

# Oregon Family Leave Act - OFLA

## Questions & Answers

### **Q. What laws require employers to give family leave?**

A. Both state and federal law require certain employers to give family leave: the Oregon Family Leave Act (OFLA) and the Federal Family and Medical Leave Act of 1993 (FMLA).

### **Q. When can an employee take OFLA and FMLA?**

A. Although there are a few exceptions, OFLA and FMLA generally provide 12 weeks of unpaid leave per year for the following purposes:

- Birth, adoption or placement of a child (parental leave).
- To care for a family member with a serious health condition or the employee's own serious health condition (serious health condition leave).
- For a pregnancy disability or prenatal care (pregnancy disability leave).
- To care for a sick child who does not have a serious health condition, but requires home care (sick child leave).

### **Q. Who is eligible to take OFLA leave?**

A. To be eligible for OFLA leave, employees must be on the job at least 180 days to take leave to care for a newborn or newly adopted child. For all other OFLA leave benefits, workers must be employed at least 180 days and also work at least an average of 25 hours a week.

### **Q. How is an employee's job protected during a leave?**

A. Employers must return employees to their former jobs or to equivalent jobs if the former positions no longer exist.

### **Q. How much leave can an employee take?**

A. Employees are entitled to 12 weeks within any one-year period, with an additional 12 weeks available to a woman for an illness, injury or condition related to pregnancy or childbirth. Parents who have taken 12 weeks of family leave to care for a newborn are also entitled to take up to 12 weeks leave to care for a sick child requiring home care.

### **Q. What notice is required?**

A. Employees are required to give written notice to the employer 30 days in advance of the leave unless the leave is taken for an emergency. Employees who fail to give written notice may be subject to discipline by the employer.

### **Q. What is the difference between OFLA and FMLA?**

A. OFLA applies to employers with 25 or more employees. To qualify for leave benefits, employees must have worked at least 180 calendar days and an average of 25 hours a week (except for parental leave, when no weekly average is required) to be eligible for OFLA leave.

FMLA applies to employers with 50 or more employees. To be eligible for FMLA leave, employees must have worked for the employer for at least 12 months (not necessarily

consecutive), and have worked at least 1250 hours during the 12-month period immediately preceding the leave.

**Q. If employers are covered by both OFLA and FMLA, does that mean they are required to give 24 weeks of leave, instead of 12 weeks, in a year?**

A. Generally, no. OFLA provides that leave counted as FMLA is also counted as OFLA. Therefore, if an employee needs 10 weeks to care for a parent with a serious health condition, the 10 weeks are counted against both OFLA and FMLA leave entitlements, and the employee has two weeks of leave left in the year. There are a few situations, however, such as sick child leave and leave to care for a parent-in-law, in which OFLA provides for leave and FMLA does not, so it is not possible to count the leave toward the FMLA entitlement. In such cases, an employer might be obliged to grant more than 12 weeks of leave in a year.

**Q. Are there any other situations in which employees might be entitled to more than 12 weeks of leave in a year?**

A. Yes. OFLA entitles employees who take pregnancy disability leave to an additional 12 weeks of any other kind of leave, if they otherwise qualify for it. For example, an employee who takes pregnancy disability leave can also take an additional 12 weeks of parental leave when the baby is born. OFLA also allows employees who have taken 12 weeks of parental leave to take an additional 12 weeks of sick child leave if they need it. It is thus possible, although unlikely, that an employee could receive as many as 36 weeks of leave in a year.

**Q. Are both parents entitled to a full 12 weeks of parental leave?**

A. Yes, although employers are not required to allow both parents to take parental leave at the same time. OFLA states that family members working for the same employer may not take family leave at the same time unless one of the employees is suffering from a serious health condition or the employer allows the taking of concurrent leave.

**Example:** XYZ Corporation employs both the mother and father of a newborn child. Although parental leave can be taken any time within a year of birth, both parents would prefer to take parental leave during the 12 weeks immediately following the birth. The employer can require the parents to take leave consecutively instead of concurrently.

**Q. What notice is required?**

A. Employees are required to give written notice to the employer 30 days in advance of the leave unless the leave is taken for an emergency. Employees who fail to give written notice may be subject to discipline by the employer.

**Q. Must the employer tell the employee that time off is being designated as family leave?**

A. FMLA requires that in order to count the time as family leave, employers must provide employees with a written notice informing them of the designation and of several other items. The United States Department of Labor can provide employers with a list of these items, and that list can be given directly to the employee. Call 503-326-3057 for more information.

**Note:** Although OFLA does not have a similar designation requirement, it is recommended that employers inform employees every time they count time off against the employee's OFLA leave bank.

**Q. If I am covered by both OFLA and FMLA, which law do I follow?**

A. As with all laws pertaining to employment, the employer must follow the law most beneficial to the employee.

**Example:** OFLA includes parents-in-law in its definition of family members, but FMLA does not. Employers covered by both laws must provide leave for employees who wish to care for their parents-in-law. Because this kind of leave is not covered under FMLA, the

employer cannot count it against the employee's FMLA entitlement, and the employee will still have an additional 12 weeks of FMLA leave.

**Q. Must the employer compensate the employee during the leave?**

A. There is no requirement that family leave be paid. However, the employee must be allowed to use any existing accrued vacation leave, and the employer must apply its existing sick leave policy. The only exception is OFLA parental leave, in which the employer must also allow employees to use any accrued sick leave.

**Example:** An employee requests ten weeks of family leave to care for her sick parent. The employee has accrued five weeks of vacation leave and two of sick. The employer must allow the employee to use the vacation leave. Whether the employer must also allow use of the sick leave depends upon the employer's sick leave policy. For example, if the employer's policy allows employees to use accrued sick leave to care for a family member, the employer must allow the employee to use her accrued paid sick leave as well as the accrued vacation leave. The employee must then take the remaining three weeks as unpaid leave.

**Example:** A father wishes to take parental leave to care for his newborn child. He has accrued fifteen weeks of sick leave and wishes to use it during his parental leave, even though he would not normally be entitled to it unless he was actually sick. The employer must still allow the employee to use his sick leave for the entire parental leave period.

**Note:** Employers can also require that employees exhaust all accrued paid leave before taking some or all of the family leave as unpaid leave.

**Q. When the leave has been completed, is the employee entitled to return to his or her job?**

A. FMLA states that an employee returning from leave is entitled to his or her former job or an equivalent job. OFLA states that an employee returning from leave is entitled to the former job, or to an available equivalent job if the former job has been eliminated. Employers covered under both OFLA and FMLA must therefore allow the employee on leave to return to the former job, if that job still exists.

**Q. Can an absence due to a Workers' Compensation claim also be counted as family leave?**

A. Yes, if it meets the definition of a serious health condition under OFLA or FMLA. Employers must then look at the reinstatement rights under the leave laws and under the workers' compensation discrimination laws and do whichever is most beneficial for the employee.

**Q. If an employer grants a family leave for a condition that is also a disability under the Americans with Disabilities Act, is there any further accommodation required once the leave period has ended?**

A. Employers must reasonably accommodate an employee's disability if it does not create an undue hardship. If an employee's family leave entitlement has been exhausted for a serious health condition that is also a disability, the reasonable accommodation obligation still remains. An example would be an employee who suffered permanent injuries to her back and although able to return to work needs special office furniture or equipment to allow her to perform the job therapy after the twelve-week family leave period.