

FMLA Questions And Answers

Introduction

Passed in the mid-1990s, the Family Medical Leave Act (FMLA) and Oregon Family Leave Act (OFLA) provide employees with leave from work for their own or their families medical needs, including time off to care for a new child.

The FMLA and OFLA are only part of the university services, benefits and policies available to you when you or a family member face a health problem. As you consider your individual situation and needs, be sure to consult the collective bargaining agreement and applicable policies on paid leave such as sick leave and vacation, long- and short-term disability coverage, leave without pay, and so forth.

What is it?

1. What is the Family and Medical Leave Act?

The Family and Medical Leave Act of 1993 (FMLA) is a federal law designed to help you preserve your job and benefits when you need time off from work to take care of a new child or deal with serious health situations involving your family or yourself. FMLA can help you be confident of your decisions as you balance family needs with your work schedule. You can take time off to attend to such critical life events without losing your employment and health insurance coverage.

2. Does Oregon have a family and medical leave law?

Yes. The state has the Oregon Family Leave Act (OFLA). However, in most cases, OFLA leave also qualifies as FMLA leave. As long as leave qualifies under both the FMLA and OFLA, its use is counted against both entitlements so employees are usually not eligible for more time off under OFLA. In some cases, OFLA does provide more time off than FMLA and the additional time is then charged only against the employee's OFLA leave balance. OFLA provides job protection for time off, but does not provide employer paid health insurance while on leave without pay.

3. Who should I contact if I need time off for myself or a family member?

Human Resources (HR) encourages employees to call if they have questions about the basis for leaves and the procedures for requesting leave. HR staff are available for one-on-one appointments to discuss the specifics of your situation and how the law, in conjunction with other benefits, can help you. HR provides information about FMLA and any other laws, collective bargaining agreements, or policies that provide employees time off.

Am I Eligible?

4. How do I know if I am eligible for family and medical leave?

To qualify for FMLA, you must have 12 months of service with the State of Oregon (does not have to be consecutive) and you must have worked at least 1,250 hours during the 12 months preceding the date your leave begins. If you do not qualify for FMLA, you might be eligible for OFLA. You must have been employed for at least 180 calendar days and have worked an average of 25 hours a week (except for parental leave which does not require the weekly average) to qualify for OFLA. In most cases, employees qualify for both FMLA and OFLA at the same time.

5. What family and medical leave reasons qualify?

Leave taken for the following reasons is designated as FMLA and OFLA:

1. Your serious health condition
2. A family member's serious health condition
3. Care for your child after birth, adoption or foster care placement

OFLA also allows you to take time off to care for a child at home with a cold or some other non-serious condition requiring home care, but FMLA does not.

6. How do I know if I have a serious health condition or a family member has a serious health condition?

The definition of a serious health condition includes:

1. Hospital care
2. Absence of four days or more plus treatment two or more times (also includes one treatment and continuing supervision)
3. Pregnancy
4. Chronic conditions requiring treatments
5. Permanent long-term conditions requiring supervision
6. Multiple treatments (non-chronic conditions)

The OFLA definition of a serious health condition closely tracks the FMLA serious health condition definition.

7. What is the definition of a family member?

Under FMLA, a family member includes a son, daughter, spouse or parent. The OFLA definition is the same, but also includes a parent-in-law and same-gender domestic partner. FMLA protections do not extend to same or opposite-gender domestic partners.

8. What is the definition of a son/daughter?

A son/daughter is defined as any child under 18, or over 18 if incapable of self-care, who is a biological, adopted, or foster child, a stepchild or a legal ward, or a child for whom you are financially responsible and supervise on a day-to-day basis. The OFLA definition is the same, but also includes an adult child, over 18 and not substantially disabled, who needs care for a serious health condition.

9. How does the law define a parent?

A parent is defined as any individual who had day-to-day and financial responsibility for you when you were a child. A grandparent, aunt, uncle, etc. could be considered to be your parent.

10. If I have an injury that qualifies under Workers' Compensation, does it qualify for FMLA and OFLA?

It depends. If the injury meets the definition of a serious health condition and you qualify for family and medical leave, the employer must designate your time off as FMLA and OFLA and you will be eligible for the protections the laws offer.

How Much Time Can I Take?

11. How much time am I eligible to take for a family and medical leave reason?

You are eligible for up to 12 weeks of leave designated as FMLA and OFLA during any 12-month period. The University uses the "rolling backward" method to calculate the 12-month period. This is the 12-month period measured back in time from the date you request any family and medical leave. You are eligible for a combined total of 12 weeks for the reasons listed above. In some cases, OFLA may provide more time off.

12. If my spouse also works at WOU, can we both take 12 weeks to care for a new child?

Under FMLA, you and your spouse will have to share the 12 weeks to care for a new child. It is up to you how you split the 12 weeks. However, OFLA is more generous and each parent has an individual 12 week entitlement, even if both employees work for the same employer. The shared 12 weeks would be counted as FMLA leave and the additional time would be counted as OFLA leave.

13. Since leave that qualifies as both FMLA and OFLA runs concurrently, does OFLA ever allow me to take more time off than FMLA does or to take time off for reasons that do not qualify under FMLA?

Yes. In some cases, OFLA is more generous than FMLA and allows you to take more than the 12 weeks available under FMLA or allows you to take time off before you qualify for FMLA. Time off that qualifies only under OFLA, is designated only as OFLA leave. Time off that qualifies under both FMLA and OFLA leave is counted against the 12 weeks available under both laws. Remember, employer paid health insurance is not available if you are on leave without pay that qualifies only as OFLA, not FMLA.

14. What are some examples of time off that qualify under OFLA, but not FMLA?

Both mothers and fathers are entitled to leave for birth, adoption or placement of foster children. Each parent has an individual 12 week entitlement under OFLA, even if both parents work for the same employer. Under FMLA, parents must share the 12 weeks of leave if they work for the same employer. OFLA includes a parent-in-law and same gender domestic partner in the definition of an eligible family member, but FMLA does not. Under OFLA, an employee may take 12 weeks off to care for a parent-in-law or same-gender domestic partner, but that time off may not be charged against the FMLA entitlement. Assuming no other family leave was used in the leave year, an employee would have 12 full weeks available under FMLA if an eligible family member developed a serious health condition.

Under OFLA, an employee must be allowed to take family leave for any illness or injury of a child that requires home care, although there is no serious health condition. This time cannot be charged against the FMLA leave. OFLA allows an employee to take time off to care for an adult child over the age of 18 (does not have to be incapable of self-care) who has a serious health condition.

Generally, OFLA entitles employees to 12 work-weeks of leave in a 12-month period.

There are however, two exceptions:

1. An employee who takes family leave because of a pregnancy-related medical condition, is also entitled to an additional 12 weeks of OFLA leave for any other family leave purpose.
2. An employee using the full 12 weeks of OFLA leave to care for a newborn or newly-adopted or placed foster child is entitled to an additional 12 weeks of sick child leave. If the employee does not use the entire 12 weeks of parental leave, the employee has only the unused balance of the 12 weeks of parental leave to use for sick child care for the remainder of the 12 months or for any other OFLA leave purpose.

15. Can I take intermittent or reduced hour leave for a serious health condition?

Yes. If your health care provider states you need to work an intermittent or reduced hour schedule for a serious health condition, you can reduce your hours or use leave intermittently. Your health care provider must indicate a schedule of time off for visits or treatments or the likely duration and frequency of episodes of incapacity.

16. Can I take intermittent or reduced hour leave to care for a new child?

Yes, with your supervisor's approval. The regulations say employees are required to take the leave all at once unless the employer elects to grant intermittent or reduced hour leave within a set time frame. Check with your supervisor. Your leave must be taken within 12 months after the birth or placement for adoption or foster care.

What Happens to my Pay and Benefits?

17. Will I receive pay while I am on FMLA and OFLA leave?

You will receive pay only if you have paid leave (sick, vacation, personal) available to use. In fact, if you are a classified employee, you are required to use any accrued leave you have available before you go on leave without pay during your family and medical leave. This includes sick, vacation and personal leave. Classified employees receiving Workers' Compensation are not required to use paid leave before going on leave without pay. If you are an unclassified employee, you must use all sick leave prior to requesting leave with out pay. Use your normal reporting process to let your department know what type of leave you are using. In addition, you will be required to complete an FMLA and/or OFLA attendance record each month to verify your family and medical leave.

18. Can I use all of my accrued paid leave before my time off is designated as family and medical leave?

No. It runs concurrently. Family and medical leave does not start after paid leave is used up. The designation is based on the reason you are taking the leave, not whether you are on paid leave or unpaid leave. Family medical leave actually protects your job, unlike sick leave, because you cannot be disciplined for missing time for a qualifying reason. If you have questions about sick leave contact human resources at 503-838-8139.

19. What happens to my benefits while I am on unpaid family and medical leave?

If you qualify for both FMLA and OFLA, the university's contribution for your medical and dental benefits continues during your leave even if you are on leave without pay. We will let you know in writing when your regular benefits end and when you become eligible for benefits under FMLA and OFLA. When you are on unpaid leave, you will be required to pay the portion of the medical and dental premium that is normally deducted from your paycheck. You are also eligible to pay for any additional plans you wish to continue during your unpaid leave. If you return during the twelve weeks allowed under family and medical leave, or the day immediately after the twelve weeks ends, your coverage will be reinstated effective the first of the next month. If you do not return immediately after the twelve-week period ends, you must meet the 80 hour rule for classified employees, or the .50 FTE rule for unclassified employees before coverage becomes effective. This means you must work at least 80 hours or .50 FTE the month you return to be eligible for coverage the following month.

What Kinds of Notices and Medical Certification are Required?

20. How do I request family and medical leave?

If the need for your leave is foreseeable, you must provide advance written notice to your supervisor using the Request for Leave form available by call HR at 503-838-8139.

Because medical information is confidential, the Request for Leave form lists only "serious health condition" as a reason if you or your family member has a medical problem. The form does not ask you to describe your health condition. If the need for your leave is not foreseeable, contact your supervisor as soon as possible. Your supervisor will contact HR.

21. Do I have to specifically request family and medical leave to receive job protection for my time off?

No. However, you must provide enough information about the reason for your absence so your supervisor realizes that your time off may qualify as FMLA and OFLA leave. The Request for Leave form includes both FMLA and OFLA qualifying reasons and definitions.

22. Who is responsible for designating the leave as family and medical leave qualifying?

The Family and Medical Leave Act states that, in all circumstances, it is the employer's responsibility. HR is responsible for designating your leave as FMLA and/or OFLA qualifying based on the reason for your leave and counting your leave toward your 12-week entitlement.

23. Do I have to provide a medical certification for my or my family member's serious health condition?

Yes. You have 15 days from the date HR is notified of the leave to provide the medical certification. To qualify for FMLA and OFLA, your doctor must certify that you have a serious health condition and must also state that you are unable to work because of it.

24. Is the information included in my medical certification confidential?

Yes. A return envelope marked "confidential" is included with the form for you or your doctor to use to return your medical certification to HR. Medical certifications are kept in a separate, locked cabinet, apart from your personnel file. Your supervisor does not receive a copy of the medical certificate. HR shares only information that is consistent with business necessity (i.e., the date your leave begins, the date your leave ends, and whether you will be off intermittently or will work reduced hours) with your supervisor.

Will I be Reinstated to my Previous Job?

25. Can I return to my job when my leave ends?

When you return from both FMLA and OFLA leave or only OFLA leave, you are entitled to your same position if it still exists or to another if your position was eliminated. Your benefits will also be reinstated. Remember, in order to receive this protection, you must qualify under the family and medical leave acts and return the day after the twelve-week period ends. If you return at a later date, you may be returned to your same or similar position in accordance with applicable leaves and policies.

26. What if I am hired only for a specific project or a limited duration and that project or job ends while I am on family and medical leave? Am I eligible for reinstatement when my leave ends?

No. Neither FMLA or OFLA give you any protections you would not have had if you had not taken family and medical leave.

27. If I have a condition that qualifies under family and medical leave and Workers' Compensation (WC), how does this affect my reinstatement rights?

If you are partially released to return to work under the WC law, the University must offer you a suitable, available position. You must accept the offer or risk losing reinstatement rights under WC. You are not obligated to return to work under family and medical leave until you can perform all the essential functions of your job. Therefore, while you may lose reinstatement rights under WC, you would not lose them under FMLA and OFLA provided you were able to return to your former job by the time your 12 weeks ends.

Because your individual circumstances undoubtedly will differ, we urge you to contact Human Resources at 503-838-8139 for consultation on your specific situation.