

# North Wasco County School District 21

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## Family and Medical Leave \*

### Employee Eligibility

FMLA benefits are available to employees who have been employed by the district for at least 12 months, have worked for at least 1,250 hours during the past 12-month period and work at a worksite that employees 50 district employees within 75 miles of the worksite.

An employee who has previously qualified for and has taken some portion of FMLA leave may request additional FMLA leave within the same leave year. In such instances, the employee may not need to requalify as an eligible employee.

Generally, in order for an employee to be eligible for the benefits under OFLA, the employee must work an average of 25 hours or more per week during the 180 calendar days<sup>1</sup> immediately prior to the first day of the start of the requested leave.<sup>2</sup>

~~For parental leave purposes, an employee becomes eligible upon completing at least 180 days immediately preceding the date on which the parental leave begins; there is no minimum average number of hours worked per week.~~

An employee is eligible to take leave for purposes of OFLA during a period of time covered by a public health emergency except:

1. An employee who has worked for the district for fewer than 30 days immediately before the date on which the family leave would commence; or
2. An employee who worked for the district for an average of fewer than 25 hours per week in the 30 days immediately before the date on which the family leave would commence.

An employee of the district is eligible to take leave for purposes of OFLA if the employee:

1. Separates from employment with the covered employer, irrespective of any reason:
  - a. Is eligible to take leave OFLA at the time the employee separates; and

<sup>1</sup> Thirty days during a declared public health emergency.

<sup>2</sup> The requirements of OFLA do not apply to any employer offering eligible employees a nondiscriminatory cafeteria plan, as defined by section 125 of the Internal Revenue Code of 1986, which provides as one of its options employee leave at least as generous as the leave required by OFLA.

- b. Is reemployed by the district within 180 days of separation from employment; or
2. Is eligible to take OFLA leave:
- a. At the beginning of a temporary cessation of scheduled hours of 180 days or less; and
  - b. Returns to work at the end of the temporary cessation of scheduled hours of 180 days or less.

Any OFLA leave taken by the employee within any one-year period continues to count against the length of time of OFLA leave the employee is entitled. The amount of time that an employee is deemed to have worked for the district prior to a break in service due to a separation from employment or a temporary cessation of scheduled hours shall be restored to the employee when the employee is reemployed by the district within 180 days of separation from employment or when the employee returns to work at the end of the temporary cessation of scheduled hours of 180 days or less.

~~An employee who has previously qualified for and has taken some portion of OFLA leave, may request additional OFLA leave within the same leave year. In such instances, the employee must requalify as an eligible employee for each additional leave requested unless one of the following exceptions apply:~~

When an employee requests OFLA leave, or when the district acquires knowledge that an employee's leave may be for a purpose that constitutes OFLA leave, the district will notify the employee of the employee's eligibility to take OFLA leave within five business days, absent extenuating circumstances. Whether an employee is an "eligible employee" as defined in OAR 839-009-0210 is determined, a notice must be provided, at the commencement of the first instance of each purpose for leave listed in OAR 839-009-0240 during the OFLA leave year. If an employee is an "eligible employee" as defined in OAR 839-009-0210 for the purpose listed in OAR 839-009-0240, the employee's eligibility for that purpose does not change during the applicable 12-month period. In addition:

1. An employee taking, in any order, some or all of 12 weeks of OFLA pregnancy disability leave and some of all of 12 weeks of OFLA leave for any other purpose, need not requalify **each time the employee takes OFLA leave within** the same leave year;
2. An employee who has taken **2 weeks of OFLA child placement leave need not requalify for up to an additional 12 weeks of parental leave need not requalify to take an additional 12 weeks within** the same leave year **when used for the purposes of OFLA for sick child leave;**
3. ~~An employee granted leave for a serious health condition for the employee or a family member need not requalify if additional leave is taken in this leave year for the same reason.~~

An employee unable to work because of a disabling compensable injury **need not requalify under OAR 839-009-0210** in order to use OFLA leave following a period the employee is off work due to the compensable injury. ~~and~~

4. ~~An employee who has taken serious health condition leave to care for a family member who dies during the employee's serious health condition need not requalify to take leave for the death of that family member.~~

In determining if an employee has been employed for the preceding 180 calendar days **under OFLA**, the district must consider days, paid or unpaid, an employee is maintained on payroll.

<sup>3</sup> As defined in ORS 656.005.

Leave under the Oregon Military Family Leave Act OMFLA applies to employees who work an average of at least 20 hours per week. There is no minimum number of days worked when determining employee eligibility for OMFLA.

~~Full-time public school teachers who have been maintained on payroll by a district for 180 consecutive calendar days are thereafter deemed to have been employed for an average of at least 25 hours per week during the 180 days immediately preceding the start date of the OFLA leave.~~

In determining average workweek, [under FMLA and OFLA](#), the employer must count the actual hours worked using the Fair Labor Standards Act (FLSA) guidelines.

## Qualifying Reason

Eligible employees may access FMLA leave for the following reasons:

1. Serious health condition of the employee or the employee's covered family member. "Serious health condition" means an illness, injury, impairment or physical or mental condition that involves inpatient care<sup>4</sup> or continuing treatment by a health care provider<sup>5</sup>.
2. Parental leave<sup>6</sup> (separate from eligible leave as a result of a child's serious health condition):
  - a. Bonding with and ~~the~~ caring for the employee's newborn child (within 12 months following birth);
  - b. Bonding with and ~~the~~ caring for a newly adopted or newly placed child in foster care under the age of 18 (within 12 months of placement);
  - c. Care for a newly adopted or newly placed child in foster care over 18 years of age who is incapable of self-care because of a physical or mental ~~impairment~~ disability (within 12 months of placement);
  - d. Time to effectuate the legal process required for placement of a child in foster care or the adoption of a child.
3. Military Caregiver Leave: leave for the care for spouse, child or next-of-kin who is a covered servicemember with a serious injury or illness;
4. Qualifying Exigency Leave: leave arising out of ~~the foreign~~ deployment [to a foreign country](#) of the employee's spouse, child or parent [who is a military member on active duty of call to covered active duty status](#).

Eligible employees may access OFLA [leave entitlements](#) for the following reasons:

<sup>4</sup> "Inpatient care" means an overnight stay in a hospital, hospice, or residential medical facility, including any period of incapacity or any subsequent treatment in connection with such inpatient care. See 29 CFR § 825.114.

<sup>5</sup> "Continuing treatment" includes incapacity and treatment, pregnancy or prenatal care, chronic conditions, permanent or long-term conditions, conditions requiring multiple treatments, and absences attributable to incapacity. See 29 CFR § 815.115.

<sup>6</sup> Parental leave must be taken in one continuous block of time within 12 months of the triggering event.

1. ~~Serious health condition of the employee or the employee's covered family member. Serious health conditions means:~~

- a. ~~An illness, injury, impairment or physical or mental condition that requires inpatient care in a hospital, hospice or residential medical care facility;~~
  - b. ~~An illness, disease or condition that in the medical judgement of the treating health care provider poses an imminent danger of death, is terminal in prognosis with a reasonable possibility of death in the near future, or requires constant care;~~
  - c. ~~Any period of disability due to pregnancy, or period of absence for prenatal care; or~~
  - d. ~~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.<sup>12</sup>~~
2. ~~Parental leave (separate from eligible leave as a result of the child's serious health condition):~~
- a. ~~Bonding with and the care for the employee's newborn (within 12 months following birth);~~
  - b. ~~Bonding with and the care for a newly adopted child or newly placed child in foster care under the age of 18 (within 12 months of placement);~~
  - c. ~~Care for a newly adopted child or newly placed child in foster care over 18 years of age who is incapable of self-care because of a physical or mental impairment (within 12 months of placement);~~
  - d. ~~Time to effectuate the legal process required for placement of a child in foster care or the adoption of a child.~~
3. **Pregnancy disability leave: leave taken by an employee for their own disability related to pregnancy, including pregnancy termination or childbirth, whether the disability occurs before, during or after the birth of the child or for prenatal care, including infertility treatment.**
4. **Sick Child Leave: leave taken to care for non-serious health conditions of the an employee's child suffering from an illness, injury, or condition that requires home care. For Under OFLA, sick child leave includes leave absence to care for an employee's child whose school or child care provider has been closed<sup>7</sup> in conjunction with a statewide public health emergency declared by a public health official.<sup>8</sup>**
5. **Bereavement Leave: leave related to the death of a covered family member. leave taken to deal with the death of a covered family member and includes leave taken to attend the funeral or alternative to a funeral of the family member, to make arrangements necessitated by the death of the family member, or to grieve the death of the family member.<sup>9</sup>**

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<sup>7</sup> "Closure" (OAR 839-009-0210(5)) for the purpose of sick child leave during a statewide public health emergency declared by a public health official means a closure that is ongoing, intermittent, or recurring and restricts physical access to the child's school or child care provider as defined in OAR 839-009-0210(4).

<sup>8</sup> The district may request verification of the need for sick child leave under OFLA due to a closure during a statewide public health emergency. Verification may include:

- 1. The name of the child being cared for;
- 2. The name of the school or child care provider that has closed or become unavailable;
- 3. A statement from the employee that no other family member of the child is willing and able to care for the child; Bereavement leave under OFLA must be completed within 60 days of when the employee received notice of the death.

<sup>9</sup>Bereavement leave under OFLA must be completed within 60 days of the date the employee received notice of the death. The notice of the death of a family member may be by any means and from any source.

6. Leave previously protected by OFLA<sup>10</sup>: 1) leave to which an eligible employee was entitled under ORS 659A.150 - ORS 659A.186 on June 30, 2024; and 2) leave to which an eligible employee would not be entitled under ORS 659A.150 - ORS 659A.186 on July 1, 2024 and may now be entitled leave under Paid Family Medical Leave (ORS 657B).

Eligible employees may access OMFLA ~~under OFLA~~ for the purpose of spending time with a spouse or domestic partner who is in the military and has been notified of an impending call or order to active duty, or who has been deployed during a period of military conflict.

~~The eligibility of an employee who takes multiple leaves for different qualified reasons during the same leave year may be reconfirmed at the start of each qualified leave requested.~~

## Definitions

### 1. Family member:

- a. For the purposes of FMLA, “family member” means:

- (1) Spouse<sup>11</sup>;
- (2) Parent<sup>12</sup>;
- (3) Child; or
- (4) Persons who are “in loco parentis”.

- b. For the purposes of OFLA, “family member” means **an eligible employee’s**:

- (1) Spouse or domestic partner;
- (2) Child or the child’s spouse or domestic partner;
- (3) Parent or the parent’s spouse or domestic partner;
- (4) Sibling or stepsibling, or the sibling’s or stepsibling’s spouse or domestic partner;
- (5) Grandparent or the grandparent’s spouse or domestic partner; or
- (6) Grandchild or the grandchild’s spouse or domestic partner; or
- (7) Any individual related by blood or affinity whose close association with ~~a covered individual~~ **an eligible employee** is the equivalent of a family relationship<sup>13</sup>.

<sup>10</sup> OAR 839-009-0215. OFLA: Leave Previously Protected by OFLA.

<sup>11</sup> “Spouse” means individuals in a marriage, including “common law” marriage and same-sex marriage.

<sup>12</sup> “Parent” means a biological, adoptive, step or foster parent, or any other individual who stood “in loco parentis” to the employee when the employee was a child as defined herein. This does not include parents “in law.”

<sup>13</sup> “Affinity” means a relationship for which there is a significant personal bond that, when examined under the totality of the circumstances, is like a family relationship. This bond may be demonstrated by, but is not limited to the following factors, with no single factor being determinative:

1. Shared personal financial responsibility, including shared leases, common ownership of real or personal property, joint liability for bills or beneficiary designations;
2. Emergency contact designation of the employee by the other individual in the relationship or the emergency contact designation of the other individual in the relationship by the employee;
3. The expectation to provide care because of the relationship or the prior provision of care;
4. Cohabitation and its duration and purpose;
5. Geographic proximity; and
6. Any other factor that demonstrates the existence of a family-like relationship.

### 2. Child:

- a. For the purposes of FMLA, “child” means a **the eligible employee’s** biological or adopted child, a child ~~in the employee is fostering, foster care,~~ a stepchild, a legal ward or a child of a person standing “in loco parentis”, who is either under the age of 18, or who is 18 years of age or older and who is incapable of self-care because of a physical or mental ~~impairment~~ **disability**.
- b. For the purposes of Military Caregiver Leave and Qualifying Exigency Leave under FMLA, “child” means the employee’s child on covered active duty regardless of that child’s age.
- c. For the purposes of OFLA, “child” means **the eligible employee’s** a biological or adopted child, a child **the employee is fostering** ~~in foster care or a~~ stepchild, **the child** of the employee’s **spouse or domestic partner**, ~~the child of the employee’s domestic partner,~~ or a child with whom the employee is or was in a relationship of “in loco parentis”.
- d. For the purposes of ~~parental~~ **child placement leave** and sick child leave **only** under OFLA, the child must be under the age of 18 or an adult dependent child substantially limited by a physical or mental impairment.

3. In loco parentis:

- a. For the purposes of FMLA, “in loco parentis” means persons with day-to-day responsibility to care for and financially support a child, or, in the case of an employee, who had such responsibility for the employee when the employee was a child. A biological or legal relationship is not necessary.
- b. For the purposes of OFLA, “in loco parentis” means person in the place of the parent, having financial or day-to-day responsibility for the care of a child. A legal or biological relationship is not required.

4. Next of kin:

For the purposes of FMLA, “next of kin” means the nearest blood relative other than the **covered** servicemember’s spouse, parent, or child in the following order of priority (unless otherwise designated in writing by the servicemember):

- a. Blood relatives who have been granted legal custody of the **covered** servicemember by court decree or statutory provisions;
- b. Siblings;
- c. Grandparents;
- d. Siblings of parents and their spouses; and
- e. First cousins.

5. Covered servicemembers:

For the purposes of FMLA, “covered servicemember” means a current 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 covered veteran who is undergoing medical treatment, recuperation, or therapy for a serious injury or illness.

6. Covered veteran:

For the purposes of FMLA, “covered veteran” means an individual who was:

- a. A member of the Armed Forces (including a member of the National Guard or Reserves);
- b. Discharged or released under conditions other than dishonorable; and
- c. Discharged within the five-year period prior to the first date the eligible employee takes FMLA leave to care for the covered veteran.

7. Public health emergency:

For OFLA a “public health emergency” means;

- a. A public health emergency declared under ORS 433.441.
- b. An emergency declared under ORS 401.165 if related to a public health emergency as defined in ORS 433.442.

**Leave Period**

For the purposes of calculating an employee’s leave period for FMLA, the district will use the 12-month period measured forward from the date any the employee’s first FMLA leave begins. ~~The same method for calculating the one-year period for FMLA and OFLA leave entitlement shall be used for all employees. However, in all instances, the leave period for the purposes of OMFLA and Military Caregiver Leave under FMLA shall be dependent on the start of any such leave regardless of the district’s designated leave period described above.~~

For the purposes of calculating an employee’s leave period for OFLA, the district will use a period of 52 consecutive weeks beginning on the Sunday immediately preceding the date on which family leave commences.

The methods for calculating the leave period for FMLA or OFLA leave entitlement shall be used for all employees.

The leave period for the purposes of Military Caregiver Leave under FMLA shall be dependent on the start of any such leave regardless of the district’s designated leave period described above.

**Leave Duration**

For the purposes of FMLA, an eligible employee is generally entitled to a total of 12 weeks of qualified leave during the district’s designated leave period (12-month period). ■ Spouses who work for the district ~~may be limited to a combined 12 weeks of~~ are eligible for FMLA leave ~~may be limited to a combined total of 12 weeks of FMLA leave during the district’s designated leave period when the purpose of the leave is for:~~

~~during the district’s designated leave period when the purpose of the leave is for the~~

- 1. Birth of a child or to care for a child after birth;
- 2. Placement of an adopted child or child in foster care, the care for an adopted child or child in foster care after placement, or
- 3. Care for the employee’s parent’s serious medical condition.

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<sup>13</sup> An eligible employee taking Military Caregiver Leave under FMLA is entitled to up to 26 weeks of leave in the 12-month period beginning with the first day of such leave and regardless of any FMLA leave taken previously during the district’s leave period. However, once the 12-month period begins for the purposes of Military Caregiver Leave under FMLA, any subsequent FMLA qualified leave, regardless of reason for such leave, will count toward the employee’s 26-week entitlement under Military Caregiver Leave under FMLA.



Except in specific and unique instances, all qualified leave under FMLA counts toward an employee's leave entitlement within the district's designated leave period.

For the purposes of OFLA, an eligible employee is generally entitled to a total of 12 weeks of ~~OFLA leave, for sick child leave and bereavement leave, qualified leave~~ during the designated leave period. ~~However, an~~ An eligible employee may be is entitled to an additional, a total of two weeks of bereavement leave upon the death of each family member of the employee within a leave year, except that the eligible employee may not take more than four weeks of bereavement leave within a leave year. ~~full~~

An employee may also be entitled to take a total of 12 weeks of ~~OFLA pregnancy disability leave within the same leave year. parental leave during the designated leave period following the birth of a child regardless of how much OFLA qualified leave the employee has taken prior to the birth of such child during the designated leave period. Likewise, an employee who uses the full 12 weeks of parental leave during the designated leave period, will be entitled to an additional~~

Under OFLA, the employee may use all or part of the 12 weeks of sick child or bereavement leave and all or part of the 12 weeks of pregnancy disability leave in any order. ~~under OFLA. Unlike FMLA, OFLA does not combine the leave entitlement for spouses working for the district. However, under OFLA, family members who work for the district may be restricted from taking concurrent OFLA qualified leave.<sup>14</sup>~~

Unlike FMLA, OFLA does not combine the leave entitlement when two or more family members work for the district. Under OFLA, family members who work for the district may be restricted from taking concurrent OFLA qualified leave. ■

For the purposes of OMFLA, an eligible employee is entitled to 14 days of leave per call or order to active duty or notification of a leave from deployment. When an employee also meets the eligibility requirements of OFLA, the duration of the OMFLA leave counts toward that employee's leave entitlement during the designated leave period.

~~Except as otherwise noted above,~~ Qualified leave under FMLA and OFLA for an eligible employee will run concurrently during the designated leave period if for the same qualifying reason. Qualified leave under FMLA will run concurrently with other qualified leave covered under Paid Family and Medical Leave Insurance (PFMLI) and/or available sick leave under ORS 653.601 - 653.661 for eligible employees. Qualified leave under OFLA may also run concurrently with leave taken under the sick leave law in ORS 653.601 - 653.661 if for the same qualifying reason, but not concurrent with PFMLI.

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<sup>15</sup> Exceptions to the ability to require family members from taking OFLA qualified leave at different times are when 1) employee is caring for the other employee who has a serious medical condition; 2) one employee is caring for a child with a serious medical condition when the other employee is suffering a serious medical condition; 3) each family member is suffering a serious medical condition; 4) each family member wants to take Bereavement Leave under OFLA; and 5) the employer allows the family members to take concurrent leave.



For the purpose of tracking the number of leave hours an eligible employee is entitled and/or has used during each week of the employee's leave, leave entitlement is calculated by multiplying the number of hours the eligible employee normally works per week by 12.<sup>15</sup>

If an employee's schedule varies from week-to-week, a weekly average of the hours worked over the 12 months worked prior to the beginning of the leave period shall be used for calculating the employee's normal workweek.<sup>16</sup>

If an employee takes intermittent or reduced work schedule leave, only the actual number of hours of leave taken may be counted toward the 12 weeks of leave to which the employee is entitled.

Holidays which occur within the week taken as FMLA may be counted against FMLA entitlement.<sup>17</sup> However, for leave taken in increments of less than one week, holidays in which employees generally are not expected to report do not count against the employees FMLA leave entitlement.

Under OFLA, days in which the district is not in operation, are not counted toward intermittent or reduced work schedule OFLA leave.

### **Intermittent Leave**

With the exception of parental leave under FMLA which must be taken in one continuous block of time, an eligible employee is permitted under FMLA or and OFLA to take intermittent leave for any qualifying reason.

Intermittent leave is taken in ~~multiple blocks~~ separate periods of time (i.e., hours, days, weeks, etc.) rather than in one continuous ~~block~~ period of time and/or requiring an altered or reduced work schedule. For OFLA this includes but not limited to sick child leave taken requiring an altered or reduced work schedule because the intermittent or recurring closure of a child's school or child care provider due to a statewide public health emergency declared by a public health official.

When an exempt employee is eligible for both OFLA and FMLA leave, and the employee takes intermittent leave in blocks of less than one day, if done in accordance with 29 CFR § 825.206, the district may reduce the employee's salary for the part-day absence without the loss of the employee's exempt status in accordance with OAR 839-020-0004(32) (30)(a).

When ~~an exempt employee is eligible for OFLA~~ leave is not covered by but not FMLA leave, and the employee takes intermittent leave in blocks of less than one day, the district will jeopardize the employee's exempt status if the district reduces the employee's salary for the part-day absence.

An employee's FMLA and/or OFLA intermittent leave time is determined by calculating the difference between the employee's normal work schedule and the number of hours the employee actually works during the leave period. The result of such calculation is credited against the eligible employee's leave entitlement.

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<sup>15</sup> For example, an employee normally employed to work 30 hours per week is entitled to 12 times 30 hours, or a total of 360 hours of leave.

<sup>16</sup> For example, an employee working an average of 25 hours per week is entitled to 12 times 25 hours, or a total of 300 hours of leave.

<sup>17</sup> See 29 CFR § 825.200(h).

Holidays or days in which the district is not in operation, are not counted against the eligible employee's intermittent OFLA leave period unless the employee was scheduled and expected to work on any such day.

### Alternate Work Assignment

Under FMLA, the district may transfer an employee taking intermittent leave or leave on a reduced leave schedule that is foreseeable based on planned medical treatment recovering from a serious health condition to an alternate position for which the employee is qualified and which better accommodates an employee's recovery from a the serious health condition, a serious health condition of a spouse, parent, son, or daughter, or a serious injury of illness of a covered servicemember. However, the district may not transfer the employee to an alternative position in order to discourage the employee from taking leave or otherwise work a hardship on the employee. ~~provided:~~

Under FMLA, when an employee who is taking leave intermittently or on a reduced leave schedule and has been transferred to an alternative position no longer needs to continue on leave and is able to return to full-time work, the employee will be placed in the same or equivalent job as the job they left when the leave commenced. An employee may not be required to take more leave than necessary to address the circumstance that precipitated the need for leave.

Under OFLA, the district may transfer an employee on intermittent OFLA leave or reduced work schedule into an alternate position with the same or different duties to accommodate leave, provided:

1. The employee accepts the position voluntarily and without coercion;
2. The transfer is temporary, lasts no longer than necessary to accommodate the leave and has equivalent pay and benefits;
3. The transfer is compliant with any applicable collective bargaining agreement, as well as with state and federal law;
4. ~~The transfer is compliant with state and federal law, including but not limited to the protections provided for in FMLA and/or OFLA; and~~
5. The transfer to an alternate position is used only when there is no other reasonable option available that would allow the employee to use intermittent leave or reduced work schedule; and
6. The transfer is not used to discourage the employee from taking FMLA and/or OFLA leave or to create a hardship for the employee. ~~for a serious health condition or to create a hardship for the employee.~~

Under OFLA, an employee transferred to an alternate position for the purpose of a reduced work schedule must be returned to the employee's former position when the employee notifies the employer that the employee is ready to return to the former position at the end of the alternate duty leave.

The district may transfer an eligible employee who is on a intermittent OFLA leave to an alternate another position that with the same or different duties to accommodate OFLA pregnancy disability the leave, provided:

1. The employee accepts the transfer position voluntarily and without coercion;

2. The transfer is temporary, lasts no longer than necessary to accommodate the leave and has equivalent pay and benefits;
3. The transfer is compliant with any applicable collective bargaining agreements, as well as with state and federal law;
4. The transfer is compliant with state and federal law, including but not limited to the protections provided for in FMLA and/or OFLA;
5. The transfer to an alternate position is used only when there is no other reasonable option available that would allow the employee to use intermittent leave or reduced work schedule; and
6. The transfer is not used to discourage the employee from taking intermittent or reduced work schedule OFLA leave or to create a hardship for the employee.

Under OFLA, if an eligible employee is transferred to an alternative position to accommodate the employee's serious health condition, and as a result the employee works fewer hours than the employee was working worked in the original position, the employee's OFLA leave time is determined by calculating the difference between the number of hours the employee's normal worked in the original position schedule and the number of hours the employee actually works in the alternative position. during the leave period.

An employee is not on OFLA leave if the When an employee is has been transferred – as provided for in OAR 839-009-0245 (5) - to alternate position for the purpose of alternate work duties that the employee is able to perform within the limitations of the employee's pregnancy disability, but not requiring a reduced workweek. as described above but such transfer does not result in a reduced schedule, time worked in any such alternate position shall not be considered for the purpose of OFLA leave. An employee working in an alternate position retains the right to return to the employee's original position at any time during the employee's unless all OFLA leave. This does not impair the right of an employee to a reasonable accommodation or the application of any other state or federal law. taken in that leave year plus the period of time worked in the alternate position exceeds 12 weeks.

### Special Rules for School Employees

For the purposes of FMLA, "instructional employee" means those whose principal function is to teach and instruct students in a class, a small group or an individual setting. Athletic coaches, driving instructors and special education assistants, such as interpreters<sup>18</sup> for the hearing impaired, are included in this definition. This definition does not apply to include teacher assistants or aides who do not have as their principal job actual teaching or instructing, auxiliary personnel such as counselors, psychologist, curriculum specialists, cafeteria workers, maintenance workers or bus drivers.

For the purposes of OFLA, "school employee" means employees employed principally as instructors in public kindergartens, elementary schools, secondary schools or education service districts.

FMLA and/or OFLA leave that is taken for a period that ends with the school year and begins with the next semester is considered consecutive rather than intermittent. The period during the summer vacation when the employee would not have been required to report for duty is not counted against the employee's

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<sup>18</sup> 29 CFR 825.600(c) uses "signers."

**FMLA leave entitlement.** In any such situation, the eligible ~~school~~ **instructional** employee will receive any benefits during the break period that employees would normally receive if they had been working at the end of the school year.

1. Foreseeable Intermittent Leave Exceeding 20 Percent of Working Days

When the qualified leave is foreseeable, will encompass more than 20 percent of the eligible ~~school~~ **instructional** employee's regular work schedule during the leave period, and the purpose of such leave is to care for a family member with a serious medical condition, for a **covered** servicemember **or for the employee's own** with a serious medical condition, ~~or because of the employee's own serious medical condition~~, the district may require the eligible ~~school~~ **instructional** employee **choose either** to:

- a. Take leave for a period or periods of a particular duration, not greater than the duration of the planned treatment; or
- b. Temporarily transfer ~~the eligible school employee~~ to an alternate position for which the employee is qualified, which has equivalent pay and benefits and which better accommodates recurring periods of leave than the employee's original position.

**If an instructional employee does not give required notice of foreseeable FMLA leave to be taken intermittently or on a reduced leave schedule, the district may require the employee to take leave of a particular duration, or to transfer temporarily to an alternative position. Alternatively, the district may require the employee to delay the taking of leave until the notice provision is met.**

2. Limitation on Leave Near the End of the ~~Term School Year~~ **Term** ■

When an eligible ~~school~~ **instructional** employee requests leave near the end of the ~~term school year~~, the district may require the following:

- a. When the qualified leave begins more than five weeks before the end of the **term**, ~~the district may require the employee to continue taking leave until the end of the term if:~~ **school year:**
  - (1) ~~For the purposes of FMLA leave, the eligible school employee may be required to continue taking leave until the end of the school year provided:~~
    - (a) The leave will last at least three weeks; and
    - (b) The employee would return to work during the three-week period before the end of the term.
- b. ~~For the purposes of OFLA leave, if the reason for the leave is because of the eligible school employee's own serious health condition, the eligible school employee may be required to remain in leave until the end of the school year, provided:~~
  - (a) ~~The leave will last at least three weeks; and~~

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<sup>19</sup> "Academic term" means the school semester, which typically ends near the end of the calendar year and the end of spring each school year. In no case may a school have more than two academic terms or semesters each year for purposes of FMLA. 29 CFR § 825.602(b)

~~(b) — The employee's return to work would occur within three weeks of the end of the school year.~~

- c. ~~For the purposes of FMLA and/or OFLA leave, When the qualified leave begins within~~ **during a five weeks period before** ~~of the end of the school year term~~ and the purpose of such leave is parental leave, for the serious health condition of a family member or **to care for the serious health condition of a covered** ~~servicemember, the eligible school instructional employee may be required by the district to remain on leave until the end of the term if school year provided:~~
- (1) The leave will last more than two weeks; and
  - (2) The employee would return to work during the two-week period before the end of the **term school year.**
- d. ~~For the purposes of FMLA and/or OFLA leave, When the qualified leave begins within three weeks of the end of the school year term~~ and the purpose of such leave is parental leave, for the serious health condition of a family member or **for the serious health condition of a covered** ~~servicemember, the eligible school instructional employee may be required to remain on leave until the end of the school year term provided if~~ the length of the leave will last more than five working days.

If the district requires an eligible ~~school instructional~~ **school instructional** employee to remain on leave until the end of the ~~school year term~~ as described above, additional leave required by the ~~employer district~~ **district** until the end of the ~~school year term~~ shall not count against the eligible ~~school instructional~~ **school instructional** employee's leave entitlement.

For the purposes of OFLA leave, if an employee **█** begins a period of bereavement leave during the three-week period before the end of the term and the duration of the leave is greater than five working days, the district may require the employee continue on family leave until the end of the term.

## **Paid/Unpaid Leave**

FMLA and OFLA do not require the district to pay an eligible employee who is on a qualified leave. Paid Family **and** Medical Leave Insurance (PMFLI) leave taken via Paid Leave Oregon or an equivalent plan will run concurrently with ~~OFLA and FMLA~~ **and leave available under ORS 653.601-653.661** when taken for the same purpose.

~~Subject to any related provisions in any applicable collective bargaining agreement, the district requires the eligible~~ **An employee may elect** to use any available accrued **paid sick leave, including sick,** vacation or personal leave days ~~(or other available paid time established by Board policy(ies) and/or collective bargaining agreement) in the order specified by the district and before taking FMLA and/or OFLA leave without pay during the leave period to the extent that the total amount of accrued paid leave and benefits received from PMFLI does not exceed an amount equal to the employee's full wage replacement during the period of leave. This includes when an employee is~~

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<sup>21</sup> Applies only to an employee who is employed principally in an instructional capacity by the district.

~~being paid through PMFLI.~~ The district will notify the eligible employee ~~that~~ when the requested leave has been designated as FMLA ~~and/or~~ OFLA leave and ask the employee about the use of available accrued paid leave.

Eligible employees who request OMFLA leave ~~shall not be required~~ are entitled to use any available accrued paid time off during the OMFLA leave period.

## **Benefits and Insurance**

When an eligible employee returns to work following a FMLA, ~~or~~ OFLA, or OMFLA qualified leave, the employee must be reinstated to the same position the employee held when the leave commenced, or to an equivalent position with equivalent benefits, pay and other terms and conditions of employment.

During an OFLA qualified leave an eligible employee does not accrue seniority or other benefits that would have accrued while the employee was working, unless the terms of a collective bargaining agreement, other agreement or other employer's district policy provide otherwise.<sup>21</sup> The eligible employee is also subject to layoff to the same extent similarly situated employees not taking OFLA leave are subject unless the terms of an applicable collective bargaining agreement, other agreement or the district's policies provide otherwise.

For the purposes of FMLA and OFLA, the district will continue to pay the employer portion of the eligible employee's group health insurance contribution (if applicable) during the qualified leave period. The eligible employee is required to pay the employee portion of any such group health insurance contribution as a condition of continued coverage.

For the purposes of FMLA qualified leave, the district's obligation to maintain the employee's group health insurance coverage will cease if the employee's contribution is remitted more than 30 calendar days late. The district will provide written notice that the premium payment is more than 30 calendar days late. Such notice will be provided within 15 calendar days before coverage is to cease.

For the purposes of OMFLA, the eligible employee is entitled to a continuation of benefits.

## **Fitness-for-Duty Certification**

For purposes of FMLA, prior to the reinstatement of an employee following a leave which was the result of the employee's own serious health condition, the district may require the employee to obtain and present a Fitness-for-Duty Certification. If the district is going to require a Fitness-For-Duty Certification upon return to work, the district must notify the employee of such requirement when the leave is designated as FMLA ~~and/or~~ OFLA leave and failure to provide the certification may result in a delay or denial of reinstatement. ~~For the purposes of FMLA qualified leave,~~ Any costs associated with obtaining the fitness-for-duty certification shall be borne by the employee.

~~For the purposes of OFLA qualified leave, any out-of-pocket costs associated with obtaining the fitness-for-duty certification shall be borne by the district.~~

~~If the leave is qualified under both FMLA and OFLA, any out-of-pocket costs associated with obtaining the fitness-for-duty certification shall be borne by the district.~~

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<sup>21</sup> See also ORS 342.934(4)(d) in reduction force situations.



## Application

~~Under federal and state law, an eligible employee requesting~~ For purposes of FMLA and/or OFLA leave ~~an eligible employee requesting FMLA leave~~ shall provide at least 30 days' notice prior to the leave date if the leave is foreseeable. The notice shall be written and include the anticipated start date, duration and reasons for the requested leave. When appropriate, the eligible employee must make a reasonable effort to schedule treatment, including intermittent leave and reduced leave, so as not to unduly disrupt the operation of the district. ~~An eligible employee able to give advance notice of the need to take FMLA leave must follow the district's known, reasonable and customary procedures for requesting any kind of leave.~~

For the purposes of OFLA, an eligible employee ~~shall provide at least 30 days~~ ~~is required to provide oral or written notice of the need for foreseeable leave before starting family leave.~~ ~~An employee within 24 hours of commencement may commence family leave without prior notice in the event of: the leave in unanticipated or emergency leave situations~~ an unexpected illness, injury or condition of a child of the employee that requires home care; the death of a family member; or an illness, injury or condition related to the employee's own pregnancy or childbirth that disables the employee from performing any available job duties offered by the district. If an employee commences leave without prior notice as allowed above, ~~the employee must give oral notice~~ to the employer within 24 hours of the commencement of the leave and must provide the written notice within three days after returning to work. ~~The employee may designate a family member or friend to notify the district during that period of time.~~ Failure of an employee to provide the required notice for leave covered by OFLA may result in the district deducting up to three weeks from the employee's unused OFLA leave in that one-year leave period. The employee may be subject to disciplinary action for not following the district's notice procedures.

The district may request additional information<sup>23</sup> ~~in~~ to determine ~~that~~ the requested leave qualifies as FMLA and/or OFLA leave. The district may designate the employee as provisionally on FMLA and/or OFLA leave until sufficient information is received to properly make a determination. An eligible employee able to give advance notice of the need to take FMLA and/or OFLA leave must follow the district's known, reasonable and customary procedures for requesting any kind of leave.

For the purposes of FMLA, if advance notice is not possible, an employee eligible for FMLA leave must provide notice as soon as practicable. "As soon as practicable," for the purpose of FMLA leave, means as soon as both possible and practical, taking into account all of the facts and circumstances in the individual case. In most situations, as soon as practical will be within one business day of an employee becoming aware of the need. Failure of an employee to provide the required notice for FMLA leave may result in the district delaying the employee's leave up to 30 days after the notice is ultimately given.<sup>24</sup>

For the purposes of OFLA, if an eligible employee is taking leave in an unforeseeable situation, and employee must give oral or written notice ~~within 24 hours before or after commencement of the leave.~~ ~~When an employee fails to give advance notice for both the FMLA and OFLA above, the district must choose the remedy that is most advantageous to the employee.~~ In all cases, proper documentation must be submitted no later than three working days following the employee's return to work.

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<sup>22</sup> Oral notice may be given by any other person on behalf of the employee taking the leave.

<sup>23</sup> Except in cases to verify OFLA bereavement leave unless the district requires the use of an attestation form for purposes of determining affinity.

<sup>24</sup> See 29 CFR § 825.304.

<sup>25</sup> Notice may be given by any other person on behalf of the employee taking the leave.



For purposes of OMFLA, an employee must provide the district with notice of the intention to take leave within five business days of receiving official notice of an impending call or order to active duty or of a leave from deployment.

### **Medical Certification-Verification**

Under FMLA, the district shall may require an eligible employee to provide medical documentation, when appropriate <sup>26</sup>, to support the stated reason for such leave. In most cases, the district will provide written notification to an employee of this requirement within five working days of the employee's request for leave. ~~If the employee provides less than 30 days' notice,~~ The employee is required to submit such medical certification no later than 15 calendar days after receipt of the district's notification that medical certification is required, unless not practicable. Any additional certifications, including second and third opinions, will be in accordance with applicable law.

Under OFLA, the district may require an eligible employee to provide medical verification, when appropriate <sup>27</sup>, to support the stated reason for qualifying OFLA leave. The district will provide written notification to an employee of this requirement and state the consequences for failure to provide the requested medical verification. If the employee gives advance written notice of foreseeable leave, the district may require the employee to provide medical verification for OFLA leave before the leave starts. If the employee begins unforeseeable OFLA leave without prior notice, the employee is required to submit such medical verification within 15 calendar days after receipt of the district's request for medical verification. The employee may be subject to disciplinary action for not providing the requested medical verification.

For the purposes of OFLA qualified leave, costs associated with obtaining the medical verification shall be borne by the district, or be paid as otherwise allowed by law. The district will not delay the use of qualifying OFLA leave when medical verification is not received before the commencement of unforeseeable leave. The district may not require an employee to obtain a second opinion.

Under OFLA, the district may request verification for the need for leave to care for a child who requires home care due to the closure of the child's school or child care provider as a result of a public health emergency. A request for verification may include a request for:

- 1 The name of the child requiring home care;
- 2 The name of the school or child care provider that is subject to the closure;
- 3 A statement from the employee that no other family member of the child is willing and able to care for the child; and
- 4 A statement that special circumstances exist that require the employee to provide home care for the child during the day, if the child is older than 14 years of age.

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<sup>26</sup> Medical verification is not allowed in every situation. Review current laws and guidance for more information.

<sup>27</sup> Medical verification is not allowed in every situation. Review current laws and guidance for more information. (OAR 839-009-0260)

## Posted Notice

The district will post the Bureau of Labor and Industries Family Leave notice in each building or worksite **in an area** that is accessible to and regularly frequented by employees.<sup>28</sup> The district will also post a notice explaining the provisions of FMLA and providing information concerning the procedures for filing complaints.<sup>29</sup>

## Record Keeping

The district will maintain all records as required by federal and state laws including dates leave is taken by employees, identified separately from other leave; hours/days of leave; copies of general and specific notices to employees, including Board policy(ies) and regulations; premium payments of employee health benefits while on leave and records of any disputes with employees regarding granting of leave.

Medical documentation will be maintained separately from personnel files as confidential medical records.

## Federal vs. State Law

Both federal and state law contain provisions **for family and medical leave**. ~~regarding leave for family illness.~~ Federal regulations state an employer must comply with ~~both~~ **all leave** laws; that the federal law does not supersede any provision of state law that provides greater family **or medical** leave rights than those established pursuant to federal law; and **if leave qualifies for that OFLA and FMLA leave, the leave used counts against the employee's entitlements under both laws.** ~~run concurrently.~~ State law requires that FMLA and OFLA **or other state** leave entitlements run concurrently when **for the same purpose.** ~~possible.~~

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<sup>28</sup> [https://www.oregon.gov/boli/employers/Documents/BOLI\\_Printable\\_FamilyMedLv.pdf](https://www.oregon.gov/boli/employers/Documents/BOLI_Printable_FamilyMedLv.pdf); electronic posting is not sufficient to satisfy this requirement, but may be used to supplement the physical posting.

<sup>29</sup> <https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/fmlaen.pdf>; electronic posting is sufficient as long as it is posted prominently where it can be readily seen by employees and applicants for employees. The poster and the text must be large enough to be easily read and contain fully legible text.