment.
- (G) Up to five days to spend with a military member on rest and recuperation (R and R).
- (H) 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.)
- (I) Leave needed to address issues related to the death of the military member.
- (J) An agency may agree to permit leave for other deployment-related activities not encompassed in the other categories.

(c) **Definitions:**

- (A) Spouse: The employee's husband or wife as defined by Oregon state law.
 - (B) 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.
 - (C) 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 limit under the definition of a son or daughter for FMLA Qualifying Exigency leave.
 - (D) 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.
- (d) An agency may, at its option, require an employee to provide a FMLA Qualifying Exigency Certification to verify the need for FMLA Qualifying Exigency leave. If requiring certification, the agency gives the employee the FMLA Qualifying Exigency Certification PD 615C (attached) with the initial response (Section (7)).
- (e) The employee must complete the FMLA Qualifying Exigency Certification, attach documents as required in the form, and return it to the agency within 15 calendar days. In some extenuating circumstances, the agency allows more than 15 days, when despite the employee's diligent efforts he or she is unable to provide the certification in 15 days.
- (A) If an employee refuses to or does not provide the FMLA Qualifying Exigency Certification, an agency may deny the FMLA Qualifying Exigency leave. Denied FMLA Qualifying Exigency leave is not protected under FMLA.
 - (B) If the FMLA Qualifying Exigency Certification is incomplete or insufficient, the agency advises the employee in writing what additional information is needed to make the certification complete and sufficient. The agency allows the employee up to seven calendar days to obtain complete and sufficient certification.
 - (C) The agency may not request recertification for Qualifying Exigency leave.
 - (D) An agency may recoup from the employee insurance payments made on the employee's behalf where the employee is not entitled to insurance.