

FAMILY AND MEDICAL LEAVE POLICY

PURPOSE: To inform County departments, managers and supervisors about the requirements of Federal and State laws protecting employees taking leaves of absence in certain situations.

SCOPE: This policy applies to all County Offices and Employees. Any FML-qualifying leave must be reported as FML leave even if the employee has paid leave time accrued. FML is not voluntary; it is mandatory when the situation qualifies for leave under Federal Family Medical Leave, Oregon Family Leave Act, and/or Oregon Military Family Leave Act.

POLICY STATEMENT: Clackamas County provides leave for family and medical reasons in conformance with the Federal Family Medical Leave Act (FMLA,) Oregon Family Leave Act (OFLA,) and/or Oregon Military Family Leave Act (OMFLA.) In addition, pregnancy and parental leave are provided in conformance with Oregon law ORS 659.029, the Federal Pregnancy Discrimination Act (PDA) and Amendment to Title VII of the Civil Rights Act of 1964. The purpose of these laws is to secure the right of employees to respond to their own health needs and those of their family members without being penalized for taking such leave and to guarantee reinstatement to the employee's former or equivalent position. Clackamas County's Family and Medical Leave (FML) Policy has been designed to consolidate provisions of both State and Federal laws in such a way as to allow employees the maximum advantage.

ELIGIBILITY

For purposes of this policy, employees include probationary, regular status, seasonal and/or temporary employees. Employees who are absent from work due to service in the National Guard or the Reserves shall have their time spent in military service count toward the eligibility requirements for FML.

To be eligible under **FMLA**, an employee must have worked for a total of at least **12 months** (not necessarily consecutive, but based on no more than a 7 year period prior to the beginning of the leave) and worked for at least **1250 hours** during the 12 month period immediately preceding the leave.

To be eligible under **OFLA**, an employee must have worked for a period of **180 calendar days** immediately preceding the date leave begins, and worked an average of **25 hours per week** during the 180-day period. Employees are eligible for **parental leave** after being employed for **180 calendar days, without regard to the number of hours worked per week.**

To be eligible under **OMFLA**, an employee must work an average of **20 hours per week**

QUALIFYING EVENT

The following events qualify an employee for FML: "parental leave" for the birth of a child or placement of a child with the employee for adoption or foster care; "serious health condition" or pregnancy of the employee; "serious health condition" of the employee's spouse, or parent, or the child of the employee or spouse, or someone with whom the employee has an "In Loco Parentis" relationship.

Under FMLA, an employee can take up to 26 weeks of leave in a 12-month period to care for a spouse, son, daughter, parent, or next of kin (person most closely related to the employee,) who is a 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.

Also under FMLA, an employee can take leave for any qualifying exigency that arises from a spouse, son, daughter, or parent who is a member of the National Guard or Reserves, or a retired member of the Regular Armed Forces or Reserve being on active duty, or being notified of an impending call or order to active duty, in the Armed Forces in support of a contingency operation. A qualifying exigency is a non-medical activity that is directly related to the covered military member's active duty or call to active duty status, and includes:

- a. Short-notice deployment
- b. Military events and related activities
- c. Temporary childcare arrangements (but not ongoing childcare) and school activities
- d. Financial and legal arrangements
- e. Counseling
- f. Rest and recuperation (leave permitted up to five days when the military member is on temporary rest and recuperation leave)
- g. Post-deployment military activities
- h. Additional activities not encompassed in these specific categories, but agreed to by the County and the employee

Similar to FMLA qualifying exigency leave, the OMFLA is leave taken by the spouse or domestic partner of a member of the Armed Forces of the United States, the National Guard, or the military reserve forces of the United States who has been called to active duty or notified of an impending call or order to active duty, or who is on leave from active duty during a period of military conflict. An employee is entitled to up to 14 work days of OMFLA per deployment; it may be taken intermittently or consecutively. Both FMLA and OMFLA will be applied to the leave if the time is eligible for both.

Under OFLA, employees are also eligible for leave due to the serious health condition of a grandparent, grandchild, parent-in-law or same sex domestic partner, and provides for "sick child leave" for children with non-serious health conditions. County policy extends leave to employees who would otherwise qualify for FMLA and OFLA due to the serious health conditions of their domestic partners and their domestic partner's children and parents as if they were the spouses, children and parents-in-law of the employee.

An "In Loco Parentis" is defined under FMLA as a person with whom an employee has developed a parent/child relationship in the absence of a biological or adoptive parent. It is defined under OFLA as a person having financial and day-to-day responsibility for the care of a child in the place of a parent.

For the serious health condition of a child, FMLA restricts the leave for children under age eighteen (18) years of age or children of any age who are disabled. OFLA does not have this restriction for a child with a serious health condition, but it does apply for "sick child leave."

OFLA also provides for two weeks of bereavement leave to deal with the death of a family member. Bereavement leave may be used to attend the funeral or memorial service, make arrangements related to the death of the family member and/or grieve the death of the family member. If multiple family members pass away, the employee is allowed two weeks of bereavement leave for each family member. Bereavement leave counts toward the employee's 12-week OFLA entitlement and must be completed within 60 days after the date the employee receives notice of the death. The employee must first use any paid Bereavement Leave as contained within the appropriate collective bargaining agreement or Personnel Ordinance prior to using vacation leave, sick leave or unpaid time. Paid Bereavement Leave counts toward the OFLA bereavement leave entitlement.

SERIOUS HEALTH CONDITION

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

- a. inpatient care in a hospital, hospice, or residential medical care facility or subsequent treatment resulting from such inpatient care; or
- b. a period of incapacity of more than three (3) consecutive calendar days, and any subsequent treatment, with the first treatment taking place within seven (7) of the first day of incapacity (two or more treatments that occur within 30 days of the first day of incapacity or once with a regimen of continued treatment); or
- c. any period of incapacity for pregnancy or prenatal care; or
- d. any period of incapacity or treatment of such incapacity due to a chronic serious health condition (asthma, diabetes) that requires visits for treatment by a health care provider at least twice a year; or
- e. permanent or long-term incapacity due to a condition for which treatment may not be effective (Alzheimer's, severe stroke, etc.); or
- f. any period of absence to receive multiple treatments either for restorative surgery after an accident or injury or that would likely result in a period of incapacity of more than three (3) days if untreated; or
- g. an illness, disease or condition that poses an imminent danger of death, is terminal in prognosis, or requires constant care.

"Treatment" includes (but is not limited to) examinations to determine if a serious health condition exists and evaluations of the condition. Treatment does not include routine physical examinations, eye examinations or dental examinations. "A regimen of continuing treatment" includes, for example, a course of prescription medications or therapy requiring special equipment to resolve or alleviate the health condition. A course of treatment that includes taking over-the-counter medications or bed-rest, drinking fluids, exercise, and other similar activities that can be initiated without a visit to a health care provider is not, by itself, sufficient to constitute a regimen of continuing treatment for the purposes of FML.

Examples of a serious health condition include but are not limited to: heart attacks and conditions requiring surgery (e.g., bypass or valve operations); back conditions requiring extensive therapy or surgery; strokes; severe nervous disorders (mental/emotional/stress); severe respiratory conditions; pregnancy, severe morning sickness, prenatal care, childbirth and recovery from childbirth; appendicitis; pneumonia; severe arthritis; treatment for substance abuse (not absence because of use of substance).

Health conditions not considered serious (unless inpatient hospital care is required or complications arise) include, but are not limited to: short term illnesses, (common cold, flu, ear aches, upset stomach, ulcers, headaches other than migraines), routine dental or orthodontia problems, cosmetic treatment, or routine physical exams.

DURATION OF THE LEAVE

All Qualifying Events under FMLA and OFLA

Employees are permitted to take a total of twelve (12) weeks of leave in any 12-month period for any qualifying event. When the leave qualifies for both FMLA and OFLA, the leave will be charged concurrently to FMLA and OFLA. Leaves that are allowed only under OFLA do not count toward FMLA entitlement or provide benefits under FMLA, nor do leaves that are allowed only under FMLA count toward OFLA entitlement or provide benefits under OFLA.

The twelve (12) weeks of leave for the birth or placement for adoption or foster care for an employee's child must be taken and concluded within one (1) year from the date of birth or placement. Parental leave must be taken in a consecutive period of time, unless the employee's supervisor approves the leave to be taken in two or more non-consecutive periods.

Additional Leave under FMLA

FMLA provides for up to 26 weeks of leave in a 12-month period to care for an employee's spouse, son, daughter, parent, or next of kin who as member of the Armed Forces is seriously injured during active duty. This leave is combined with all other FMLA leaves in a 12-month period, resulting in a maximum total leave entitlement of 26 weeks.

Additional Leave under OFLA

OFLA provides that a female employee who takes leave for a disability resulting from pregnancy or childbirth may take an additional 12 weeks for any OFLA-qualifying purpose. This means a female employee may take up to 24 weeks for pregnancy disability (but she does not then get an additional 12 weeks for parental or sick child leave). This period of pregnancy-related disability includes any period of time prior to childbirth in which the employee's health care provider certifies the employee cannot work and continues after childbirth until the health care provider certifies the employee is no longer disabled. However, a woman may choose to designate the leave following childbirth as parental leave instead of pregnancy disability.

OFLA also allows an employee who has used twelve (12) weeks of parental leave to take up to twelve (12) weeks additional sick child leave. If an employee does not take a full twelve (12) weeks of parental leave, he or she is only entitled to take sick child leave up to his/her basic twelve (12) week entitlement.

Rolling Twelve-Month Period

The 12-week time period will be determined on a "rolling 12-month" basis, in which the 12-month period is measured backward from the date the leave is effective. The equivalent of one week of FML is based on the usual number of hours worked per week and based on the employee's work schedule prior to the start of the leave. Leave equivalent to 12 weeks may be taken on an intermittent basis or a reduced leave schedule if medically necessary.

Spouses Working For the Same Employer

When a husband and wife who both work for Clackamas County want to take FML for the same reason, the entitlement under FMLA is 12 weeks combined for the same event. There is no such restriction under OFLA except that only one parent at a time may take sick child leave.

ADDITIONAL INFORMATION REGARDING PREGNANCY & CHILDBIRTH

Federal and State laws provide the following rights:

1. Prohibitions against terminating or refusing to hire or promote a woman solely because she is pregnant.
2. Bars mandatory leave for pregnant women arbitrarily set at a certain time in their pregnancy and not related to their ability to work. A female employee must be permitted to work during pregnancy so long as she is able to perform available job duties.

3. Requires employers to grant leaves to employees for disability related to pregnancy, childbirth, and related complications as well as non-medical “parental leaves” under the same policies as for other related leaves.
4. Requires that an employer make reasonable accommodations to allow a pregnant employee to transfer to a less strenuous or hazardous position for the duration of her pregnancy or grant a leave of absence while the employee is disabled from performing any available job duties offered by the employer.
5. Requires employers to reinstate an employee returning from pregnancy-related disability leave on the same basis as other employees returning from sick or disability leave.

The period of disability due to pregnancy or childbirth may qualify the employee for disability-insurance benefits. To apply for benefits, the employee must use all accrued sick leave and file a disability insurance claim with the Risk & Benefits Division.

For periods of leave during pregnancy outside the scope of actual physical disablement, refer to Employment Policy and Practice #11 – Leaves of Absence.

CERTIFICATION OF SERIOUS HEALTH CONDITION

The County requires certification from the attending health care provider(s) for leave to care for an employee’s family member with a serious health condition or the employee’s own serious health condition, including disability for pregnancy and following childbirth.

If leave is foreseeable, this information must accompany the request for FML. If the leave is unforeseeable, the employee must submit a *Certification of Health Care Provider* form within fifteen (15) days of their request for FML. Failure to provide medical certification 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 Certification of Health Care Provider form that the employee is needed to provide care (which may include psychological comfort).

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

When the leave extends beyond a period of one (1) year, such as with intermittent leave, the County may require a re-certification by a health care provider that there is a continuing need for leave.

HEALTH CARE PROVIDER

All of the following must be authorized to provide health care by the State in which they practice:

- Doctors of Medicine or Osteopathy
- Podiatrists
- Dentists
- Clinical Psychologists
- Optometrists
- Chiropractors (limited to manual manipulation of the spine to correct a subluxation)
- Nurse Practitioners
- Nurse Midwives
- Clinical Social Workers
- Any health care provider recognized by the County’s group health plan

Other providers:

- Christian Science practitioners listed with the First Church of Christ Scientist in Boston, Massachusetts

- A health care provider as defined above who practices and is licensed in a country other than the United States.

OFLA only:

- Naturopaths
- Direct Entry Midwives
- Registered Nurses
- A person who is primarily responsible for treatment solely through spiritual means (including Christian Science practitioner)

HEALTH BENEFIT CONTINUATION

Employees taking approved leave under FMLA will have their group health benefits continued for a maximum of 12 weeks in any 12-month period of time, or 26 weeks if the leave is to care for an employee's spouse, son, daughter, parent, or next of kin who as member of the Armed Forces is seriously injured during active duty. If the employee remains on extended leave, medical insurance may be continued following the 12-week FMLA period if required by the Affordable Care Act. See EPP #33 – Employee Benefits for more information.

Benefits to be continued while on an approved leave include medical, prescription drug and vision coverage, dental coverage, services under the Employee Assistance Program and the group term life insurance. In addition, an employee will be able to continue contributions to his or her active health care flexible spending account or existing supplemental life insurance and other optional benefits plans. Contributions to a dependent care flexible spending account may be suspended during a continuous FML. During the leave, if the employee is in an unpaid status, he or she will be responsible for paying his or her share of any applicable benefits premiums, either during the leave or as a payroll deduction immediately upon return from leave. If the employee is in a paid status at the time premiums are normally collected, the employee's contribution will be deducted from his or her pay as usual.

FAILURE TO RETURN FROM LEAVE

If an employee voluntarily terminates employment during an approved leave or fails to return to work for at least thirty (30) days at the end of the leave, the employee will be required to repay the County for the employer-paid portion of the health insurance premium during any unpaid FML period. The employee must return to his/her regular work schedule (the standard hours per pay period established for his/her position).

However, if the employee is unable to return to his/her regular work schedule for reasons beyond the employee's control, such as severe deterioration of the health status of the employee or the family member, or the employee elects retirement, this provision will not apply. If failure to return is due to continuation, recurrence or onset of a serious health condition, medical certification will be required within thirty (30) days from the date the County requests the information.

COBRA continuation eligibility begins at the end of the 12 or 26-week period of continued County-paid benefits. This will also apply to situations such as: additional unpaid leave for OFLA parental leave, other approved unpaid leave, or voluntary termination. See EPP #44 for an explanation of COBRA continuation.

SERVICE ACCRUAL AND OTHER BENEFITS

Seniority continues to accrue during all authorized leaves, both paid and unpaid. Longevity, time towards salary increases, sick leave, and vacation will accrue during an approved FML according to the 11-day rule. The 11-day rule states that an employee must be working, half time or greater, or in a paid status for 11 working days in a calendar month in order to gain service accruals for that month. For POA members, credit towards longevity and salary increases will continue to accrue during authorized leaves without pay and is not subject to the 11-day rule. For employees who work a part-time or compressed work week (i.e., four 10-hour

days), the 11-day rule will be pro-rated. This calculates to 9 working days for employees working a 4-day workweek.

The Oregon Public Employees' Retirement System (PERS) requires employees to be in a paid status for fifty (50) hours per month to receive creditable service for that month. Service credit is not granted for months in which an employee is on a leave without pay. Time spent on leave without pay also is not included in the service time used to determine eligibility for unreduced early retirement benefits. (Refer to PERS handbook or contact PERS for more information.)

PAID LEAVE

If an employee is taking FML because of their own illness or the illness of a family member, the employee must exhaust all accrued sick leave prior to using vacation or electing leave without pay. Use of sick leave for family members must comply with the applicable collective bargaining contract or County policy.

Holidays will count as FML if the employee is on FML the entire week in which the holiday falls. If the employee takes FML for less than a full workweek in which a holiday falls, the holiday does not count as FML. Employees eligible for paid holidays must be in a paid status the workday before and following the holiday for the holiday to be paid.

For OMFLA, OFLA bereavement leave, and parental FML, the employee has the choice of using any or all accrued sick leave and/or vacation hours. The amount of accrued paid leave to be taken is up to the discretion of the employee.

When an employee regularly works overtime, but is not eligible to receive overtime compensation under Federal or State law, County policy or a collective bargaining agreement (i.e., managers) and is on sporadic intermittent leave, he/she is not required to use sick or vacation when the FML leave is four (4) hours or less in a day. However, the time taken is charged against the employee's FML entitlement and cannot exceed 80 hours in any 12 month period. This provision is not intended to apply to employees placed on a reduced work schedule, i.e. 4 hours per day, due to an FML leave.

In the event of the death of the family member for which the employee is providing care while on FML, bereavement leave may be taken for the applicable days following the family member's death. An approved FMLA shall end as of the date of the death of the family member and OFLA bereavement leave may begin.

UNPAID LEAVE

In many instances an employee will use some leave without pay during an FML. If an employee is using both accrued paid leave and leave without pay, leave without pay may not begin until all required or requested paid leave is used. Any remaining paid leave may not be used for the duration of the continuous leave once unpaid leave has begun. That is, the employee may not go back and forth between leave with pay and leave without pay during a continuous leave.

ADDITIONAL LEAVE AT THE END OF FML

Once an employee's FML entitlement is exhausted, he/she may request an additional leave of absence with or without pay, subject to approval by the employee's department. Unless otherwise specified in the applicable collective bargaining agreement, a department director may approve a leave of absence with or without pay for a limited period not to exceed ninety (90) days. If an employee goes into a leave without pay status during an approved FML, this unpaid time counts towards the ninety-day period that may be approved by the department. The Board of County Commissioners must approve leaves of absence in excess of ninety (90) days. (See EPP #11 –Leaves of Absence for more information.)

If all or part of the FML was leave without pay, the employee may request leave with pay if s/he has accrued leave time. Once a post-FML leave without pay has been granted, an employee may not request leave with pay. Under no circumstances will an employee be allowed to go back and forth between paid and unpaid leave for the purpose of extending eligibility for County-paid benefits or earning service accruals.

REINSTATEMENT

When an employee returns from an approved FML, he or she shall be restored to his or her former position or an equivalent position without loss of seniority or previously accrued benefits or rights possessed at the beginning of the leave, except for paid leave the employee used during the leave of absence. If an employee has been on leave due to his or her own serious health condition, the employee must provide the supervisor with a release to return to work form completed by their health care provider.

However, the County retains the right to deny restoration in the following situations: 1) the employee would have lost the job due to layoff if he/she had not been on leave; 2) the employee fraudulently obtains a family and medical leave; 3) the employee violates the County's policy governing outside employment during the leave; or 4) the employee fails to provide a release to return to work upon return.

An employee taking an approved FML may cancel the leave and notify the employer of his or her request to return to work. The employee must request this exception in writing. The employee must be reinstated within two working days. If there is less than a week of FML remaining, the employee may be reinstated at the end of the leave as originally scheduled.

REQUEST PROCEDURES

Upon request, DES/Risk & Benefits will send FML packets to employees who may be eligible for FML leave. The request may be made by the employee or by the supervisor or a family member on behalf of the employee. The request can be verbal or written. When leave is anticipated, the employee must submit a request for FML to his or her supervisor at least **thirty (30) calendar days** in advance of the leave. In situations where an emergency arises and the need for the leave is not anticipated, the employee must notify his or her supervisor and complete the *Family and Medical Leave Request* form as soon as practical. If an employee's notice is delayed, the County may count any absences during the delay as non-FML and apply our attendance policy to those absences. Since actual dates of leave often cannot be determined in advance, the employee should estimate the dates as closely as possible at the time of the request.

If the date(s) are different than those originally submitted, the employee's supervisor will be responsible for notifying DES Risk/Benefits of the change. DES/Risk & Benefits will amend the start and end dates of FML and notify the employee upon receipt of this information. In instances where the leave is taken for the illness of the employee or family member, the *Family and Medical Leave Request* form must be accompanied by a health care provider's certification documenting the need for the leave. If a medical certification is unavailable due to emergency or unanticipated leave, the employee must provide such certification within **fifteen (15) calendar** days after submitting the request form. DES may extend this deadline to accommodate special circumstances when the employee has been unable to obtain the certification within 15 days.

In the event an employee fails to provide medical certification, DES will investigate and determine whether to count the leave toward FML and allow the use of paid leave time or to place the employee on unauthorized leave without pay.

If the leave is taken to deal with an exigency that has resulted from a family member being on active duty in the Armed Forces, the employee must provide written documentation regarding active duty status.

SUPERVISOR'S RESPONSIBILITY

Prior to an Employee Taking a Family and Medical Leave: Immediately upon receipt of a *Family and Medical Leave Request* form, the supervisor must sign the form and send it to the DES/Risk & Benefits Division in a confidential envelope.

If leave is unforeseen or no advance notice is provided, the supervisor shall notify the employee verbally that the leave may be counted as FML, and notify DES/Risk & Benefits Division of the leave.

Due to requirements under the Americans with Disabilities Act, information related to a medical condition for either the employee or a family member cannot be retained in the department's personnel files. It is important that these forms be submitted to DES for inclusion in the employee's FML file.

Upon receipt of a *Family and Medical Leave* request, DES will send a FML Action form to the department and payroll outlining the approved dates of leave and type of leave with or without pay to be used. This form will be used in lieu of a Personnel Action form. The supervisor should notify DES/Risk & Benefits as soon as the FML leave actually begins. As changes occur during the leave, DES will revise and distribute the updated FML Action form.

Timesheets: The supervisor must submit timesheets using the appropriate codes for hours taken as FML. These codes will be detailed in the FML Action form sent from DES. **Pending formal approval of FML, any leave time used must be coded as FML.** If the request is denied, Payroll will make all necessary administrative adjustments to reflect regular leave status.

Upon Completion of a Family and Medical Leave: The supervisor must notify DES Risk/Benefits of the employee's change in status and the effective date the FML expires, (i.e. return to work, extended leave without pay, leave turned into bereavement leave, etc.). An employee who has been off work due to his or her own illness or injury must provide his/her supervisor with a *Release to Return to Work* form prior to returning to work. This must be completed and signed by the employee's health care provider and forwarded to DES/Risk & Benefits Division **immediately**.

DEPARTMENT OF EMPLOYEE SERVICES/PAYROLL RESPONSIBILITY

Prior to an Employee Taking a Family and Medical Leave: Within 5 business days of receipt of a request for FML, DES will make an eligibility determination based on an employee's employment history and hours worked. If eligible, the leave will be conditionally qualified under FMLA or OFLA, and the employee will be mailed an initial notice with a request for necessary documentation.

DES will then issue an FML Action form to the department stating the status of the request and providing information on coding the employee's timesheet. When DES is notified of a change in the start or end dates, DES will adjust the FML Action form and distribute the updated form. DES/Risk & Benefits Division will send a notice with the relevant benefit information to the employee at their home.

Approval or denial of the leave request will be made when DES has sufficient information to make the determination.

During a Family and Medical Leave: If the employee's status changes to leave without pay, Payroll will notify DES, and DES will send an updated FML Action form to the department so that the supervisor can accurately code the employee's timesheet.

Upon Completion of a Family and Medical Leave: At the end of the approved FML, DES will confirm dates and employment status with the supervisor. An FML Action form will be generated to indicate the appropriate employment status of the employee and the effective date that his/her FML entitlement was exhausted. The employment status may include returning to work or being placed on a department-approved leave of absence.

REPORTING REQUIREMENTS

The law requires specific posting and record keeping. Each department is required to post both the "Federal Family and Medical Leave Act of 1993" poster and the "Oregon Family Leave Act" poster in an accessible location. Records on the use of Family and Medical Leave are subject

to audit by the Department of Labor; therefore, it is necessary that supervisors comply with timely notification of any FML and applicable time used.

If you have any questions on the Family and Medical Leave Act or the County's policy for such leaves, please contact DES/Personnel Division or DES/Risk & Benefits Division.

INTERNET LINKS

County Ordinance <http://www.clackamas.us/code/documents/title2.pdf>

LINKS TO FORMS

Family and Medical Leave Request

Medical Certification

Release to Return to Work