

Family Medical Leave Act Questions & Answers

1. Introduction

Passed in the mid-1990s, the Family Medical Leave Act (FMLA) and Oregon Family Leave Act (OFLA) provide employees with leave from work for their own or their family's medical needs, including time off to care for a new child. FMLA/OFLA laws strengthen your rights to take such leave and guarantees that your health benefits will continue while you are on leave.

As you consider your individual situation and needs, be sure to consult your collective bargaining agreement or handbook, as well as applicable policies on paid leave such as sick leave and vacation, long-term disability coverage, leave without pay, and so forth.

2. What is it?

Q. What is the Family and Medical Leave Act?

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

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

A. Human Resources encourages employees to call if they have questions about the basis for leaves and the procedures for requesting leave. The HR Director is available for one-on-one appointments to discuss the specifics of your situation and how the law, in conjunction with other benefits, can help you. HR provides information about FMLA and other laws, collective bargaining agreements, or policies that provide employees time off. You can also access this information on the Human Resources web site at: <http://hr.cocc.edu>.

3. Am I eligible?

Q. How do I know if I am eligible for FMLA?

A. You must have twelve (12) months of service with the College and you must have worked at least 1,250 hours during the twelve (12) months preceding the date your leave begins. Under the Oregon Family Leave Act, you must be employed 180 calendar days and worked an average of 25 hours per week during the preceding 180 calendar days. (Exception: An employee working less than 25 hours per week may take leave to care for an infant or newly adopted child or foster child.)

Q. What reasons for leave qualify under FMLA?

A. Leave taken for the following reasons is designated as FMLA:

- Your serious health condition;
- A family member's serious health condition (your spouse, child, or parent);
- Birth of your child and to care for your child after birth; or
- Care for your child after adoption or foster care placement.
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Q. How do I know if I have a serious health condition or a family member has a serious health condition?

A. The definition of a serious health condition includes:

- Hospital care
- Absence of four days or more plus medical treatment two or more times (also includes one treatment and continuing medical supervision)
- Pregnancy
- Chronic conditions requiring medical treatments
- Permanent long-term conditions requiring medical supervision
- Multiple medical treatments (non-chronic conditions)
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Q. What is the definition of a family member under FMLA?

A. A family member includes a son, daughter, spouse or parent. FMLA protections do not extend to domestic partners. OFLA includes a parent-in-law and domestic partners in its definition of a family member.

Q. How does FMLA define a son/daughter?

A. A son/daughter is any child under 18 who is a biological, adopted, or foster child, a stepchild or a legal ward, or a child for whom you are financially responsible and supervise on a day-to-day basis.

Q. How does FMLA define a parent?

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

Q. If I have an injury that qualifies under Worker's Compensation, does it qualify for FMLA?

A. It depends. If the injury meets the definition of a serious health condition under FMLA, the employer must designate your time off as FMLA and you will be eligible for the protections of the Family and Medical Leave Act. Please contact HR if you have questions about your Worker's Compensation.

4. How much time can I take?

Q. How much time am I eligible to take for an FMLA reason?

A. You are eligible for up to 12 weeks of leave designated as FMLA during any 12-month period. The College uses the "rolling backward" method to calculate the 12-month period. This is the 12-month period measured back in time from the date you request any FMLA leave. You are eligible for a combined total of 12 weeks for the reasons listed above.

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

A. No. You and your spouse will have to share the 12 weeks to care for a new child. It is up to you how you split the 12 weeks.

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

A. Yes. If your health care provider states you need to work an intermittent or reduced-hour schedule for a serious health condition, you can reduce your hours or use leave intermittently.

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

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

5. What happens to my pay and benefits?

Q. Will I receive pay while I am on FMLA leave?

A. You will receive pay only if you have paid leave (sick, vacation)* available to use. In fact, it is College policy that you must use your leave accruals before you go on leave without pay during your FMLA leave. In order of priority this would include sick leave and vacation. You are not required to use compensatory leave before going on leave without pay. If your supervisor approves the use of compensatory leave, you are not required to designate the days you use compensatory leave as FMLA leave. Use your normal reporting process to let your department know what type of leave you are using. You will be required to complete an FMLA attendance record to verify your FMLA leave.

- Click on the [My Login](#) button near to top of the page.
- Click on [Bobcat Web Account](#) icon
- Enter your User ID and PIN numbers. After you press enter you'll get another screen to re-verify your ID and PIN numbers.
- The next screen will have a menu with three choices; click on "**Employee Services.**"
- Click on "**Time Off Current Balances and History.**"
- You now should be able to access information on leave that you will need to determine your leave accruals.

Q. Can I use all of my accrued paid leave before my time off is designated as FMLA leave?

A. No. It runs concurrently. FMLA leave does not start after paid leave is used up. The FMLA designation is based on the reason you are taking the leave, not whether you are on paid leave or unpaid leave. The law gives you protection regardless of pay status. FMLA actually protects your job, unlike sick leave, because you cannot be disciplined for missing time for an FMLA reason. If you have questions about sick leave, refer to your Collective Bargaining Agreement or handbook.

Q. What happens to my benefits while I am on unpaid FMLA leave?

A. The College's contribution for your medical benefits (as stated contractually or by policy) continues during your leave even if you are on leave without pay. We will let you know in writing when your regular benefits end and when you become eligible for benefits under FMLA. When you are on unpaid leave, you will be required to pay the portion of the medical premium that is normally deducted from your paycheck. You are also eligible to pay for any additional plans you wish to continue during your unpaid leave.

While you are on unpaid leave no contributions (the College makes both the employee and employer contributions) will be made to the Oregon Public Employees Retirement System (PERS). This contribution is based on gross wages, therefore, no contributions can be made while on unpaid leave.

Q. Do I accrue seniority while I am on FMLA leave?

A. You accrue seniority while you are on paid FMLA leave. You do not accrue any seniority while on unpaid FMLA leave.

6. What kinds of notices and medical certification are required?

Q. How do I request FMLA leave?

A. If the need for your leave is foreseeable, you must provide advance written notice to your supervisor using the Leave Request Form available in the Office of Human Resources (HR) or at their website: <http://hr.cocc.edu> under forms. Also, please contact Human Resources immediately at 383-7216 for an appointment to discuss your rights and responsibilities. Because the required medical information is confidential, the Leave Request Form lists only "serious health condition" as a reason if you or your family member has a medical problem. The form does not ask you to describe your health condition. If the need for your leave is not foreseeable, contact your supervisor as soon as possible. Your supervisor will contact Human Resources.

Q. Do I have to specifically request FMLA leave to receive job protection for my time off?

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

Q. Who is responsible for designating the leave as FMLA qualifying?

A. The Family and Medical Leave Act states that, in all circumstances, it is the employer's responsibility. The Director of Human Resources is responsible for designating your leave as FMLA qualifying based on the reason for your leave and counting your leave toward your twelve-week entitlement.

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

A. Yes. You have 10 days from the date HR is notified of the leave to provide the medical certification. Certification is required for pregnancy complications, but is not required for the birth or to care for a newborn.

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

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

7. Will I be reinstated to my previous job?

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

A. When you return from leave, you are entitled to return to the same, or an equivalent job at the same salary, and your benefits will be reinstated. Remember, in order to receive this protection, you must qualify under the FMLA for leave and return the day after the twelve-week period ends. If you return at a later date, you may be returned to your same or similar position in accordance with applicable leaves and policies.

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

A. No. FMLA does not give you any protections you would not have had if you had not taken FMLA leave.

Q. If I have a condition that qualifies under FMLA and Worker's Compensation (WC), how does this affect my reinstatement rights?

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

Q. What can I do to help my coworkers cope with my absence if I know in advance I will be gone?

A. Please make sure that you do whatever is possible to help minimize the impact of your absence. You can help by doing the following:

- Give as much advance notice as possible.
- Plan ahead whenever possible. You may be able to take care of some of the work before or after your leave. Your coworkers will appreciate your effort if you work ahead to try to lighten the load for them.
- Work with your supervisor to arrange coverage for each aspect of your job. You can make sure each of your tasks is well taken care of while you are on leave.
- Cross-train your coworkers. Check with your supervisor about setting up a training schedule.
- Help train your temporary replacement.
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8. Are there other Family and Medical Leave laws?

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

A. Yes. The state has the Oregon Family Leave Act (OFLA). However, in most cases, OFLA leave also qualifies as FMLA leave. If leave qualifies under both the FMLA and OFLA, its use is counted against both entitlements so employees are not eligible for more time off under OFLA.

Q. When OFLA and FMLA differ, which takes precedence?

A. You are always granted the more favorable benefit when the College needs to allow more than the 12 weeks that is allowed under FMLA. This additional leave time is charged against an employee's OFLA balance.

Q. Are the eligibility requirements the same under OFLA and FMLA?

A. No, to qualify for OFLA, you must have been employed for at least 180 calendar days and have worked an average of 25 hours a week (except for parental leave which does not require the weekly average.) Under FMLA, you must have worked for at least 12 months (does not have to be consecutive) and have worked at least 1250 hours during the 12-month period immediately preceding the date the leave begins.

Q. Is the definition for family member the same under the OFLA and the FMLA?

A. They are very similar except OFLA includes a parent-in-law and same-gender domestic partners and FMLA does not. Neither OFLA nor FMLA includes opposite gender domestic partners in its definition.

Q. When does OFLA allow you to take time off or take more time than FMLA?

A. Here are some examples:

Both mothers and fathers are entitled to leave for birth, adoption or placement of foster children. Under FMLA, parents must share the 12 weeks of leave if they work for the same employer. Each parent has an individual 12-week entitlement under OFLA, even if both employees work for the same employer. OFLA includes a parent-in-law and same-

gender domestic partner in the definition of an eligible family member, but FMLA does not. Under OFLA, an employee may take 12 weeks off to care for a parent-in-law or same gender domestic partner, but that time off may not be charged against the FMLA entitlement. Assuming no other family leave was used in the leave year, an employee would have 12 full weeks available under FMLA if an eligible family member developed a serious health condition.

Under OFLA, an employee must be allowed to take family leave for any illness or injury of a child that requires home care, although there is no serious health condition. Generally, OFLA entitles employees to 12 workweeks of leave in a 12-month period. There are however, two exceptions:

1. An employee who takes family leave because of a pregnancy-related medical condition is also entitled to an additional 12 weeks for any other family leave purpose.
2. An employee using the full 12 weeks of leave to care for a newborn or newly-adopted or placed foster-child is entitled to an additional 12 weeks of sick child leave. If the employee does not use the entire 12 weeks of parental leave, the employee has only the unused balance of the 12 weeks of parental leave to use for sick childcare for the remainder of the 12 months. Example: Joe takes 8 weeks of parental leave to care for his newborn baby. Because Joe used only 8 weeks of parental leave, he is entitled only to 4 weeks of sick-child leave. If Joe had taken the full 12 weeks of parental leave, he would have been eligible for 12 weeks of sick-child leave.

Q. If I am eligible for additional time under OFLA, but it does not count as FMLA, will my benefits be continued while I am on unpaid leave?

A. No, unlike FMLA, you will be required to continue to self-pay your own medical plan while on unpaid OFLA leave. However, OFLA does require the College to reinstate the same level of coverage you had in place when your leave began as soon as you return to work.