



# ADMINISTRATIVE PROCEDURE

<b>SECTION:</b> 300 – Human Resources	<b>PROCEDURE #:</b> 304-A
<b>TITLE:</b> Family Medical Leave	<b>IMPLEMENTS POLICY #:</b> 304
<b>SPONSORING DEPARTMENT/DIV:</b> Human Resources	
<b>EFFECTIVE DATE:</b> 09/17/2024	<b>REVIEWED:</b> 09/17/2024

**OBJECTIVE:**

To establish procedures for administering protected leave for qualifying events in accordance with the Federal Family and Medical Leave Act of 1993 (FMLA), the Oregon Family Leave Act (OFLA) and the Paid Family Medical Leave Insurance (PMFLI) Act of 2019 (also known as Paid Leave Oregon or PLO)

**PURPOSE:**

The purpose of these family medical leave laws is to secure the right of eligible employees to respond to serious health and safety needs for themselves and their qualified family members.

**AUTHORITY:**

The authority to issue or revise these procedures is reserved to the County Administrator. The County Administrator may authorize exceptions to these procedures when deemed appropriate.

**GENERAL SUMMARY:**

Generally, eligible employees may take up to 12 weeks off work for Family Medical Leave for themselves or covered family members. Additional leave time may be available in certain situations as outlined below under qualifying events.

**ELIGIBILITY REQUIREMENTS:**

To qualify for FMLA, the employee must have worked for a total of 12 months and 1,250 hours during the 12 months preceding the leave. To qualify for OFLA, the employee must have been employed for a period of 180 calendar days preceding the date of leave and worked an average of 25 hours. To qualify for PLO, the employee must have earned at least \$1,000 in Oregon wages in the 52 weeks prior to the qualifying event.

**QUALIFYING EVENTS:**

**For all qualifying events under FMLA, OFLA, or PLO**

1. Generally, employees may take a total of twelve (12) weeks of leave in a 12- month period for any qualifying event. In accordance with current law, qualified FMLA, OFLA and PLO leave at times may run concurrently.

2. One week of leave is based on the regular work schedule of the employee prior to the start of leave.
3. Leave for the birth of the employee's child, or the placement of a child for adoption or foster care with the employee ('parental/bonding leave') must be taken within twelve (12) months of the birth or adoption.

### **Qualifying events under FMLA**

1. Employee Serious Health
2. Family Member Serious Health
3. Pregnancy Disability
4. Bonding / Child Placement
5. Military Caregiver / Military Exigency
6. Disability leave due to a compensable on-the-job injury will be designated under FMLA and will run concurrently with Workers' Compensation Leave in accordance with federal regulations.

### **Qualifying Events under OFLA**

1. Home care for the employee's child (both serious and non-serious health conditions) as well as school and childcare closures for public health emergencies
2. Pregnancy Disability - 12 weeks in addition to other OFLA eligible leaves in the same leave year. Cannot be used at the same time as any PLO leave for the same reason.
3. Bereavement Leave; two weeks per family member; maximum of 4 weeks per leave year
4. Military Family Leave up to 14 days per deployment.

### **Qualifying Events under PLO**

1. Employee Serious Health
2. Family Serious Health
3. Pregnancy Disability – 2 weeks
4. Bonding / Child Placement
5. Safe Leave

### **QUALIFYING FAMILY MEMBER:**

#### **Defined by FMLA**

1. Spouse
2. Child
3. Parent

#### **Defined by OFLA and PLO**

1. Your spouse or domestic partner
2. Your parent or parent of your spouse or domestic partner
3. Your child (biological, adopted, stepchild or foster child)
4. Your spouse or domestic partner's child
5. A child's spouse or domestic partner
6. Your parent's spouse or domestic partner
7. Your sibling or stepsibling or their spouse or domestic partner
8. Your grandparent or your grandparent's spouse or domestic partner
9. Your grandchild or your grandchild's spouse or domestic partner
10. Affinity family member (a person the employee is connected to like family)

## **SERIOUS HEALTH CONDITION:**

A serious health condition is defined as an illness, injury, impairment, or physical or mental condition that falls into one or more categories which indicate the severity of the condition, or the type of medical treatment involved. These categories are:

- Inpatient care
- Poses an imminent danger of death or possibility of death in the near future
- Continuing treatment by a Health Care Provider
- Conditions requiring multiple treatments
- Involves a period of disability due to pregnancy, childbirth, miscarriage or stillbirth, or period of absence for prenatal care
- 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. Subject to applicable laws.

## **SAFE LEAVE:**

Safe leave is paid time off for survivors of:

- Sexual Assault
- Domestic Violence
- Harassment
- Bias Crimes
- Stalking

## **PROCEDURES:**

### 1. Notification to Washington County

- 1.1. Employees must notify Washington County Human Resources Leave Administration when they are requesting a leave potentially eligible under FMLA, OFLA and/or PLO. Failure to provide timely notice may result in delay or loss of leave benefits.
- 1.2. Once a PLO claim has been filed, when an employee receives their Report of Wages and Benefit Amount from the Oregon Employment Department, the employee shall provide the County with a copy of the notice to facilitate the calculation of any accrual use.
- 1.3. Employees are required to provide written thirty (30) calendar days' notice before commencing a period of foreseeable family, medical, or safe leave, and providing oral notice within twenty-four (24) hours after the commencement of an emergency or unforeseeable period of family, medical, or safe leave, and providing written notice within three (3) calendar days after the commencement of the emergency leave.
- 1.4. Family members may give notice on an employee's behalf when the employee is unable to do so.

### 2. Medical Certification Requirements:

- 2.1. A licensed health care provider must complete the *Certification of Health Care Provider* form for leave to care for an employee's family member with a serious health

- condition, or the employee's own serious health condition, including disability for pregnancy and following childbirth. The health care provider must be performing within the scope of their professional license or certificate.
- 2.2. Medical certification for FMLA or OFLA may be requested even if not permitted by the Oregon Sick Leave statute. PLO required medical certification may be acceptable in some cases in place of the *Certification of Health Care Provider* for a concurrent leave event.
  - 2.3. The written certification must include satisfactory evidence that confirms the serious health condition of the employee, provide an estimate of when the employee will be able to return to work, state whether the employee's incapacity will require intermittent treatments, state the estimated frequency and duration of such treatments, and provide the estimated period for recovery, if known.
  - 2.4. *Certification of Health Care Provider* form must be submitted to Human Resources Leaves Administration within fifteen (15) days of the request. Failure to provide the required certification may result in denial of the requested leave.
  - 2.5. If the serious health condition is related to a family member, the attending health care provider must indicate on the *Certification of Health Care Provider* form that the employee must provide care (which may include psychological comfort, basic medical, hygiene, nutritional needs, safety, transportation, arrangement for third party care).
  - 2.6. If a certification is incomplete or insufficient the employee may be provided up to seven (7) calendar days to submit clarifying information from their healthcare provider before a leave determination is made.
  - 2.7. The County will require that an employee who provides notice for PLO leave disclose whether that leave is for a family, medical, or safe leave purpose. If the PLO leave is for a family member, the County will also require that the employee disclose which family member the leave is for. The County will not require that the employee disclose confidential information, or any other specific information related to why or what the PLO leave is needed for except to determine whether other federal leave protections must run concurrently.
  - 2.8. If validity of the medical certification is in doubt, the County may require the employee or family member to obtain a second opinion at the County's expense.
  - 2.9. Recertification may be requested every 30 days, or more frequently if 1) the employee requests an extension of leave, 2) circumstances described by the previous medical verifications have changed significantly, or 3) the employer receives information that casts doubt upon the employee's stated reason for the absence.
  - 2.10. Recertification for a chronic condition requiring an ongoing intermittent leave under FMLA will be required every six (6) months.
  - 2.11. A medical verification may be required for leave taken for the non-serious health condition of a child requiring home care (sick child leave) after the third occurrence of sick child leave and every subsequent occasion during the leave year.
3. Intermittent or Reduced Work Schedule Leave:
    - 3.1. Employees may take their FMLA, OFLA, or PLO leave continuously or intermittently, subject to certification by the healthcare provider and requirements

- under the law. Under certain circumstances, employees may use their leave to reduce the work week. Intermittent leave or reduced work schedule leave may be requested by the employee; however, it must be in full day increments for PLO.
- 3.2. Regardless of the type of leave approved, under FMLA, OFLA or PLO, it is the employee's responsibility to accurately report their time missed due to intermittent leave within the established County leave tracking system and on their county timesheet, such that the total hours must match. Failure to accurately report time missed may result in discipline up to and including termination of employment.
    - 3.2.1. An employee may request that bonding/parental leave be taken intermittently. The employee's planned schedule is to be documented on "Intermittent Parental Leave Form A" prior to the start of the leave and shared with their Supervisor and Leave Administration.
    - 3.2.2. Parental leave must be completed within twelve (12) months of the birth, adoption, or placement of the child in foster care.
  - 3.3. Employees may be asked to schedule leave periods so that it does not unduly interfere with county operations.
  - 3.4. The county reserves the right to temporarily place an employee in an available, alternative position with equivalent pay and benefits if the alternative position would better accommodate the intermittent or reduced schedule. If leave is also OFLA qualifying, the County will seek the employee's permission for the alternative assignment.
  - 3.5. In the case of partial day intermittent or a reduced work schedule leave, the employee's position retains its designated FTE status (full-time or part-time). If PLO is not approved, the difference between hours usually scheduled and actual hours worked must be covered by use of accrued leaves if available. If not available, then unpaid time will be used for hours missed until qualifying leave time is exhausted.
4. Use of Accrued Paid Leave:
- 4.1. Once confirmation of an employee's application to PLO is received, the employee may choose whether to use accrued leave to supplement their earnings from the Oregon Employment Department.
  - 4.2. If an employee has not applied for PLO, or the leave reason does not qualify for PLO, the employee must use all accrued paid leave, including any paid leave accrued during the employee's qualified leave, prior to commencing any period of unpaid leave.
  - 4.3. Employees will not be eligible to accrue vacation leave or seniority if they incur unqualified pay periods as defined by Washington County's Personnel Rules and Regulations.
  - 4.4. Under no circumstances will an employee be permitted to go back and forth between paid and unpaid leaves for the purpose of extending eligibility for County paid benefits or earning service accruals.
  - 4.5. An employee who has applied for PLO, may designate the order of leave accrual usage, in writing, to the County. Use of accruals to supplement PLO benefits and any requested order of use must be communicated to the County Leave Administration team on an Accrual Use Request Form. If the employee does not designate a specific order for leave accrual use, the County will use

and deplete an employee's accrued leave(s) in the following order: sick leave, MAPPS, holiday leave or (ILH), vacation leave, and comp time. If the employee designates a specific order of leave, the County will use that order for the remainder of the leave, or until the employee provides timely written notice (prior to the end of the pay period) requesting to change the order and/or number of hours used. If accruals are used prior to PLO notification they will not be retroactively reinstated.

5. Benefits Continuation during Leave

During an approved leave, the County will continue its contribution to employer paid benefits for leave periods that qualify under FMLA, OFLA, or PLO at the same level and under the same conditions in place when working. Employees will be responsible for their share of the premiums, and these will be collected during the leave or upon return if the County is unable to collect due to the employee entering unpaid status.

6. Return to Work after Leave

It is the employee's responsibility to provide a timely Release to Work form from a healthcare provider if leave was taken due to the employee's own serious health condition. The employee should upload the release to their leave profile in the County leave administration software, provide it to their supervisor or send it to the Human Resources Department's [HRLeaveAdministration@washingtoncountyor.gov](mailto:HRLeaveAdministration@washingtoncountyor.gov) email box to review for any continuing restrictions that may impact the employee's return to full duty. Once received, the Leaves Administration team will notify the supervisor of the full medical release, or discuss any limitations noted on the Release form that may impact the employee's ability to perform the essential functions of the position.

7. FMLA/OFLA Military Leaves:

7.1. FMLA Military Caregiver Leave for an Injured Servicemember

7.1.1. An eligible employee who is the spouse, son, daughter, parent, or next of kin (defined as the closest blood relative) of a covered servicemember shall be entitled to a total of twenty-six (26) workweeks of leave during a 12-month period to care for the servicemember.

7.1.2. A covered servicemember is 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; or a veteran who is undergoing medical treatment, recuperation, or therapy for a serious injury or illness, and who was discharged within the previous 5 years before the eligible employee takes FMLA military caregiver leave to care for the veteran.

7.2. FMLA/OFLA Family Leave Due to a Qualifying Exigency or Call to Active Duty

- 7.2.1. An eligible employee may use up to twelve (12) weeks of FMLA leave for any qualifying exigency as defined by the Department of Labor arising from a spouse, son, daughter, or parent who is either on active duty in the Armed Forces, or who has been notified of an impending call or order to active duty in the Armed Forces.
- 7.2.2. FMLA leave for a qualifying exigency is not in addition to the standard FMLA 12-week entitlement; rather, it constitutes an additional qualifying reason for seeking FMLA leave.
- 7.2.3. An eligible employee who is a spouse or registered domestic partner of a member of the Armed Forces, the National Guard, or the military reserve forces of the United States may use up to fourteen (14) days of OFLA leave per deployment or leave from deployment. The employee must notify the County of their intention to take such leave within five (5) business days of receiving notice of an impending call or order to active duty or of a leave from deployment, or as soon as is practicable when official notice is provided fewer than 5 days before commencement of the leave.
- 7.2.4. OFLA leave taken for deployment or leave from deployment of an employee's spouse or registered domestic partner is not in addition to the standard OFLA 12-week entitlement; rather, it constitutes an additional qualifying reason for seeking OFLA leave.
- 7.2.5. Employees utilizing OFLA leave pursuant to this subsection may use any accrued leave they have earned for any part of the qualified leave.
- 7.2.6. The use of OFLA leave by an employee pursuant to this subsection shall run concurrently with their FMLA leave entitlement under this subsection which may not be taken separately or consecutively.

8. Training.

The County will make available and encourage Staff to attend training that is designed to inform Staff about Family Medical Leave provisions. The Family Medical Leave Policy and corresponding Administrative Procedures will be covered in the training sessions.