



## DESCHUTES COUNTY ADMINISTRATIVE POLICY No. HR-12

EFFECTIVE DATE: JULY 21, 2008

UPDATED: SEPTEMBER 3, 2023

### **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), 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, 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 week<sup>1</sup> 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,

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<sup>1</sup> 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.

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.

### 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
- 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, a grandparent or the grandparent's spouse or domestic partner, a grandchild or the grandchild's spouse or domestic partner, a 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.

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) To care for and bond 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.
- 4) Safe leave to care for yourself or your child if you or your child are survivors of sexual assault, domestic violence, harassment, 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.
- 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.

### **Duration of the Leave**

Qualifying employees are entitled to 12 weeks of family medical leave in a 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 must be taken and concluded within one (1) year from the date of birth or placement of the child.

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

### **Concurrent Leaves**

To the extent permissible under the law, OFLA, FMLA, and PLO leave will run concurrently. Whenever these laws differ, the county will apply the standard which is most beneficial to the employee.

OFLA and PLO leave cannot run concurrently when the employee is eligible to receive worker's compensation under ORS chapter 656. OFLA leave can run concurrently only if 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 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 a "Family and Medical Leave Request Form." 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 provided to the employee. Employees applying for PLO benefits must also notify 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 forwarded to the 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 Human Resources Department as quickly as possible.

Human Resources staff will review the Family and Medical Leave Request Form and provide the employee a Family and Medical Leave Designation Notice or request additional certification forms if needed. If the employee or family member has a serious health condition, the county may require the completion of a Health Care Provider Certification Form, which will be sent to the employee by the Human Resources Department.

The Health Care Provider Certification Form must be completed by the employee's health care provider and returned to the Human Resources Department within fifteen (15) calendar days from the date of the leave request. Failure to provide the 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 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 county 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, the employee will be required to furnish a "Release to Return to Work" from 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 reserves the right to designate 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 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 Health Care Provider Certification Form.

### **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 for PLO by the state, may elect to use their accrued paid leave 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. If the day before and after a holiday are leave without pay, the holiday will also be unpaid. An employee will not earn paid leave accruals on any time coded as unpaid leave for any reason.

## **Tracking of Leave**

Employees are responsible for informing their supervisors of absences that are related to a FMLA, OFLA, or 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 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.

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 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 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 fails to return to work after exhausting family medical leave, 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 has given unequivocal notice of the intent not to return from 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 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 this provision will not apply if the need for leave

still exists, the employee 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. 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.

### **Retaliation or Discrimination**

Employees are protected against retaliation or discrimination in any manner as a result of the exercise of the right to FMLA 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.

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Nick Lelack  
County Administrator