

SUBJECT: Family and Medical Leave	NUMBER:	60.000.15
DIVISION: Human Resource Services Division	EFFECTIVE DATE:	02/15/08
APPROVED: Signature on file with Human Resource Services Division		

POLICY STATEMENT:

It is the policy of the State of Oregon to provide leave to employees so they can tend to their own serious health conditions, to the serious health conditions of family members and to their parental obligations, 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, as amended, 29 USC §§ 2601 through 2654 and Federal Regulations Part 825; 659.479 through 659.494; Oregon Family Leave Act; ORS 656.005; ORS 659A.043; ORS 659A.046; ORS 659A.805, ORS 659A.150 through 659A.186; OAR 839-009-0320; OAR 166-300-0010 through 166-300-0045; OAR 101-040-0010; the Americans with Disabilities Act 42 USC § 12101 et seq.; Fair Labor Standards Act 29 USC § 216(b); BOLI Regulations; and USERRA.

APPLICABILITY:

All employees determined eligible in accordance with provisions of federal and state leave laws covered by this policy except where collective bargaining agreement (CBA) language conflicts, including state temporary employees.

ATTACHMENTS:

[Bureau of Labor and Industries \(BOLI\) poster, "Oregon Family Leave Act, Notice to Employers and Employees"](#)
[US Department of Labor \(DOL\) poster, "Your Rights under the Family and Medical Leave Act of 1993"](#)
[Health Care Provider Certification Form \(Medical Certification\)](#)
[Public Employees' Benefit Board FMLA-OFLA Benefit Matrix](#)

DEFINITIONS:

- (1) **See also HRSD State Policy 10.000.01, Definitions; and OAR 105-010-0000**
- (2) Family Member:
 - (a) Parent: The biological or adoptive mother or father of an employee or an individual who stood in loco parentis (in place of a parent) to an employee 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. The child must be 17 years of age or younger or 18 years of age or older and 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” additionally includes the employee’s:
- (A) Grandparent or grandchild
 - (B) Parent-in-law
 - (C) Same-sex domestic partner
 - (D) Parent of a same-sex domestic partner
 - (E) In addition to the individuals included in the definition above of “son or daughter”, the definition of “child” includes the biological, adopted, foster, or stepchild of a same-sex domestic partner. (By contrast, FMLA does not extend protected leave to domestic partners or the children or parents of domestic partners.)
 - (F) For the purposes of serious health condition leave under OFLA, the definition of “child” is not limited to children under age 18 or those who are incapable of self-care because of a mental or physical disability. For example, under OFLA only, an employee may be absent to care for their own, their spouse’s or their domestic partner’s adult child with a serious health condition. (By contrast, OFLA leave for purposes of parental leave or sick child leave (for a non-serious health condition) may only be used if the child is 17 years of age or younger or incapable of self care because of a mental or physical disability.)
- (3) 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 consequent to such 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:
 - (A) Treatment two or more times by a health care provider, by a nurse, or by a physician’s assistant under direct supervision of a health care provider, or by a provider of health care services (e.g., physical therapist) under orders of or referred by a health care provider
 - (B) Treatment by a health care provider on at least one occasion that results 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)
 - (A) Pregnancy Disability Leave: (Note: Because pregnancy is a temporary condition, it is generally not a covered disability that requires reasonable accommodation under the Americans with Disabilities Act (ADA).) The following absences related to pregnancy incapacity qualify:
 - (i) Part-day or full-day absences for serious morning sickness
 - (ii) Periods of bed rest ordered by the physician of the pregnant employee
 - (iii) A reduced work schedule necessitated by pregnancy complications

- (iv) Routine prenatal visits to the doctor
- (v) Leave following childbirth, when the employee is still incapacitated (since pregnancy disability is defined to include incapacity due to pregnancy or childbirth.)
- (d) Chronic conditions requiring treatment:
 - (A) A chronic condition that requires periodic visits for treatment by a health care provider, or by a nurse or physician's assistant under direct supervision of a health care provider
 - (B) A chronic condition that continues over an extended period of time, including recurring episodes of a single underlying condition
 - (C) A chronic condition that may cause episodic rather than a continuing period of incapacity. For example, asthma, diabetes and 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 potentially is not effective. The employee or family member is under the continuing supervision of, but is not necessarily receiving active treatment by a health care provider. For example, Alzheimer's disease, a severe stroke, or 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:
 - (A) Restorative surgery after an accident or other injury
 - (B) For a condition that would likely result in a period of incapacity of more than three consecutive calendar days in the absence of medical intervention or treatment. For example: chemotherapy, radiation, etc. for cancer; physical therapy for severe arthritis; and dialysis for kidney disease.
- (4) Parental Leave: Leave to care for a newborn child, a newly adopted child or a newly-placed foster child in the employee's home.
 - (a) The employee must complete parental leave within twelve months of the birth, adoption or placement of the child. An employee is entitled to take parental leave in increments prior to the adoption or placement of a child if the employee's absence from work is required for the placement for adoption or foster care to proceed.
- (5) Sick Child Leave (OFLA Only): Absences to provide care for a child with a non-serious health condition who requires home care. This type of leave is limited to care for a child who is 17 years of age or younger or 18 years of age or older and incapable of self-care because of a mental or physical disability.
- (6) 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.
- (7) Treatment: Includes examinations to determine if a serious health condition exists and for evaluations of the condition. Treatment does not include routine physical examinations, eye examinations or dental examinations.
- (8) Regimen of Continuing Treatment: Includes, for example, a course of prescription

medication such as an antibiotic or therapy requiring special equipment to resolve or alleviate the health condition. A regimen of treatment does not include the taking of over-the-counter medications such as aspirin, antihistamines or salves, bed-rest, drinking fluids, exercise, and other similar activities that can be initiated without a visit to a health care provider.

(9) Health Care Provider: A person who is performing within the scope of their professional license or certification and has primary responsibility for providing health care to an eligible employee or their family member.

(a) Health Care Provider can include 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, see the Federal Family and Medical Leave Act 29 USC §§ 2601 through 2654 and Federal Regulations Part 825; 659.479 through 659.494.

(10) Types of Leave Schedules:

(a) Continuous Leave: FMLA or OFLA leave taken in a continuous block of time

(b) Intermittent Leave: FMLA or OFLA leave taken sporadically

(c) Reduced Schedule Leave: FMLA or OFLA leave taken where the employee works less than the employee's normal hours in a day or week.

(11) Rolling Backward Year: When determining an employee's FMLA and OFLA leave entitlement, a "rolling-backward" period is used. This means the agency appointing authority or designee looks backward on the calendar for one year from the first day of the requested leave to determine if the employee is eligible for FMLA or OFLA leave and how much leave the employee is entitled to use.

(12) Definitions Relating to Military Service Only

(a) Active Duty: 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.

(b) Covered Servicemember: A member of the Armed Forces, including a member of the National Guard or Reserves, who is undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list, for a serious injury or illness.

(c) Outpatient Status: The status of a member of the Armed Forces assigned to one of the following:

(d) A military medical treatment facility as an outpatient

(e) A unit established for the purpose of providing command and control of members of the Armed Forces receiving medical care as outpatients.

(e) Next of Kin: The nearest blood relative of the individual.

(f) Serious injury or illness: An injury or illness incurred by the service member in the line of duty on active duty in the Armed Forces that may render the member medically

unfit to perform the duties of the member's office, grade, rank or rating. This includes undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list, for a serious injury or illness.

- (g) Injured Servicemember Family Leave: Leave given to an eligible employee to care for a spouse, son, daughter, parent, as defined above in (2)(a)-(c) (excluding the age requirement for a child), or next of kin, who is a covered servicemember with a serious injury or illness as defined above in (12)(f) .

(1) Policy: It is the policy of the State of Oregon to provide leave to employees so they can tend to their own serious health conditions, to the serious health conditions of family members and to their parental obligations, in accordance with the Federal Family and Medical Leave Act (FMLA) and the Oregon Family Leave Act (OFLA).

(a) FMLA and OFLA entitle eligible employees, including limited duration employees and state temporary employees, to receive up to 12 weeks of protected leave for qualified purposes, subject to exceptions and requirements of applicable law. Application of FMLA and OFLA is not optional.

(b) The agency appointing authority or designee must inform employees about FMLA and OFLA by posting notice of federal and state provisions of the various leave laws. The required notices are called "[Oregon Family Leave Act, Notice to Employers and Employees](#)" and "[Your Rights under the Family and Medical Leave Act of 1993](#)." They are considered part of the policy. (See "[Attachments](#).") The agency appointing authority or designee may use additional methods of informing employees about FMLA and OFLA entitlements such as providing information during new employee orientation.

(c) Eligibility Requirements

(A) To be eligible for FMLA leave, the employee must meet both of the following requirements:

- (i) The employee worked for the State of Oregon for at least 12 months; the months do not have to be consecutive
- (ii) The employee worked at least 1250 hours during the 12-month period just prior to the date the leave would begin.

(B) To be eligible for OFLA leave, the employee must meet both of the following requirements:

- (i) The employee worked for the State of Oregon for at least 180 calendar days just prior to the date the leave would begin
- (ii) The employee worked an average of 25 hours per week during the 180-day period.

(a) Exception: The 25 hour per week average is not required for parental leave under OFLA.

(C) When counting the number of hours an employee worked to determine eligibility for FMLA and OFLA, only the hours the employee was actually at work are counted. Hours worked in another state agency and as a temporary employee, also count. Use of accrued paid leave is not counted.

(D) The time an employee is on military leave is considered time worked for the purposes of determining eligibility for FMLA and OFLA by federal USERRA law and Policy 60.000.25 "Military Leave."

(E) Employees who work less than full-time must meet the full eligibility requirements for FMLA, OFLA or both.

(d) Purpose Requirements

(A) An eligible employee may take FMLA and OFLA leave for the following purposes:

- (i) To recover from or seek treatment for the employee's own serious health condition that renders the employee incapacitated, including pregnancy related disability and absence for prenatal care
- (ii) To provide care for the employee's own parent with a serious health condition
- (iii) To provide care for the employee's spouse with a serious health condition
- (iv) To provide care for the employee's child with a serious health condition, who is 17 years of age or younger or who is incapable of self-care because of a mental or physical disability
- (v) For parental leave.

(B) In addition to the above purposes, an eligible employee may also take leave under FMLA for the following purpose:

- (i) To care for the employee's spouse, parent, son, daughter, or next of kin, who is a covered servicemember, with a serious injury or illness (see "Definitions" (12)(f).) Note: This is not the same as a serious health condition described in "Definitions" (3)(a)-(f).

(C) In addition to the purposes listed in subsection (1)(d)(A), an eligible employee may also take leave under OFLA for the following additional purposes:

- (i) To provide care for the employee's same-sex domestic partner with a serious health condition
- (ii) To provide care for the employee's parent-in-law or the parent of the employee's same-sex domestic partner with a serious health condition
- (iii) To provide care for the employee's child with a serious health condition who is 18 years of age or older
- (iv) To provide care for the employee's grandparent or grandchild with a serious health condition
- (v) To provide care for the child of the employee's same-sex domestic partner with a serious health condition
- (vi) To provide home care for the employee's sick child with a non-serious health condition (sick child leave.) The child must be 17 years of age or younger or incapable of self-care because of a mental or physical disability.

(e) Leave Entitlement

(A) An employee meeting eligibility and purpose requirements is entitled to up to 12 weeks of leave qualifying as FMLA, OFLA or both during a 12-month period.

- (i) If an employee has used FMLA or OFLA during the "rolling-backward" time-period, the employee is only entitled to the total entitlement minus any FMLA or OFLA leave used in the rolling backward period.
- (ii) An eligible limited duration or state temporary employee is only entitled to leave for what would be the duration of the employee's service but can be no longer than the maximum amount the employee is eligible for under FMLA and OFLA statutes.

(B) Additional Leave Granted Under FMLA:

- (i) An eligible employee is allowed up to 26 weeks of leave in a single 12-month period, to care for their spouse, son, daughter, parent or next of kin, who is a covered servicemember, with a serious injury or illness (see "Definitions" (12)(f).) The 26 weeks is not in addition to the 12-week FMLA entitlement. It is a combined leave total. For example, an employee uses 12 weeks of FMLA leave for the employee's own serious health condition. The employee has 14 weeks remaining to provide care for a covered servicemember with a serious injury or illness.

(C) Additional Leave Granted Under OFLA:

- (i) A female employee who takes 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 who uses 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.

(D) FMLA and OFLA leave are designated at the same time when the employee is entitled to and eligible for both leaves.

(i) Exceptions:

- (a) OFLA leave is not designated when an employee is unable to come to work because of a disabling compensable injury or pending a determination of a workers' compensation claim. If the workers' compensation claim is denied, OFLA leave will immediately be designated if the employee meets eligibility and purpose requirements for OFLA. If upon appeal, the denial is reversed, the number of designated OFLA hours will be restored to the employee. (For a definition of compensable injury, see ORS 656.005(7).)

- (b) If an employee with a disabling compensable injury refuses an offer of transitional work per Policy 50.020.05 "Early Return to Work of Injured Workers," OFLA leave will immediately be designated if the employee meets eligibility and purpose requirements for OFLA.

- (ii) FMLA leave is designated for an absence resulting from a workers' compensation claim if the employee meets eligibility and purpose requirements for FMLA leave.

(E) An eligible employee may need FMLA or OFLA leave for more than one qualifying condition or purpose at the same time or in the same leave year. However, this does not extend the amount of the employee's FMLA or OFLA leave entitlement.

(F) When a husband and wife both work for the State of Oregon and request FMLA or OFLA leave, the agencies must coordinate FMLA or OFLA leave under the following circumstances:

- (i) When a husband and wife both work for the State of Oregon and both are eligible for FMLA, they must share the entitlement (up to 12 or 26 weeks, as applicable) for:
 - (a) Parental leave for the birth or adoption of a child or foster child placement
 - (b) To care for a parent with a serious health condition
 - (c) To care for a spouse, son, daughter, parent or next of kin, who is a covered servicemember, with a serious injury or illness (see "Definitions" (12)(f).)

(ii) When two family members work for the State of Oregon and both are eligible for OFLA leave, they each have their full entitlement (up to 12 weeks) but they may not take OFLA leave, including sick child leave, at the same time.

(a) Exceptions:

- (i) One employee needs to care for the other employee who is suffering from a serious health condition
- (ii) 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
- (iii) Both employees have a serious health condition
- (iv) The agency appointing authority or designee grants permission under special circumstances.

(f) Intermittent or Reduced Schedule Leave

(A) An eligible employee is entitled to take FMLA or OFLA leave on an intermittent or reduced schedule basis if medically necessary, for their own or a family member's serious health condition, or to care for a covered servicemember with a serious injury or illness (see "Definitions" (12)(f).)

(i) When an eligible full-time employee takes FMLA or OFLA leave on an intermittent or reduced schedule basis, the employee is entitled to take up to 480 hours (12 weeks) of time. Under FMLA only, a full-time employee caring for a covered servicemember has an aggregate amount of up to 1040 hours (26 weeks) of time. (This includes the 480 hours (12-week) entitlement.)

(ii) When an eligible employee works less than full-time, and takes FMLA or OFLA leave on an intermittent or reduced schedule basis, the FMLA or OFLA entitlement is pro-rated depending on the usual number of hours or days the employee works in a week. For example, an employee working 30 hours per week is entitled to up to 360 hours in a 12-month time-period.

(B) It is at the sole discretion of the agency appointing authority or designee to approve FMLA or OFLA leave on an intermittent or reduced schedule basis for parental leave. An employee requesting intermittent or reduced schedule leave, must work with the agency appointing authority or designee to find a schedule that will meet the agency's needs as well as the employee's desire for intermittent or reduced schedule leave.

(i) Exception: The agency appointing authority or designee may be required to allow an employee to take FMLA or OFLA leave on an intermittent or reduced schedule basis to effect the adoption or placement of a foster child with the employee.

(g) Employee Requirements for Requesting FMLA and OFLA Leave

(A) An employee must provide notice at least 30 calendar days in advance to the agency appointing authority or designee, for a planned absence for a serious health condition, for parental leave, or for injured servicemember family leave. The employee does not need to state the leave is for FMLA or OFLA purposes. The agency appointing authority or designee may ask for more information to determine if the leave would qualify under FMLA or OFLA.

(i) Exceptions:

(a) In the event of a medical emergency or other unforeseeable event, the employee must notify the agency appointing authority or designee as soon as practicable.

- (b) In the event an employee is on approved leave for other than FMLA or OFLA, and during the absence a condition arises that potentially qualifies under FMLA or OFLA, the employee must inform the agency appointing authority or designee as soon as practicable or at the latest, immediately upon the employee's return to work. If the employee's condition requires additional leave, the employee must notify the agency appointing authority prior to the date the employee is expected to return.
- (B) An employee who qualifies for OFLA sick child leave and is absent to care for an ill child, must follow normal agency notification (call-in) procedures for an unplanned absence. The employee must say the absence is to provide home care for an ill child.
- (C) An employee already approved for intermittent leave must follow normal agency notification (call-in) procedures for an unplanned absence. The employee must say the absence is for their FMLA or OFLA qualifying condition, if the absence is for that purpose.
- (h) **Agency Appointing Authority or Designee Requirements for Designating FMLA or OFLA Leave**
- (A) Under most circumstances, an agency appointing authority or designee should respond within two business days to an employee's request for leave, or notification of an employee's need for leave that qualifies as a serious health condition, as parental leave or as leave to care for a covered servicemember. The response includes the designation of approval, provisional approval pending receipt of medical certification, denial or a request for more information.
- (B) An agency appointing authority may retroactively designate FMLA, OFLA or both leaves to the start of the absence under one of the following circumstances:
- (i) The agency appointing authority or designee did not learn the reason for the absence was potentially FMLA or OFLA qualifying until after the employee's return
 - (ii) The agency appointing authority or designee made a preliminary or provisional designation of FMLA or OFLA or is awaiting medical certification confirming the need for leave. (If the medical certification fails to confirm the need for FMLA or OFLA leave, the designation is withdrawn.)
- (C) Notification to the employee that FMLA or OFLA is being designated must address:
- (i) If the leave is counted as FMLA, OFLA or both
 - (ii) Medical certification requirements, including consequences for failure to provide the medical certification
 - (iii) Requirement to use paid leave
 - (iv) Insurance premium payment information, including the employee's potential to be required to repay insurance premiums paid by the agency, if employee does not return to work
 - (v) If a fitness for duty certificate is required for the employee to be restored to duty
 - (vi) Reinstatement rights.
- (i) OFLA, Sick Child Leave is designated by the agency appointing authority or designee to an eligible employee who is absent to provide home care for the employee's sick child.
- (j) Medical Certification
- (A) An agency appointing authority or designee may require medical certification from a health care provider for

the employee's own serious health condition and those of family members, including a covered servicemember, in accordance with FMLA and OFLA statutes.

- (B) The [Health Care Provider Certification Form \(medical certification\)](#) is considered part of the policy. This form is used when requiring an employee to provide medical certification from a health care provider. ([See "Attachments."](#))
- (C) If medical certification is required, an employee must provide it prior to commencement of the leave or within 15 days after the agency appointing authority or designee requests the medical certification, whichever is later. In some extenuating circumstances, an agency appointing authority or designee may allow more than 15 days, 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 medical certification per FMLA and OFLA statutes and applicable CBA, the agency appointing authority or designee may deny the FMLA or OFLA leave.
 - (a) If the leave is denied, the absence is no longer protected under the FMLA and OFLA statutes. In the event the agency was paying the insurance premium benefits as in the case of FMLA leave, the employee may be required to repay the agency for insurance related expenses.
- (D) OFLA statute allows an appointing authority or designee to request medical certification for sick child leave for the non-serious health condition of a child requiring home care after the third occurrence in a leave year.
- (E) Medical certification is not requested for parental leave (for the birth of a newborn, newly adopted or newly placed foster child.)
- (F) If an agency appointing authority or designee has reason to doubt the validity of a medical certification for an employee's serious health condition, an agency appointing authority or designee may request a second opinion. If the second opinion conflicts, a third provider may be consulted, whose opinion is binding.
- (G) Before restoring an employee to their former position, an agency appointing authority or designee may require the employee to present certification from the employee's health care provider verifying the employee is able to resume work.
- (H) The agency must pay uninsured expenses related to requested medical certifications. Receipts for uninsured expenses must be submitted to the agency following the agency's policy regarding reimbursement.
- (k) Medical Recertification
 - (A) An agency appointing authority or designee may require updated medical information including but not limited to the following circumstances:
 - (i) If an employee requests an extension of leave
 - (ii) If the duration or nature of the condition has changed significantly
 - (iii) If the agency appointing authority or designee receives information casting doubt on the employee's reason for the absence
 - (iv) To determine if the employee will be required to reimburse the agency for insurance premium payments made on their behalf, if the employee resigns from their job and leaves the agency
 - (v) If none of the above circumstances apply, no more than every 30 days for leave based on pregnancy,

chronic or long term conditions.

- (l) FMLA and OFLA are unpaid leave entitlements. However, an employee is required to use accrued paid leave while on FMLA (including leave to care for a covered servicemember) and OFLA leave (except compensatory (comp) time.) Once an employee exhausts all accrued paid leave, the employee is placed on leave without pay. Leave use policies and CBAs, as applicable, dictate the order of leave used.

(A) Exceptions:

- (i) An unrepresented or management service employee using FMLA or OFLA leave, who is receiving short-term disability insurance benefits provided through the Public Employee's Benefit Board, may choose to reserve a balance of up to 40 hours of sick leave. The employee is placed on leave without pay once the remainder of the employee's paid leave is exhausted.
- (ii) Some CBAs allow represented employees to retain some vacation or personal business leave while on FMLA or OFLA leave. An employee who wants to reserve paid accrued leave in accordance with an applicable CBA, must notify the agency appointing authority or designee as outlined in the CBA.
- (iii) An employee who is absent due to workers' compensation is not required to use accrued paid leave if the absence for workers' compensation is qualifying under FMLA.
- (B) An employee may request to use accrued comp time while on FMLA or OFLA leave. The use of comp time off is not counted against the employee's FMLA or OFLA 12-week entitlement as stated in the federal regulations and Oregon Administrative Rules (20 CFR 825.207(i); OAR 839-009-0220.) Use of comp time is not protected leave under FMLA or OFLA.
- (C) An employee on FMLA or OFLA leave is eligible to receive donated leave only in accordance with Policy 60.025.01 "Donated Leave," an agency policy or an applicable CBA.
- (D) An employee on FMLA or OFLA leave may be entitled to short-term or long-term disability or PERS Disability benefits. (Note: Application for disability benefits is the employee's responsibility. The employee is also responsible for giving the disability insurance provider information about their accrued leave and donated leave received or expected to receive, and payments received from other sources including Workers' Compensation and disability benefits. Leave and benefits may affect the employee's eligibility for disability and may place the employee in an overpayment situation that the employee may be required to repay.)

(m) Insurance Contributions

- (A) An employee is entitled to continued employer health care contributions for medical, dental and basic employee-only life insurance when the leave is designated as FMLA (including leave to care for a covered servicemember.) If the employee has insufficient accrued leave in a month, the employee must pay the premiums for optional insurances if the employee wishes the optional insurances to continue.
- (i) If an employee fails to return to work, the employee may be required to reimburse the agency for insurance premiums paid on their behalf, unless the employee has: a continuation, recurrence, or onset of a serious health condition; a continuation, recurrence, or onset of a condition related to care of the covered servicemember; or other circumstances beyond the control of the employee.
- (B) When the leave is qualifying only under OFLA, health care contributions continue only if the employee uses sufficient accrued paid leave in the month. An employee on reduced schedule or intermittent leave must have a sufficient combination of hours worked and accrued paid leave used in the month for health care contributions to continue. If an employee qualifying only under OFLA has insufficient paid leave or hours worked in a month, the employer contributions terminate and coverage may continue under COBRA. The

employee will receive information about self-paying insurance through a third-party administrator.

- (C) If an employee is on OFLA leave and is receiving donated leave, the employee's insurance premiums for medical, dental and basic employee-only life insurance are paid from the donated leave. The employee must pay premiums for any optional insurances the employee wishes to continue.
 - (D) For the effect on insurance for an employee returning from FMLA or OFLA leave, refer to the "[Public Employees' Benefit Board FMLA-OFLA Benefit Matrix.](#)" The matrix is considered a part of the policy. (See "[Attachments.](#)")
- (n) Effect on Salary Increases, Seniority and Recognized Service Date
- (A) For employees using FMLA leave: FMLA leave is treated as if the employee was not on leave during that time-period, up to the point where their FMLA entitlement ends.
 - (B) For employee using OFLA leave: For unrepresented and management service employees, see HRSD State Policy 20.005.05 "Merit Pay System" and 60.000.05 "Vacation Leave." For represented employees, see the appropriate CBA.
- (o) Returning From Leave
- (A) An agency appointing authority or designee may require a statement from a medical provider certifying the employee is able to return to work, and to find out if the employee has any job-related restrictions and the duration of the restrictions.
 - (B) An employee returning from OFLA leave or both OFLA and FMLA leave has a right to be restored to the position of employment held by the employee when the leave began. An employee returning from FMLA leave (including leave to care for a covered servicemember) has the right to be restored to an equivalent position with equivalent pay, benefits and other terms and conditions of employment.
- (i) Exceptions:
- (a) If the employee's position no longer exists, the employee is restored to an equivalent position with equivalent employment benefits, pay, and other terms and conditions of employment.
 - (i) If the position was eliminated through an agency layoff process, the employee is treated as if the employee was not on FMLA or OFLA leave. The employee is treated the same as similarly situated employees, per agency policy or applicable CBA.
 - (b) A returning temporary employee or limited duration employee is returned to the extent their placement or position is still in existence.
 - (c) If an employee is unable to perform an essential function of the position, because of a physical or mental condition or the continuation of a serious health condition, the employee has no right to restoration to another position. However, the agency's obligation may be governed by the Americans with Disabilities Act (ADA.)
 - (d) 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 and or OFLA leave, with or without reasonable accommodation, the employee may be subject to termination under applicable law, rule, policy or CBA.
- (C) Requests by employees who are unable to return to work after exhausting their FMLA and OFLA leave

entitlement and still have accrued sick leave, must follow the provisions of Policy 60.000.01 "Sick Leave with Pay" or the applicable agency policy, or CBA and notify the agency appointing authority or designee if they will continue their absence.

(D) An agency appointing authority or designee in their discretion, may grant a request by an employee to extend their absence after exhausting FMLA or OFLA leave and accrued sick leave with consideration for the following:

(i) The continuation of the leave does not impose an undue hardship for the agency

(ii) The continuation of the leave is in compliance with law, policy, applicable CBA and reasonable accommodation provisions of the ADA.

(p) Note: Refer to the appropriate family and medical leave law for situations regarding family and medical leave that are not referred to in the policy.

(q) FMLA and OFLA Recordkeeping

(A) The agency appointing authority or designee shall maintain records documenting leave taken by agency employees for family and medical leave. Records may include but are not limited to leave requests, payroll wage and hour related data, and records related to medical certifications or medical histories of employees or employees' family members. Some records are maintained by the agency payroll department and others are maintained in a locked medical file separate from the employee's official personnel file. For FMLA and OFLA recordkeeping requirements and purging schedules, see OAR 166-300-0035(3)(5)(6).

(r) Prohibition of Retaliation

(A) An employee cannot be retaliated against with respect to hiring or any other term or condition of employment because the employee inquired about or submitted a request for FMLA or OFLA leave or invoked any provision of FMLA or OFLA.

(B) An agency appointing authority or designee may not count an employee's use of FMLA or OFLA leave against the employee in determining the employee's compliance with attendance policies.

(1) **Performance Measure:** Percentage of leaves granted with documented "notice of eligibility" to employee.

Performance Standard: 100%

(2) **Performance Measure:** Percentage of FMLA and OFLA designated leaves granted by using the "rolling-backward" method to determine eligibility.

Performance Standard: 100%

(3) **Performance Measure:** Percentage of leaves granted where employee was required to use accrued leave in accordance with (1)(l) of this policy.

Performance Standard: 100%