
FAMILY AND MEDICAL LEAVE POLICY

STATEMENT OF POLICY

It is the policy of Deschutes County to comply with the provisions of the federal Family and Medical Leave Act (FMLA), ~~and~~ the Oregon Family Leave Act (OFLA), and Paid Leave Oregon (PLO).

APPLICABILITY

This policy applies to all eligible Deschutes County employees.

POLICY AND PROCEDURES

General

This policy informs county employees about protected leave outlined in FMLA, ~~and~~ OFLA, and PLO. Whichever act provides the greater benefit to the employee will be applied. Protections that qualify under more than one type of protected leave will run concurrently. Although not every detail of these laws can be included in this policy, the county will administer protected leave in accordance with all applicable state and federal laws.

Employee Eligibility

FMLA

To qualify for FMLA, an employee must have been employed by the county for at least 12 months and have worked at least 1,250 hours in the previous 12 months.

OFLA

To qualify for OFLA, an employee must have been employed by the county for an average of 25 hours or more per week¹ for 180 calendar days before leave begins. However, employees taking leave due to the birth of a child or newly adopted or placed foster child become eligible after being employed for 180 calendar days, without regard to the number of hours worked per week. Additionally, during a public health emergency, employees become eligible for OFLA leave if they have worked for a covered employer for at least 30 days and have worked an average of at least 25 hours per week in the 30 days before taking leave.

¹ This requirement may be different for employees who qualify under the Oregon Military Family Leave Act (OMFLA). Human Resources will provide direct consultation regarding eligibility for those who qualify under OMFLA.

PLO

PLO is a paid leave benefit administered by the Paid Leave Oregon division of the Oregon Employment Department. Eligible employees that have earned at least \$1,000 in the prior year and who have contributed to PLO may qualify for up to 12 weeks of paid family, medical, or safe leave in a benefit year.

Employees applying for PLO benefits will apply directly through the Paid Leave Oregon website and will be required to request a leave of absence from the county as well.

When an employee applies for this PLO, the state will determine an employee's qualifications for the benefit and will approve or deny claims for PLO benefits.

Qualifying Events for Leave

- a. Under FMLA, employees are entitled to take family medical leave in the following situations:
 - 1) When the employee has a "serious health condition" (defined further below), which renders the employee unable to perform the functions of their position.
 - 2) To care for a family member with a "serious health condition." Under FMLA, family member is defined as a spouse, parent, or child, or someone with whom the employee has an "in loco parentis" relationship. "In loco parentis" is defined as a person with whom an employee has developed a parent/child relationship in the absence of a biological or adoptive parent.
 - 3) For the birth or adoption of a child, or for the placement of a child in foster care with the employee. This is often referred to as "parental leave."
 - 4) Immediate family members (spouses, parents, and children) as well as next of kin (nearest blood relative) of an Armed Forces service member who suffers a serious injury or illness while in military service are entitled to take up to 26 weeks of FMLA leave to care for that service member during a 12-month period. The expanded leave to care for injured service members is only available during a single 12-month period.
 - 5) "Any qualifying exigency" arising out of the fact that the spouse, son, daughter, or parent of the employee is on active duty, or has been notified of an impending call to active duty status, in support of a contingency of operation. "Qualifying exigency" may include child or elder care (even without a serious health condition) or helping the family member prepare for departure for duty.

b. In addition, employees are entitled to take family medical leave in the following situations under Oregon law (OFLA):

1) To provide home care for a child under the age of 18 with a non-serious health condition, provided another family member is not willing and able to care for the child; or

2) To provide childcare if your child's school or childcare provider is closed due to a statewide public health emergency, such as COVID-19 pandemic school closures; or

3) Up to an additional twelve (12) weeks for pregnancy disability leave before or after the birth of a child; or

4) Up to fourteen (14) days for military family leave if your spouse or domestic partner is a service member who has been called to active duty or is on leave from active duty; or

4)5) Up to two (2) weeks for bereavement leave related to the death of a family member; or

6) To care for a family member with a "serious health condition." Under OFLA, eligible family members include those covered under FMLA as well as a child's spouse or domestic partner, a parent's spouse or domestic partner, a sibling or stepsibling or the sibling's or stepsibling's spouse or domestic partner, age 18 or over, parent-in-law, a grandparent or the grandparent's spouse or domestic partner, a grandchild or the grandchild's spouse or domestic partner, same-sex a domestic partner, or child or parent of same-sex domestic partner, or any individual related by blood or affinity whose close association with a covered individual is the equivalent of a family relationship. A statement of Affinity may be required to show that such a bond exists. — who has a "serious health condition."

A. As outlined in OAR 471-070-1000, "affinity," as the term is used in ORS 657B.010, means a relationship that meets the following requirements:

a. There is a significant personal bond that, when examined under the totality of the circumstances, is like a family relationship, and;

b. The bond under section (a) of this rule may be demonstrated by, but is not limited to the following factors, with no single factor being determinative:

i. Shared personal financial responsibility, including

- shared leases, common ownership of real or personal property, joint liability for bills, or beneficiary designations;
- ii. Emergency contact designation of the claimant by the other individual in the relationship, or vice versa;
- iii. The expectation to provide care because of the relationship or the prior provision of care;
- iv. Cohabitation and its duration and purpose;
- v. Geographical proximity; and
- vi. Any other factor that demonstrates the existence of a family-like relationship

c. Employees are entitled to take paid leave in the following situations under PLO:

- 1) To care for family members (as defined under OFLA,) with a serious health condition.
- 2) ~~and~~ To care for and bonding with a child in the first year after birth, adoption, or when they're placed in your home through foster care.
- 3) Medical leave to care for yourself when you have a serious health condition.
- 2)4) Safe leave to care for yourself or your child if ~~for you or your child are~~ survivors of sexual assault, domestic violence, harassment, ~~and~~ or stalking.

Serious Health Condition

A serious health condition means an illness, injury, impairment or physical or mental condition that involves:

- 1) Inpatient care (overnight hospital stay).
- 2) A critical illness or injury diagnosed as terminal, or which possesses an imminent danger of death.
- 3) A period of incapacity for more than three consecutive calendar days, and any subsequent treatment period of incapacity relating to the same condition, which also involves:
 - a. Two or more treatments by a health care provider, or
 - b. Treatment by a health care provider on at least one occasion, with a regimen of continuing treatment (e.g., prescription drugs.)
- 4) Permanent or long-term incapacity due to a condition for which treatment may not be effective, such as Alzheimer's disease, severe stroke, clinical depression, or terminal stages of a disease.
- 5) Absences for pre-natal care or pregnancy-related disability.

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- 6) Absences for "chronic" serious health conditions, including, but not limited to diagnosed migraines, asthma, diabetes or epilepsy.
 - 7) Absences to receive multiple treatments for restorative surgery after an accident or injury, or conditions that, if not treated, would likely result in an incapacity of more than three consecutive calendar days without medical intervention or treatment.

~~Some examples of relatively common conditions that **might** qualify for family leave are:~~

- ~~1) Outpatient surgery, when incapacitated for more than three calendar days and prescription drugs (such as pain killers, anti-inflammatories, or antibiotics) are prescribed.~~
- ~~2) Treatment for the employee or a qualifying family member for Alzheimer's disease, stroke, clinical depression, or the terminal stages of a disease.~~
- ~~3) Multiple recurring treatments such as chemotherapy or radiation treatments for cancer.~~
- ~~4) Absence for alcohol or drug treatment, if the employee is attending a recognized treatment program. Attendance in such programs does not negate potential employment action by the County in accordance with applicable drug/alcohol policies.~~

~~Some examples of common illnesses which generally **do not** qualify as a serious health condition are:~~

- ~~1) Ordinary temporary conditions, including common colds, flu, earaches, hay fever and other nasal or sinus allergies, upset stomach, sore throat, headaches (other than diagnosed migraines), routine orthodontia or dental problems including periodontal disease and routine examinations.~~
- ~~2) Job or personal stress (mental illness resulting from stress may be considered a serious health condition).~~
- ~~3) Cosmetic treatments, unless inpatient care is required or complications arise.~~

Duration of the Leave

Qualifying employees are entitled to 12 weeks of family medical leave in a "rolling" 12 month period. ~~A "rolling" 12 month period is determined by "looking backward" from the first day the employee will be out on qualifying leave one-year period, which means a period of 52 consecutive weeks beginning on the Sunday immediately preceding the date on which family~~

leave commences.

For parental leave under OFLA, intermittent leave is subject to department approval and the leave the 12 weeks of leave must be taken and concluded within one (1) year from the date of birth or placement of the child. ~~The twelve weeks may be split into no more than two separate blocks of time.~~

Under OFLA and PLO, additional leavetime may be available for ~~female~~ employees who suffer from a disability resulting from pregnancy or childbirth. Additionally, OFLA allows additional time off to care for a child with a non-serious health condition that requires home care. Employees ~~are encouraged to should~~ contact ~~the Personnel Department the Human Resources Department~~ to determine if they are eligible for extended leave ~~time~~ under these circumstances.

When family members who are each employed by the county wish to take leave under this policy at the same time, their ability to do so may be limited in certain circumstances, such as when they wish to take parental leave together or when they wish to take leave at the same time to care for a parent suffering from a serious health condition. When family members who are each employed by the county wish to take leave at the same time, they ~~are encouraged to should~~ contact ~~the the Personnel Department Human Resources Department~~ to determine if they are eligible to do so.

Concurrent Leaves

To the extent permissible under the law, OFLA, and FMLA, and PLO leave will run concurrently. ~~However, the County will administer FMLA, and OFLA, and PLO policies in such a way that will provide the greatest benefit to the employee. Whenever these laws differ, the county will apply the standard which is most beneficial to the employee.~~

OFLA and PLO leave cannot run concurrently ~~with when the employee is eligible to receive~~ worker's compensation under ORS chapter 656. leave when an employee's absence is due to an on-the-job injury. OFLA leave can run concurrently only if unless the worker's compensation claim is denied, or if the employee has refused a suitable offer of light duty or modified employment. FMLA leave will run concurrently with a worker's compensation leave if the leave meets the criteria for a serious health condition under FMLA.

Notice Required by Employee

When the leave is ~~anticipated~~ foreseeable, the employee must apply for family medical leave **at least thirty (30) calendar days** in advance of the leave by completing and providing to the county obtaining a "Family and Medical Leave Request Form." ~~from their supervisor.~~ Furthermore, if the leave is foreseeable, the employee must make reasonable efforts to schedule leave in a way that does not unduly disrupt the operation of the employee's department. If an employee fails to give at least thirty (30) days' notice of foreseeable leave, and has no reasonable excuse, the county may delay the start of leave until at least 30 days

after the notice was actually given by the employee. If leave is required because of a medical emergency or other unforeseeable event, the employee must inform their supervisor within three working days so the form can be mailed provided to the employee. Employees applying for PLO benefits must also notify PLO the state within its established timeframes to avoid a possible reduction in the PLO benefit.

Completed forms are to be returned to the employee's supervisor and then so they can be forwarded to the Personnel Human Resources Department to determine if the employee and leave request meets the qualification criteria. It is the responsibility of the employee, and the employee's supervisor to ensure Family and Medical Leave Request Forms are completed and submitted to the Personnel Human Resources Department as quickly as possible.

Human Resources staff will review the ~~When the~~ Family and Medical Leave Request Form ~~is received by the Personnel Human Resources Department, and the condition is anything other than a serious health condition of the employee or family member, the employee will have receive provide the employee~~ a Family and Medical Leave Designation Notice or request additional certification forms if needed ~~mailed to their home~~. If the employee or family member has a serious health condition, ~~the employee will receive a provisional Family and Medical Leave Designation Notice, and~~ the county will may require the completion of a Medical Certification Form Health Care Provider Certification Form, which will be sent to the employee by the Human Resources Department.

The ~~Medical Certification Health Care Provider Certification~~ Form must be completed by the employee's health care provider and returned to the Personnel Human Resources Department within fifteen (15) calendar days from the date ~~on the Family and Medical Leave Designation Notice of the leave request. The County's designation of the leave under either FMLA or OFLA will remain provisional until the Medical Certification Form is received by the Personnel Department.~~ Failure to provide the Medical Health Care Provider Certification Form may result in denial of the rights and protections of FMLA and OFLA.

If the serious illness is related to a family member, the attending health care provider must indicate on the Medical Health Care Provider Certification Form that the employee is needed to provide care.

When the medical certification is unclear, or its validity is in question, the county may require the employee or family member to obtain a second or third opinion at the county's expense.

If the need for leave extends beyond a period of one (1) year, such as with intermittent serious health condition leave, the cCounty may require periodic re-certifications by a health care provider that there is a continuing need for leave.

If the family medical leave is for the employee's own serious health condition, ~~he/she may, at the County's discretion, the employee will~~ be required to furnish a "Release to Return to Work" from ~~his/her/their~~ health care provider upon requesting to return to work.

Employees applying for PLO benefits will be required to provide documentation directly to PLO in accordance with PLO's claim request process. The county will not supply medical documentation to PLO on behalf of an employee or their family member.

Obligation to Designate Leave

Deschutes County is obligated under the law to designate family medical leave when it becomes aware of a situation that clearly meets the leave criteria. It is the policy of Deschutes County that employees are to follow the above procedures for notifying the county of their potential leave. However, if the leave clearly meets the leave criteria, the county will reserves the right to designate ~~the protected~~ -leave beginning with the first day of absence for the qualifying leave. The employee cannot delay the start date of family medical leave by declaring the first part of leave as "vacation" leave.

Confidentiality

Supervisors and Human Resources staff are required to keep medical information confidential and ~~FMLA/OFLA~~ Family and Medical Leave documents and forms in a file separate from the employee's personnel file.

Intermittent or Reduced Schedule Leaves

For serious health conditions, family medical leave may be taken on an intermittent basis or a reduced schedule if medically necessary. Details of the proposed schedule will be verified by the certifying medical professional on the ~~Medical Health Care Provider Certification by Physician or Practitioner~~ Form.

~~Intermittent leave or a reduced schedule is not allowed upon the birth or adoption of a child, except for the required legal process leading to the adoption of a child or the placement of a foster child. Upon department head approval, parental leave will be limited to two periods of time off, not to exceed 12 weeks, and must be concluded within one year from the date of birth or placement of the child.~~

Status Reports

While on family medical leave, the employee's supervisor is entitled to periodic reports of status and intent of return to work from the employee, at intervals determined by the supervisor. The supervisor must take into account all of the relevant facts and circumstances related to the individual employee's leave situation when considering such reports, how often such reports are required, and how such reports will affect the length of the employee's leave.

Use of Accrued Leave

Employees who take leave under FMLA and/or OFLA, and who apply for, and are approved by for PLO by the state, may elect to use their accrued paid leave are required to use the amount of to replace their wages up to approximately 100% of their average weekly wage, consistent with applicable law. The average weekly wage is the employee's total gross wages divided by the number of weeks the employee has worked for Deschutes County over the prior 12 months. An employee choosing to supplement their PLO benefits with accrued leave must make their election for each leave bank during the payroll period in which they wish to use the hours. The county will report all supplemental benefits paid to employees to the state in accordance with applicable rules. It should be understood that the county is not responsible for an employee's PLO repayment obligations, penalties, or reduction in benefits assessed by the state due to the employee's decision to use their accrued leave.

If an employee is approved for PLO benefits and has requested to use leave accruals, any period of absence when they are not using any leave accruals will be considered an unpaid leave of absence. The county may request documentation of PLO benefits received when an employee elects to supplement with their accrued leave while on PLO so the appropriate amount of accrued leave to be used can be determined. An employee's regular salary will not be paid when on leave under PLO, even if their PLO benefit has not yet been received.

If an employee's leave does not qualify or apply for PLO, but qualifies for other protected leaves, employees are required to use all available accrued paid leave before going into leave without pay. Compensatory time may not be used until all other leave banks have been exhausted. During the leave period, the employee must continue to use allowable paid leave available to the employee before going on unpaid leave. If the day before and after a holiday are leave without pay/unpaid leave, the holiday will also be unpaid. In any case of unpaid leave Employees An employee will not earn paid leave accruals on any time coded as unpaid leave for any reason. will not accrue paid leave during any part of their leave in which they are absent without pay.

~~During the leave period, the employee must continue to use allowable paid leave available to the employee before going on unpaid leave. If the day before and after a holiday are unpaid leave, the holiday will also be unpaid. Employees will not accrue paid leave during any part of their leave in which they are absent without pay.~~

Tracking of Leave

Employees are responsible for informing their supervisors of absences that are related to an FMLA, OFLA, or OFLA-PLO event. Both employees and supervisors are responsible for ensuring such absences are clearly noted on timesheets so the amount of FMLA/OFLA/PLO leave may be accurately tracked.

Benefit Continuation

Employees on family leave who are eligible for leave under FMLA and/or OFLA will have their benefits continued under the same terms and conditions as when they were an active employee during the period of qualified leave. ~~Employees who are eligible for protected leave under PLO will have their benefits continued after 90 consecutive days of employment. However, employees who are on unpaid leave that is covered only under OFLA are not entitled to have their health insurance paid by the County. An employee granted unpaid leave only under OFLA will be responsible for the entire cost of the health insurance premium while on OFLA leave, if the employee chooses to continue coverage while on OFLA leave.~~

Employee contributions towards benefits will be made either through payroll deduction (when using paid leave) or by direct payment to the county (while on unpaid leave). The employee will be advised in writing ~~at the beginning of the leave period~~ as to the method of payment and due date of premiums. Employee contribution amounts are subject to any change in rates that occur while the employee is on leave.

Reinstatement

Employees returning from ~~family medical~~ leave will be reinstated to the same or an equivalent position with equivalent benefits, pay and other terms and conditions of employment and employment status (for example, if the employee was on a work plan or had progressive discipline before the leave, these corrective steps will resume), unless their former positions have been eliminated in circumstances under which the law does not require reinstatement. The employee's restoration rights are the same as they would have been had the employee not been on leave. Therefore, if an employee's position would have been eliminated or the employee would have been terminated but for the family and/or medical leave, the employee would not have the right to be reinstated upon return from leave.

If an employee is on probationary status while on approved family and/or medical leave, and the leave exceeds more than two weeks, the employee's probationary period will be extended by the length of the leave.

Failure to Return from Leave

~~When an employee returning to work from family medical leave must return to his/her regular work schedule (the standard hours per month established for his/her position) unless a change or modification of the employee's schedule is approved in advance by the employee's supervisor before the employee returns to work. If an employee fails to return to work after exhausting family medical leave, his/her/their employment may be terminated in accordance with applicable laws, county policies, and union contracts. When an employee is unable to return to work due to their own serious health condition, the county will work with the employee to determine any protections that they may be afforded under the Americans with Disabilities Act (ADA).~~

~~If the employee voluntarily terminates employment has given unequivocal notice of the intent not to return after during an approved from leave, leave or does not return to work for at least thirty (30) days at the end of the leave, the employer's obligation to reinstate the employee ceases. Under FMLA only, the employment relationship generally ends after the employee clearly abandons future employment. The employee may may be required to repay the county for the employer-paid portion of the health insurance premium during any unpaid FMLA period. Health insurance premium repayment under thisThis provision will not apply if the need for leave still exists, the employee employee is unable to return to his/her regular work schedule for reasons beyond the employee's control, such as for a severe deterioration of the health status of the employee or the family member cannot return for a reason that is beyond their control, or the employee elects retirement.~~

~~Regardless of the employee's notification of their decision to not return to work, under OFLA only, the county will continue the employee's previously approved OFLA leave until it is exhausted. The employee remains entitled to all rights and protections under OFLA for the balance of the leave, including the right to the continuation of group health coverage. Under OFLA, an employee is entitled to complete a previously approved OFLA leave, provided that the original need for OFLA leave still exists. The employee remains entitled to all rights and protections under OFLA for the balance of the leave, including the right to the continuation of group health coverage.~~ If failure to return is due to continuation, recurrence or onset of a serious health condition, medical certification may be required within thirty (30) days from the date the county requests the information.



DESCHUTES COUNTY ADMINISTRATIVE POLICY No. HR-12

EFFECTIVE DATE: JULY 21, 2008

UPDATED: SEPTEMBER 3, 2023

Retaliation or Discrimination

Employees are protected against retaliation or discrimination in any manner as a result of the exercise of the right to FMLA ~~or~~ OFLA, or PLO leave. Any employee violating this provision is subject to discipline.

Approved, as updated, by the Deschutes County Board of Commissioners effective September 3, 2023 ~~on July 21, 2008~~.

Nick Lelack
County Administrator