



How to track Paid Leave Oregon, OFLA and FMLA

September 25, 2023
Tigard, Oregon



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Employer Assistance

Employer Assistance

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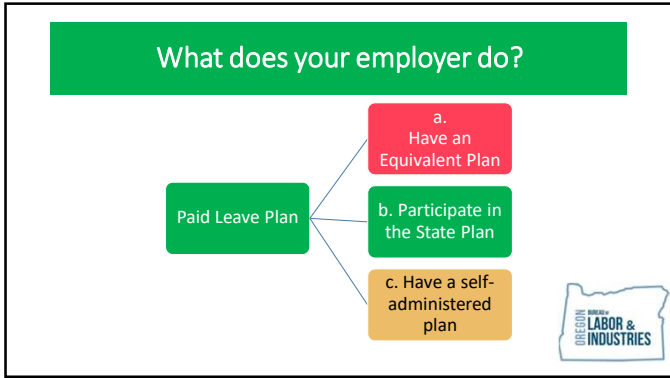

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Disclaimer

- These materials were prepared as a general summary and teaching guide. The Employer Assistance answers questions to inform the public regarding the policies and procedures of the Oregon Bureau of Labor and Industries and to generally inform the public regarding the law of employer-employee relations. The Employer Assistance may not and does not give legal advice. In order to determine the legality of any matter or to protect your legal rights, you should obtain the assistance of a lawyer. Consult your telephone directory, search on the internet or contact the Oregon state bar lawyer referral service at (503) 684-3763 or 1-800-452-7636.
- This information is available in alternate format.



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Today's Ground Rules: Your role

- You have some knowledge of Paid Leave Oregon, and working experience administering OFLA, FMLA, other employment laws, and the applicable provisions of various union contracts between your district and the represented employees, and your school district's policies for management/non-represented employees, please do share your observations and expertise in this workshop.
- We will explore them together and learn from one another.
- Asking questions and expressing your opinions/doubts are encouraged.

OREGON DEPARTMENT OF LABOR & INDUSTRIES

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Employment Department's role

- The Oregon Employment Department is authorized by the legislature to establish a family and medical leave insurance program to provide family and medical leave insurance benefits to eligible Oregonians. [ORS 657B.340\(1\)](#)
- The Oregon Employment Department is authorized to adopt rules that are necessary to establish the family and medical leave insurance program. The department has hired a Paid Leave Oregon team to implement the program. [ORS 657B.340\(2\)](#); [OAR 471-070-0010](#)

OREGON DEPARTMENT OF LABOR & INDUSTRIES

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BOLI's role

- BOLI enforces OFLA and adopts rules to implement OFLA.
- BOLI is charged with enforcing the anti-discrimination and anti-retaliation provisions and processing wage claims when an employer or their equivalent plan administrator fails to pay the Paid Leave Oregon benefits after an eligible employee with a qualifying event applies for benefits. [ORS 657B.210\(12\)](#), [657B.070](#), [OAR 471-070-2400\(5\)](#)
- Many employers come to BOLI for answers. We welcome all, we have a “no wrong door policy” but please remember the Employment Department’s role.



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U.S. DOL, Wage and Hour Division's role

- Nothing in FMLA supersedes any provision of State or local law that provides greater family or medical leave rights than those provided by FMLA.
- The Department of Labor will not, however, enforce State family or medical leave laws, and States may not enforce the FMLA.
- Employees are not required to designate whether the leave they are taking is FMLA leave, OFLA or Paid Leave under State law, and an employer must comply with the appropriate (applicable) provisions of the three laws. An employer covered by one law and not the other has to comply only with the law under which it is covered. Similarly, an employee eligible under only one law must receive benefits in accordance with that law. If leave qualifies for FMLA leave and leave under State law, the leave used counts against the employee's entitlement under both laws. [29 CFR 825.701\(a\)](#)



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Key concept

- FMLA is a federal law. The Oregon legislature has no authority to limit FMLA benefits available under federal law. Paid Leave Oregon was enacted by the Oregon legislature. Paid Leave Oregon does not supersede FMLA.



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Some moving parts are unknown to me

1. Since the end of the legislature session, BOLI and OED are busy writing proposed rules, adopting rules and issuing guidance on how Paid Leave Oregon and OFLA will work separately or concurrently. We are referring to the current laws, rules and guidance of Paid Leave Oregon, OFLA and FMLA as of September 14, 2023.
2. If your employer has a fully-insured equivalent plan approved by the OED I have no information on how the plan administrator will process the claims or track the leave.
3. I don't have the answers to all the questions.



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Agenda

Topics	
I. New definitions of serious health condition , family member , and leave year	
II. Employee eligibility requirements for Paid Leave, OFLA and FMLA	
III. The nine qualifying events that warrant leave	
1. Pregnancy disability leave	
2. Parental leave	
3. Sick child leave	
4. Serious health condition	
5. Bereavement leave	
6. Safe leave	



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Agenda


Topics	
Qualifying reasons for military families	
7. Oregon military family leave	
8. FMLA qualifying exigency leave	
9. FMLA military caregiver leave	
IV. Duration of leave and considerations for intermittent leave	
V. Proper utilization of accrued time	
VI. Impact on employee pay and benefits	



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Agenda


Topics	
VII. Reinstatement guidelines	
VIII. Extended leave provisions	



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Why are we talking about “How to track?”

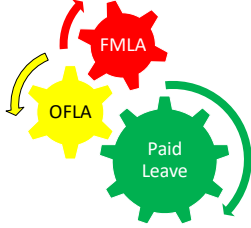

- **Answer:** Tracking is required.
- **All employers** must maintain payroll records, including records documenting employee contributions and expenses. Employment records must reflect the total hours worked by all employees and the **amount of leave taken by employees under Paid Leave Oregon** for the current calendar year including the last three calendar years. Source: Paid Leave Oregon: [Employer Guidebook 12/2022](#), page 14
- **FMLA:** Covered employers who have eligible employees must maintain records that include, among other items, the dates FMLA leave is taken by FMLA eligible employees (e.g., available from time records, requests for leave, etc., if so designated). Leave must be designated in records as FMLA leave; leave so designated may not include leave required under State law or an employer plan which is not also covered by FMLA. [29 CFR 825.500\(c\)\(2\)](#)



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We will discuss how to track the leaves concurrently

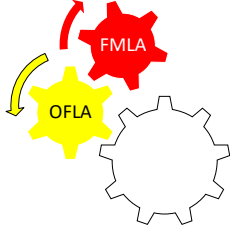
Once an employee's Paid Leave is approved, if the employee is eligible for OFLA and FMLA and the qualifying event is covered by OFLA and FMLA, all three leaves will be set in motion.

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If the employee does not apply for Paid Leave

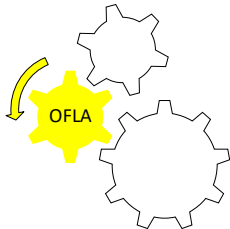
If the employee does not apply for Paid Leave, and the employee is eligible for OFLA and FMLA and the qualifying event is covered by OFLA and FMLA, only two leaves will be set in motion.



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In some cases, only the OFLA applies

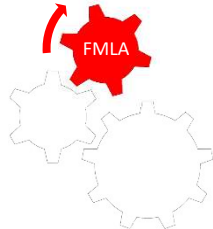
In some cases, only the OFLA Leave applies because the employee is eligible for OFLA and the qualifying event is **NOT** covered by FMLA or Paid Leave.



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In some cases, only the FMLA applies

In some cases, only the FMLA Leave applies because the employee is not eligible for OFLA and the employee does not apply for Paid Leave.



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In some cases, only the Paid Leave applies

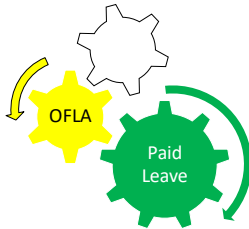
In some cases, only Paid Leave applies because the employee is NOT eligible for OFLA or FMLA due to the length of service.



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In some cases, only Paid Leave and OFLA apply

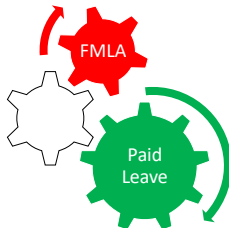
When an employee takes leave to care for a family member who is not recognized under FMLA, only the Paid Leave and OFLA leave can be tracked concurrently.



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In some cases, only Paid Leave and FMLA apply

When an employee has exhausted their OFLA leave entitlement and then they have a qualifying event covered under Paid Leave and FMLA, in that case, only the FMLA and Paid Leave are counted concurrently.



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Let's get started!

Topics	
I. New definitions of serious health condition , family member , and leave year	
II. Employee eligibility requirements for Paid Leave, OFLA and FMLA	
III. The nine qualifying events that warrant leave	
1. Pregnancy disability leave	
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6. Safe leave	



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Your Employer's Paid Leave Equivalent Plan

What you need to know
(Read your plan administrative information first)

Starting in September 2023, Paid Leave Design will serve most employers in Oregon by providing guidance for Paid Leave in relation to other paid or unpaid leave benefits. If you are an employer, you will need to update your Paid Leave plan to reflect these changes. This means that your plan must be updated to comply with the new Paid Leave law.

What benefits are provided through an employer's Equivalent Plan and what is required to qualify for those benefits? Read on to learn more about the requirements for an Equivalent Plan, and how to update your plan to comply with the new Paid Leave law.

What does the Equivalent Plan mean? Starting in September 2023, employers will have to provide an Equivalent Plan through paid leave. This means that employers will need to update their plans to reflect these changes.

What do I need to do to update my Equivalent Plan? If you are an employer, you will need to update your plan to reflect these changes. This means that your plan must be updated to comply with the new Paid Leave law.

How do I get my Paid Leave under the Equivalent Plan? In September 2023, you can apply for paid leave benefits under your Equivalent Plan.

How can I get my employer's assistance? If you are an employer, you can get help from your employer or your administrator.

How do I get my employer's assistance? If you are an employer, you can get help from your employer or your administrator.

What are my options? If you are an employer, you can get help from your employer or your administrator.


How to my information protected? Your information is protected under the law.

What if I have questions about this document? If you have questions about this document, you can contact your administrator.

Learn more about our Equivalent Plan.

I. DEFINITIONS

Presented by
Employer Assistance



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a. Serious health condition




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What is a serious health condition under Paid Leave Oregon?

- “Serious health condition” has the meaning given that term in ORS 659A.150, which is the definition for serious health condition in OFLA.
- [ORS 657B.010\(23\)](#); [OAR 471-070-1000\(23\)](#)
- Does anyone want a refresher on what constitutes a serious health condition under OFLA or FMLA?

Yes


No



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Highlight: Pregnancy related condition


FMLA	OFLA	Paid Leave Oregon
A serious health condition involving continuing treatment by a health care provider includes any period of incapacity due to pregnancy, or for prenatal care.	"Serious health condition" means an illness, injury, impairment or physical or mental condition of an employee or family member that involves any period of disability of a female due to pregnancy or childbirth or period of absence for prenatal care.	"Serious health condition" means an illness, injury, impairment, or physical or mental condition of a claimant or their family member that involves any period of disability due to pregnancy, childbirth, <i>miscarriage or stillbirth</i> , or period of absence for prenatal care.
29 CFR §825.115(b)	OAR 839-009-0210(25)(h) ; ORS 659A.150(7)(c)	OAR 471-070-1000(20)(h) ; ORS 657B.010(23)



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Highlight: Organ / Tissue donation

FMLA	OFLA	Paid Leave Oregon
An organ donation can qualify as a serious health condition under the FMLA when it involves either inpatient care or continuing treatment as defined in the regulations. Organ-donation surgery commonly requires overnight hospitalization and that alone suffices for the surgery and the post-surgery recovery to qualify as a serious health condition.	"Serious health condition" means 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.	"Serious health condition" means an illness, injury, impairment, or physical or mental condition of a claimant or their family member that involves any period of absence from work for the donation of a body part, organ, or tissue, including preoperative or diagnostic services, surgery, post-operative treatment, and recovery.
www.dol.gov/agencies/whd/fmla/faq#9	ORS 659A.150(7)(d)	OAR 471-070-1000(20)(i) ; ORS 657B.010(23)



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Highlight: Substance Abuse Treatment

FMLA	OFLA	Paid Leave Oregon
<p>Substance abuse may be a serious health condition if the conditions meets one or more of the criteria of a serious health condition. However, FMLA leave may only be taken for treatment for substance abuse by a health care provider or by a provider of health care services on referral by a health care provider, not for an absence to abuse the substance.</p>	<p>Provisions of OFLA will be construed to the extent possible in a manner that is consistent with any similar provisions of FMLA.</p>	<p>"Serious health condition" means an illness, injury, impairment, or physical or mental condition of a claimant or their family member that requires inpatient care in a medical care facility such as, but not limited to, a hospital, hospice, or residential facility such as, but not limited to, a nursing home or <i>inpatient substance abuse treatment center</i>.</p>
<p>29 CFR 825.119(a)</p>	<p>OAR 839-009-0220(2)</p>	<p>OAR 471-070-1000(20)(a)</p>



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b. Family member



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OFLA serious health condition leave

- Under OFLA, an eligible employee may take leave to provide care for a family member with a serious health condition
- OAR 839-009-0230(2)(a)
- Who is a family member?



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SB 999 re-defines OFLA family member and aligns it with Paid Leave

82nd OREGON LEGISLATIVE ASSEMBLY—2023 Regular Session

**Enrolled
Senate Bill 999**

Sponsored by COMMITTEE ON LABOR AND BUSINESS

CHAPTER Chapter 203, 2023 Laws, effective 6-7-2023

AN ACT


Relating to leave laws concerning time off from work; creating new provisions; amending ORS 657B.060, 657B.070, 659A.150, 659A.171 and 659A.186; and declaring an emergency.

Be It Enacted by the People of the State of Oregon:

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Who is a family member?


Family member	OFLA	Paid Leave
(a) The spouse of a covered individual;	Yes	Yes



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Who is a family member?

Family member	OFLA	Paid Leave
(a) The spouse of a covered individual;	Yes	Yes
(b) A child of a covered individual or the child's spouse or domestic partner;	Yes	Yes




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Who is a family member?

Family member	OFLA	Paid Leave
(a) The spouse of a covered individual;	Yes	Yes
(b) A child of a covered individual or the child's spouse or domestic partner;	Yes	Yes


For many years, employers and employees questioned why sons-in-law and daughters-in-law are NOT recognized as family members. Now you have it.



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Who is a family member?

Family member	OFLA	Paid Leave
(a) The spouse of a covered individual;	Yes	Yes
(b) A child of a covered individual or the child's spouse or domestic partner;	Yes	Yes
(c) A parent of a covered individual or the parent's spouse or domestic partner;	Yes	Yes




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Who is a family member?

Family member	OFLA	Paid Leave
(a) The spouse of a covered individual;	Yes	Yes
(b) A child of a covered individual or the child's spouse or domestic partner;	Yes	Yes
(c) A parent of a covered individual or the parent's spouse or domestic partner;	Yes	Yes


Do you notice that "parent-in-law" is not listed explicitly in the amended OFLA in SB 999?



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Please refer to the temporary rule


- “Parent” means:
 - (a) An eligible employee’s biological parent, adoptive parent, stepparent or current or former foster parent or a person who was or is the eligible employee’s legal guardian or with whom the eligible employee was or is in a relationship of in loco parentis; or
 - (b) **The parent of the eligible employee’s spouse or domestic partner** who meets a description in subsection (a) of this section.
- Temporary OAR 839-009-0210(23)



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Who is a family member?

Family member	OFLA	Paid Leave
(a) The spouse of a covered individual;	Yes	Yes
(b) A child of a covered individual or the child’s spouse or domestic partner;	Yes	Yes
(c) A parent of a covered individual or the parent’s spouse or domestic partner;	Yes	Yes
(d) A sibling or stepsibling of a covered individual or the sibling’s or stepsibling’s spouse or domestic partner;	Yes	Yes
Operative 9-3-2023	SB 999 Sec. 6(4)	ORS 657B.010(18)




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Who is a family member?

Family member	OFLA	Paid Leave
(a) The spouse of a covered individual;	Yes	Yes
(b) A child of a covered individual or the child’s spouse or domestic partner;	Yes	Yes
(c) A parent of a covered individual or the parent’s spouse or domestic partner;	Yes	Yes
(d) A sibling or stepsibling of a covered individual or the sibling’s or stepsibling’s spouse or domestic partner;	Yes	Yes
Operative 9-3-2023	SB 999 Sec. 6(4)	ORS 657B.010(18)


For many years, employers and employees questioned why brothers and sisters are NOT recognized as family members. Now you have it.



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Who is a family member?

Family member	OFLA	Paid Leave
(a) The spouse of a covered individual or the spouse or domestic partner;	Yes	Yes
(b) A child of a covered individual or the parent's spouse or domestic partner;	Yes	Yes
(c) A parent of a covered individual or the parent's spouse or domestic partner;	Yes	Yes
(d) A sibling or stepsibling of a covered individual or the sibling's or stepsibling's spouse or domestic partner;	Yes	Yes
Operative 9-3-2023	SB 999 Sec. 6(4)	ORS 657B.010(18)




In fact, we go one-step further by including sister-in-law and brother-in-law.

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Who is a family member?


Family member	OFLA	Paid Leave
(e) A grandparent of a covered individual or the grandparent's spouse or domestic partner;	Yes	Yes



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Who is a family member?


Family member	OFLA	Paid Leave
(e) A grandparent of a covered individual or the grandparent's spouse or domestic partner;	Yes	Yes
(f) A grandchild of a covered individual or the grandchild's spouse or domestic partner;	Yes	Yes



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Who is a family member?

Family member	OFLA	Paid Leave
(e) A grandparent of a covered individual or the grandparent's spouse or domestic partner;	Yes	Yes
(f) A grandchild of a covered individual or the grandchild's spouse or domestic partner;	Yes	Yes
(g) The domestic partner of a covered individual; or	Yes	Yes




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Who is a family member?

Family member	OFLA	Paid Leave
(e) A grandparent of a covered individual or the grandparent's spouse or domestic partner;	Yes	Yes
(f) A grandchild of a covered individual or the grandchild's spouse or domestic partner;	Yes	Yes
(g) The domestic partner of a covered individual; or	Yes	Yes

Do you notice that the qualifier "same gender" is not used before the words "domestic partner?"



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No more just "same sex" only in domestic partnership

83rd OREGON LEGISLATIVE ASSEMBLY—2023 Regular Session

Enrolled
House Bill 2032

Introduced and printed pursuant to House Rule 12.00. Petition filed (at the request of House Interim Committee on Rules for Oregon Association of County Clerks)

CHAPTER Chapter 20, 2023 Laws, effective 1-1-2024

AN ACT

Relating to domestic partnerships; amending ORS 106.310 and 106.340.

Be It Enacted by the People of the State of Oregon:

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New definition of "domestic partnership"

- (1) "Domestic partnership" means a civil contract described in ORS 106.300 to 106.340 entered into in person between two individuals *of the same sex* who are at least 18 years of age, who are otherwise capable and at least one of whom is a resident of Oregon.
- (2) "Partner" means an individual joined in a domestic partnership.
- Chapter 20, 2023 Oregon Laws amended ORS 106.310, effective 1-1-2024



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Paid Leave Oregon will be impacted

- "Family member" includes the domestic partner of a covered individual.
- "Domestic partner" means an individual joined in a domestic partnership.
- "Domestic partnership" has the meaning given that term in ORS 106.310.
- ORS [657B.010\(9\)](#) and [\(10\)](#)
- ORS [657B.010\(18\)\(g\)](#)



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Finally, who is a family member?

Family member	OFLA	Paid Leave
(e) A grandparent of a covered individual or the grandparent's spouse or domestic partner;	Yes	Yes
(f) A grandchild of a covered individual or the grandchild's spouse or domestic partner;	Yes	Yes
(g) The domestic partner of a covered individual; or	Yes	Yes
(h) Any individual related by blood or affinity whose close association with a covered individual is the equivalent of a family relationship.	Yes	Yes
Operative 9-3-2023	SB 999 Sec. 6(4)	ORS 657B.010(18)



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Temporary rule defining "affinity"

- (a) "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.
- (b) The bond described in subsection (a) of this section may be demonstrated by, but is not limited to the following factors, with no single factor being determinative:
 - Temporary OAR 839-009-0210(2)



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Temporary rule defining "affinity"

- (A) Shared personal financial responsibility, including shared leases, common ownership of real or personal property, joint liability for bills or beneficiary designations;
- (B) 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;
- (C) The expectation to provide care because of the relationship or the prior provision of care;
- (D) Cohabitation and its duration and purpose;
- (E) Geographic proximity; and
- (F) Any other factor that demonstrates the existence of a family-like relationship.
- Temporary OAR 839-009-0210(2)(b)



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Group Discussion

1. If an employee has to care for someone who is close to them but not legally related, what are the limits of that?
2. Can the employee get leave to help take care of a romantic partner they are not married to?
3. What about a close friend?
4. What about my sister's child?



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Cascading effects of the new definition of family member

- The definition of “family member” under the OFLA bereavement leave will also be amended as a result of the passage of SB 999.



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Cascading effects of the new definition of family member

- The definition of “family member” under the Oregon sick time law will also be amended as a result of the passage of SB 999.
- Temporary OAR 839-007-0000(3)



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How will the new law impact FMLA tracking beginning 1-1-2024?

- FMLA does not recognize a domestic partner as a family member and many of the family members listed under OFLA and Paid Leave.
- When an employee takes OFLA leave and/or Paid Leave to care for a domestic partner, or any one of the family members not recognized under FMLA, with a serious health condition, the employer may not count the amount of leave concurrently as FMLA.



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Who is a family member under FMLA?

- Employers covered by FMLA are required to grant leave to eligible employees to care for the **employee's spouse, son, daughter, or parent** with a serious health condition.
- [29 CFR 825.112\(a\)\(3\)](#)



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Suggested action items

- Amend your employer's OFLA policy to reflect the new definition of "family member."
- Amend your employer's Oregon sick time (or PTO) policy to reflect the new definition of "family member."
- Review the employee handbook to see if there may be other policies that touch on an employee's "family member." If so, does the employer want to change that as well? For example, many employers offer 3 to 5 working days (or x number of hours) of paid compassionate leave after the death of an employee's family member.



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c. Leave Year & Benefit Year



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SECRET OF SUCCESS IN TRACKING

For each leave request, ask the following questions:

	FMLA	OFLA	Paid Leave
1. What is the leave year or benefit year?	Identify the 12-month period under each of the three laws		

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One leave year or one benefit year at a time

FMLA	OFLA	Paid Leave
Except in the case of military caregiver leave, an eligible employee's FMLA leave entitlement is limited to a total of 12 workweeks of leave during any 12-month period . 29 CFR 825.200(a)	An eligible employee is entitled to up to a total of 12 weeks of family leave within any one-year period . ORS 659A.162(1)	A claimant may only have one valid benefit year at a time under Paid Leave Oregon. OAR 471-070-1000(3)

Note: It depends what leave year your employer has selected. A FMLA/OFLA leave year may or may not align with a Paid Leave benefit year. See examples on the next slides.

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How does PLO define a "benefit year?"

- A covered individual may qualify for up to 12 weeks of family and medical leave insurance benefits per **benefit year**. [ORS 657B.020\(1\)](#)
- "Benefit year" means a period of 52 consecutive weeks beginning on the Sunday immediately preceding the day that family, medical, or safe leave commences for the claimant, except that the benefit year shall be 53 weeks if a 52-week benefit year would result in an overlap of any quarter of the base year of a previously filed valid claim. A claimant may only have one valid benefit year at a time.

✓ [OAR 471-070-1000\(4\)](#); [ORS 657B.010\(5\)](#)

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OFLA leave year: SB 999 Sec. 2

2023					2024						
Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	July
5 options											

Currently, there are 5 options:

- (1) Calendar year,
- (2) Fixed 12 months,
- (3) 12-month moving forward,
- (4) Rolling backward 12 months, or
- (5) A period of 52 consecutive weeks beginning on the Sunday immediately preceding the date on which OFLA leave commences.

Poll: Which method does your employer use ?

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OFLA leave year

2023					2024						
Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	July
					Some districts opt to change to the new method beginning 1-1-24: An OFLA leave year is a period of 52 consecutive weeks beginning on the Sunday immediately preceding the date on which OFLA leave commences.						

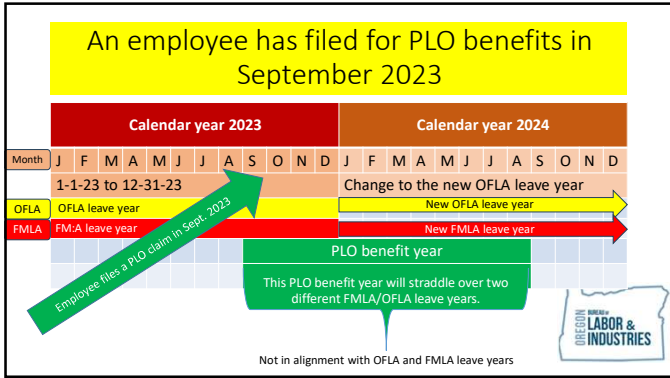
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Assumption: Change the OFLA leave year beginning 1-1-2024

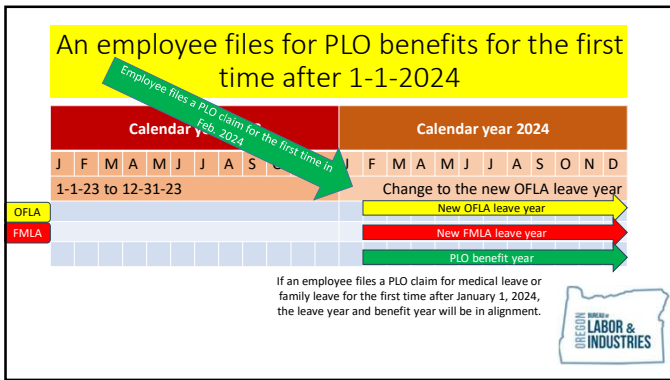
January 2024						
Sun	Mon	Tue	Wed	Thu	Fri	Sat
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30	31			

For example, currently a district uses the calendar year as the OFLA leave year method. It plans on changing to the new OFLA leave year method beginning 1-1-2024.

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FMLA rule for the transition

- An employer wishing to change to another alternative is required to give at least 60 days notice to all employees, and the transition must take place in such a way that the employees retain the full benefit of 12 weeks of leave under whichever method affords the greatest benefit to the employee. Under no circumstances may a new method be implemented in order to avoid the Act's leave requirements.

• [29 CFR 825.200\(d\)\(1\)](#)



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Changing OFLA Leave Year

- OFLA does not prescribe a specific procedure to change the OFLA leave year but the OFLA rules do include the following, "Provisions of OFLA will be construed to the extent possible in a manner that is consistent with any similar provisions of FMLA."
- Employers, who are covered by OFLA only or OFLA/FMLA, are advised to follow the FMLA procedures.
- [OAR 839-009-0220\(2\)](#)



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How does the new leave year impact leave tracking under SB 999

- The span of an employee's "benefit year" under Paid Leave Oregon may or may not coincide with your employer's OFLA/FMLA "leave year" in every case.




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Different variables, different outcomes




There are innumerable permutations.



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Next, let's explore...

Topics	
I. New definitions of serious health condition , family member , and leave year	
II. Employee eligibility requirements for Paid Leave, OFLA and FMLA	
III. The nine qualifying events that warrant leave	
1. Pregnancy disability leave	
2. Parental leave	
3. Sick child leave	
4. Serious health condition	
5. Bereavement leave	
6. Safe leave	



77



II. Eligibility for Paid Leave Oregon, OFLA and FMLA




78

SECRET OF SUCCESS IN TRACKING

For each leave request, ask the following questions:


	FMLA	OFLA	Paid Leave
1. What is the leave year or benefit year?	Identify the three 12-month periods		
2. Is the employee eligible?	Yes/No	Yes/No	Yes/No



79

Districts with fewer than 25 employees


- These districts are NOT covered employers under OFLA, they do not have to provide OFLA leave to their employees.
- These districts *are* covered employers under FMLA but the employees cannot meet the FMLA eligibility requirements. The result is that they do not have to provide FMLA leave to their employees either.



80

OFLA / FMLA eligibility requirements


<p style="text-align: center;">OFLA</p> <ul style="list-style-type: none"> • An employee must be employed by an OFLA-covered employer. • To be a covered employer the employer must employ 25 or more persons statewide for each working day during each of 20 or more calendar workweeks in the year in which the leave is to be taken or in the year immediately preceding the year in which the leave is to be taken. • ORS 659A.153 	<p style="text-align: center;">FMLA</p> <ul style="list-style-type: none"> • An employee must be employed by a FMLA-covered employer. • To be a covered employer the employer must employ 50 or more persons nationwide for each working day during each of 20 or more calendar workweeks in the year in which the leave is to be taken or in the year immediately preceding the year in which the leave is to be taken, except that all schools and public employers are covered. 29 CFR 825.104
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81

OFLA / FMLA eligibility requirements


<p>OFLA</p> <ul style="list-style-type: none"> Employee must have been employed at least 180 calendar days immediately preceding the date on which OFLA leave begins. Employee must have worked an average of 25 hours per week during the 180 calendar days (except for parental leave). ORS 659A.156; OAR 839-009-0210(8) 	<p>FMLA</p> <ul style="list-style-type: none"> Employee must have been employed for a total of 12 months (not necessarily consecutively) Worked for at least 1,250 hours during the 12-month period immediately preceding the leave Employer must have 50 employees within 75 miles 29 CFR 825.110
---	--



82

OFLA / FMLA eligibility requirements

<p>OFLA</p> <ul style="list-style-type: none"> Employee must have been employed at least 180 calendar days immediately preceding the date on which OFLA leave begins. Employee must have worked an average of 25 hours per week during the 180 calendar days (except for parental leave). ORS 659A.156; OAR 839-009-0210(8) 	<p>FMLA</p> <ul style="list-style-type: none"> If a school district has 25 or more employees but fewer than 50, the district is a FMLA-covered employer but the employees are NOT eligible for FMLA leave because the district does not have 50 or more employees within 75 miles. 29 CFR 825.110
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83

Am I eligible for Paid Leave Oregon?

I am an employee of your school district.

[OAR 471-070-1010\(1\)](#)



84

Does your employer use independent contractors?

- Under Paid Leave Oregon, employee does not include an independent contractor.
- Make sure the independent contract is "independent" enough to meet the criteria as an "independent contractor" in [ORS 670.600](#). For more information on "independent contractor" see also <https://www.oregon.gov/ic/Pages/index.aspx>

[ORS 657B.010\(13\)\(b\)\(A\)](#)



85

Excluded individuals

- "Employee" does not include:
- (A) An **independent contractor** as defined in ORS 670.600.
 - (B) A participant in a **work training program** administered under a state or federal assistance program.
 - (C) A participant in a **work-study program** that provides students in secondary or postsecondary educational institutions with employment opportunities for financial assistance or vocational training.
 - (D) A railroad worker exempted under the federal Railroad Unemployment Insurance Act.
 - (E) A **volunteer**.

[ORS 657B.010\(13\)\(b\)](#)



86

Leave request matrix



87

Eligibility possibility #1

- Due to the different criteria for employer coverage and employee eligibility requirements, and the various qualifying events under Paid Leave, OFLA, and FMLA, there are seven eligibility possibilities.

88

Who could be in this category?

Paid Leave Oregon	OFLA	FMLA
Category 1:		
1.1 Employees with fewer than 180 days of employment 1.2 Part-time employees who cannot meet the hourly requirements for OFLA or FMLA 1.3 Employees who take safe leave. 1.4 Employees working for an employer who is a small employer with fewer than 25 employees in Oregon. (This list is not all inclusive.)		

89

Eligibility possibility #2

- Follow your district's procedures in processing a leave of absence that is covered under OFLA.
- Let the OED or the equivalent plan administrator deal with the employee's application for Paid Leave benefits.

90

Who could be in this category?

Paid Leave Oregon	OFLA	FMLA
Category 2:		

- 2.1 Employees who have fewer than 12 months of employment and they take leave either for their own serious health condition, or to care for a family member
- 2.2 Employees who have 12 months or more of service and they take leave to care for a family member who is not recognized as a family member under FMLA
- 2.3 Employees working for an employer who is a small employer with 25 or more employees in Oregon but fewer than 50 nationwide
- 2.4 Employees who exercise their *Escriba* right when they take Paid Leave and OFLA leave

(This list is not all inclusive.)

91

Eligibility possibility #3

• Follow your district's procedures in processing a leave of absence that is covered under OFLA.

92

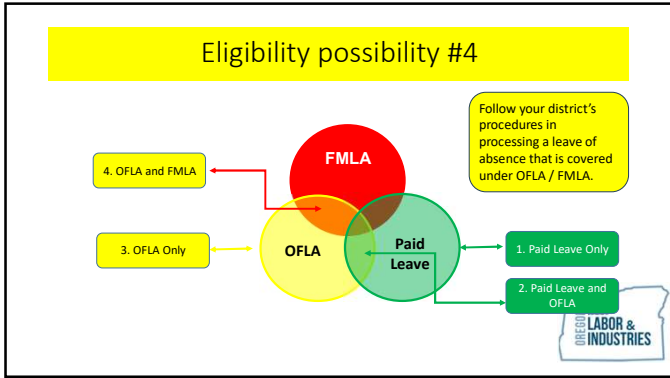
Who could be in this category?

Paid Leave Oregon	OFLA	FMLA
Category 3:		

- 3.1 Employees who have used 12 weeks of Paid Leave in a benefit year and they are still eligible for 4 weeks OFLA, if they can meet the eligibility requirements
- 3.1 Employees who have fewer than 365 days of employment and they take OFLA sick child leave, OFLA bereavement leave, or Oregon Military Family Leave
- 3.2 Employees working for a small employer with more than 25 employees in Oregon but fewer than 50 nationwide and taking partial days off (reduced scheduled leave) due to a qualifying reason
- 3.3 Employees who have an OFLA reason covered by Paid Leave but they do not apply for PLO benefits

(This list is not all inclusive.)

93



94

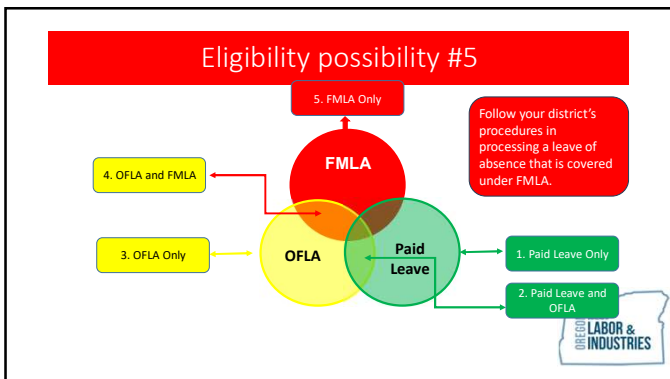
Who could be in this category?

	Paid Leave Oregon	OFLA	FMLA
Category 4:			

4.1 Employees who take parental leave *before* the birth, adoption or foster placement
 4.2 Employees who take intermittent leave for partial days
 4.3 Employees who take Oregon Military Family Leave and FMLA qualifying exigency leave concurrently
 4.4 Employees who do not apply for Paid Leave benefits when they have a qualifying event under OFLA and FMLA
 (This list is not all inclusive.)

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96

Who could be in this category?

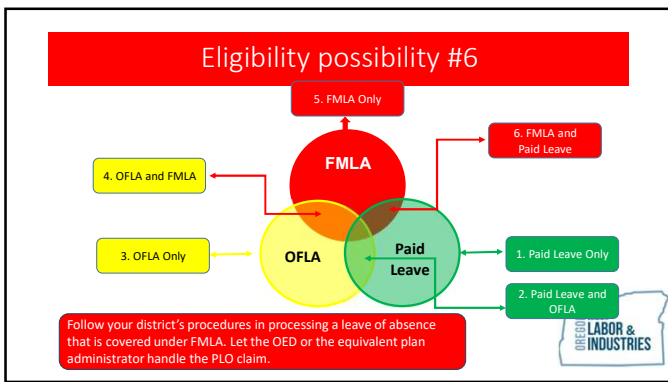
Paid Leave Oregon	OFLA	FMLA
-------------------	------	------

Category 5:

- 5.1 An employee who does not apply for Paid Leave benefits and they cannot meet the OFLA eligibility requirements
- 5.2 A new employee who has exhausted their PLO and OFLA sometime in the first year of employment prior to their end of their 12 months of service and the leave taken could not be counted as FMLA due to their length of service. When they become eligible for FMLA, after completing 12 months of service, they may take FMLA only for a period of time
- 5.3 Employees who take Qualifying Exigency Leave and the exigency is not covered under Paid Leave, or the leave is beyond the 14 working days covered by Oregon Military Family Leave.
- 5.4 Employees who take 26 weeks FMLA military caregiver leave in a single 12-month period but beyond 12 weeks in a benefit year.
- 5.5 Employees who take partial days off as intermittent leave under Qualifying Exigency or military caregiver leave.

(This list is not all inclusive)

97



98

Who could be in this category?

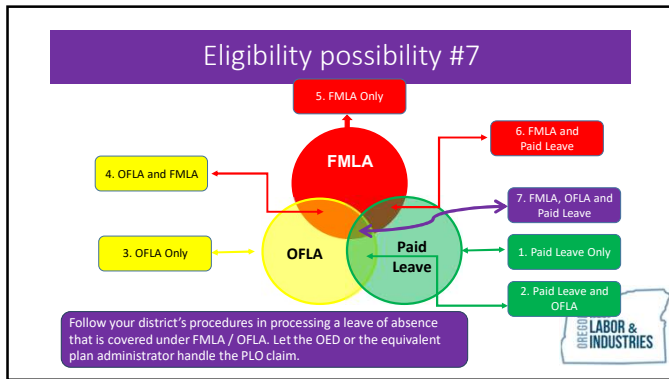
Paid Leave Oregon	OFLA	FMLA
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Category 6:

- 6.1 Employees who cannot meet the OFLA eligibility requirements, e.g., an employee did not have an average of 25 hours per week in the 180 days immediately preceding the leave because they miss a lot of time recently for personal reason or they transferred from a full-time to 0.5 FTE position but they did have a total of 1,250 hours of service in 12 months immediately preceding the leave.
- 6.2 An employee who has exhausted a combined total of 12 weeks of OFLA leave for OFLA sick child leave, bereavement leave or Oregon military family leave prior to taking Paid Leave and FMLA.

(This list is not all inclusive.)

99



100

Who could be in this category?

	Paid Leave Oregon	OFLA	FMLA
Category 7:			

7.1 Employees, who can meet all the eligibility requirements and they take leave:

- For their own serious health condition, or
- To care for a family member (who is recognized under all three laws) with a serious health condition.

(This list is not all inclusive.)

101

No magic words required!

FMLA	OFLA	Paid Leave
When an employee seeks leave for the first time for a FMLA-qualifying reason, the employee need not expressly assert rights under the FMLA or even mention the FMLA.	The employee is not required to specify that the request is for OFLA leave.	An employee does not need to expressly mention the Paid Family and Medical Leave Insurance program when giving their employer written or oral notice under this rule.
29 CFR 825.302(c)	OAR 839-009-0250(1)	OAR 471-070-1310(6)

102

For Paid Leave:

- An employer may require a written notice to include:
 - (a) Employee's first and last name;
 - (b) Type of leave (medical leave, family leave or safe leave);
 - (c) Explanation of the need for leave; and
 - (d) Actual or anticipated timing and duration of leave.

• OAR 471-070-1310(4)



103

For OFLA leave

- A covered employer may require an eligible employee to give notice of the need for OFLA leave, including an explanation of the need for leave, before starting OFLA leave. The timing of the employee's notice for leave varies depending on whether it is a foreseeable or unforeseeable leave. The employee is not required to specify that the request is for OFLA leave.

• OAR 839-009-0250(1), (2) & (3)



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For FMLA leave

- An employee must provide at least verbal notice sufficient to make the employer aware that the employee needs FMLA-qualifying leave, and the anticipated timing and duration of the leave. Depending on the situation, the content of the notice may vary information. When an employee seeks leave for the first time for a FMLA-qualifying reason, the employee need not expressly assert rights under the FMLA or even mention the FMLA. When an employee seeks leave due to a FMLA-qualifying reason, for which the employer has previously provided FMLA-protected leave, the employee must specifically reference the qualifying reason for leave or the need for FMLA leave.

• 29 CFR §825.302(c)



105

Note: Employee may choose to apply for Paid Leave benefits

Question: Must the employee take OFLA and Paid Leave at the same time if both programs cover the purpose of the leave?

Answer: The employee may choose if they would like to take Paid Leave benefits. However, if the employee takes Paid Leave for a purpose that qualifies for both OFLA and Paid Leave, then the leave runs at the same time as OFLA. Employees need to provide notice of their need for protected OFLA/FMLA leave to their employers. Employees claiming Paid Leave will need to apply separately for paid benefits.


Question: How will the employer know the employee applied for Paid Leave?

Answer: If the employer participates in the state Paid Leave program and not an equivalent plan, the employer will receive a notice from OED that the employee has applied for Paid Leave. The employer will then receive a second

106

Processing leave requests accordingly

- Follow your district's procedures in processing an employee's OFLA/FMLA leave request. The procedures have not been amended whether an employee has or has not applied for PLO benefits.
- When you receive the notice of claim from the Oregon Employment Department for Paid Leave or if the employee informs you that they are also applying for Paid Leave, you do not change the OFLA/FMLA leave request process. Your district may have to adjust the use of PTO or paid sick time policy (which will be discussed later).




107

Differences in the length of the waiting period

1 day

Employer with an approved equivalent plan may impose a 30-day waiting period for Paid Leave.



108

Differences in the length of the waiting period

1 day 180

OFLA has a 180-day waiting period (except during a public health emergency)

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109

Differences in the length of the waiting period

1 day 180 365

FMLA has a 1-year waiting period

DEPARTMENT OF LABOR & INDUSTRIES

110

Tracking Paid Leave, OFLA / FMLA leave for a new employee

- In the following illustration, we assume that the employer has changed its "leave year" method to, "a period of 52 consecutive weeks beginning on the Sunday immediately preceding the date on which family leave commences."

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111

New employee

A new employee was hired in May 2023.

112

New employee takes 12 weeks of Paid Leave

New employee takes 12 weeks of Paid Leave beginning in September. Employer may not count the Paid Leave concurrently as OFLA or FMLA because the employee is not yet eligible for OFLA or FMLA.

113

Employee becomes eligible for OFLA

New employee becomes eligible for OFLA after 6 months of employment in November.

114

Employee starts an OFLA leave year

Let's assume that the employer uses the new OFLA leave method. The Paid Leave taken in November and thereafter will be counted concurrently as OFLA after the employee becomes eligible for OFLA. Employer may not count any of the leave as FMLA because the employee is not yet eligible.

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115

Employee may take 4 more weeks of OFLA

Paid Leave Oregon allows an employee who is eligible for OFLA to take a combined total of 16 weeks of PLO and OFLA, with no more than 12 weeks as PLO in a benefit year. Employee may choose to take up to 4 more weeks of OFLA in this example. None of these 16 weeks can be counted concurrently as FMLA because the employee is not eligible for FMLA yet.

INDUSTRIES

116

Employee becomes eligible for FMLA

Assuming the employee can meet the 1,250 hour of service in the preceding 12 months, they become eligible for FMLA in May 2024 after 12 months of employment.

INDUSTRIES

117

Employee may take 12 weeks of FMLA

Let's assume that the employer uses 12-month rolling forward year as the FMLA leave year. In this example, after becoming eligible for FMLA, this employee may take up to 12 weeks of FMLA leave in the FMLA leave year. None of the 12 weeks can be counted as Paid Leave or OFLA because the employee has no more Paid Leave or OFLA available in the above scenario. We call this an "eligibility gap."

118

Possible stacking of leave

Do you see how a new employee could possibly stack their Paid Leave and FMLA leave?

119

Employees with 1 or more years of service

Let's assume that the employer uses 12-month rolling forward year as the FMLA leave year and the employer has changed the OFLA leave year to the new method already. An existing employee may take 12 weeks of Paid Leave beginning 9-3-2023, if the reason for leave is qualified under Paid Leave, OFLA and FMLA, they are counted concurrently.

120

Employment status may impact tracking

- Some part-time, temporary, on-call, seasonal employees, may not be able to meet the OFLA or FMLA eligibility requirements because they cannot not meet the hours/length of service requirements . Some of these employees may be eligible for Paid Leave Oregon only.



121

Questions?



122

Next: Qualifying events

Topics	
I. New definitions of serious health condition , family member , and leave year	
II. Employee eligibility requirements for Paid Leave, OFLA and FMLA	
III. The nine qualifying events that warrant leave	
1. Pregnancy disability leave	
2. Parental leave	
3. Sick child leave	
4. Serious health condition	
5. Bereavement leave	
6. Safe leave	



123

There are nine qualifying events

There are nine entry doors to the "house of leave" An employee must meet the eligibility requirements before entering

127

Nine qualifying purposes (life events)

For all eligible employees:

1. Pregnancy disability leave
2. Parental leave
3. Sick child leave
4. Serious health condition leave
 - a) EE's serious health condition
 - b) Family member's serious health condition leave
5. Bereavement leave
6. Safe Leave

For military families only:

7. Oregon military family leave
8. Military caregiver leave
9. Qualifying exigency leave

128

Qualifying purposes comparison chart


Qualifying events	FMLA	OFLA	Paid Leave Oregon	Comments
1. Pregnancy disability leave	Yes	Yes	Yes	Differences in the amount of leave
2. Parental leave	Yes	Yes	Yes	Minor differences
3. Sick child leave	No	Yes	No	
4. Serious health condition leave				
a. EE's SHC	Yes	Yes	Yes	
b. Family member's SHC	Yes	Yes	Yes	Differences in who is a family member
5. Bereavement leave	No (except for military families)	Yes	No	
6. Safe leave	No	No	Yes	

129

Qualifying purposes comparison chart

For military families only:

Qualifying events	FMLA	OFLA	Paid Leave Oregon	Comments
7. Oregon military family leave	Yes	Most likely yes	No	See the specific requirements
8. FMLA Qualifying exigency leave	Yes	No	Possibly	See the specific requirements
9. FMLA Military caregiver leave	Yes	Most likely yes	Most likely yes	See the specific requirements



130




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1. Pregnancy disability leave




131

Amount of leave: FMLA



FMLA 12 weeks
(an employee may use up to 12 weeks of FMLA for pregnancy disability or a combination of reasons)

- FMLA: Except in the case of military caregiver leave, an eligible employee's FMLA leave entitlement is limited to a total of 12 workweeks of leave during any 12-month period.
- [29 CFR 825.200\(a\)](#)



132

Amount of leave: OFLA + bonus leave

This option is still available if an employee does not apply for Paid Leave benefits.

133

Once an employee files a Paid Leave claim and the claim is approved...

134

Up to 18 weeks in a benefit year

- If a pregnant employee has taken ANY amount of Paid Leave, they are entitled to a total of 16 weeks of leave in any combination of Paid Leave and OFLA leave in a benefit year, and 2 additional weeks of Paid Leave for pregnancy related conditions.
- [ORS 657B.020\(3\)](#);
[OAR 471-070-1030\(2\)](#);
[471-070-1100\(1\)\(h\)](#)

135

How may a pregnant employee stack the Paid Leave, OFLA and FMLA?



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136

Pregnant employee's leave 2023



2023								2024			
May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr
4 + 8 weeks FMLA											
OFLA											
	OFLA 12 wks parental lv										
				Paid Leave Benefit year							

The amount of FMLA and OFLA leave taken prior to 9-3-2023 will not diminish a pregnant employee's Paid Leave that will become fully operative on 9-3-2023.

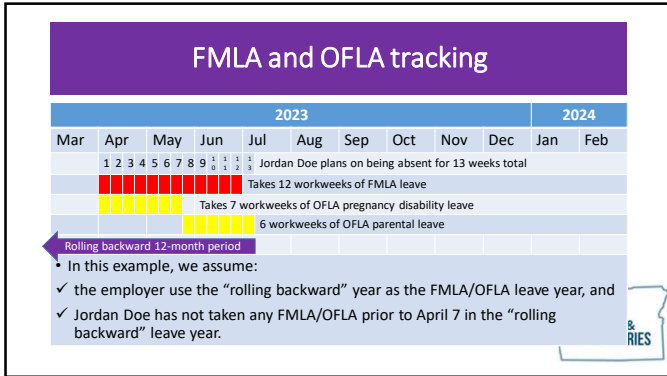


137

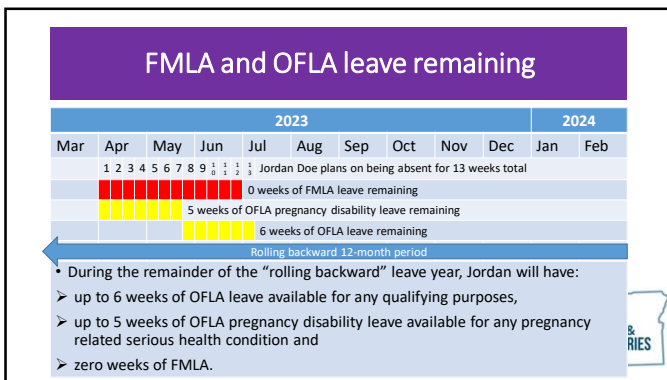
Jordan Doe's case

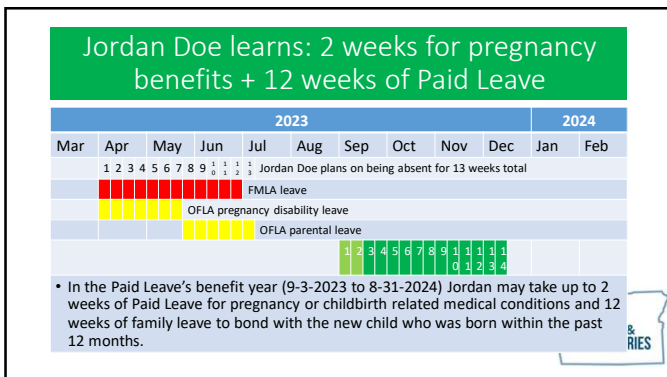
138



142



143

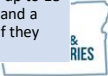


144

Paid Leave option: 2 + 12 + 4 = 18 weeks



2023												2024	
Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb		
1	2	3	4	5	6	7	8	9	10	11	12		
Jordan Doe plans on being absent for 13 weeks total													
0 weeks of FMLA leave remaining													
[Red bars representing 13 weeks of FMLA leave]													
[Yellow bars representing 2 weeks of Paid Leave]													
[Green bars representing 4 weeks of Paid Leave]													

• In the Paid Leave's benefit year (9-3-2023 to 8-31-2024) Jordan may take up to 18 week of leave, which include up to 2 weeks of Paid Leave for pregnancy, and a combined total of up to 16 weeks of Paid Leave and unpaid OFLA leave, if they are eligible for OFLA.



145

Any questions?

146

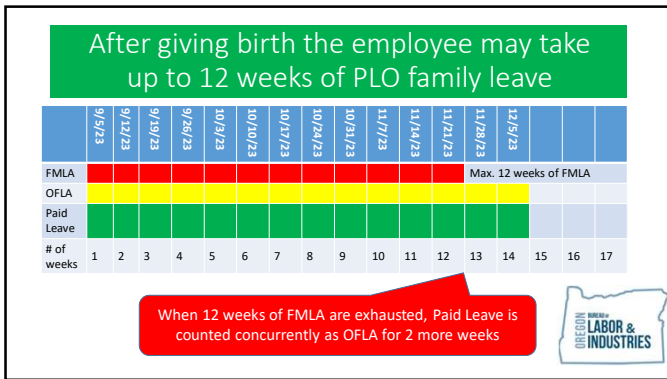
Another type of "stacking"



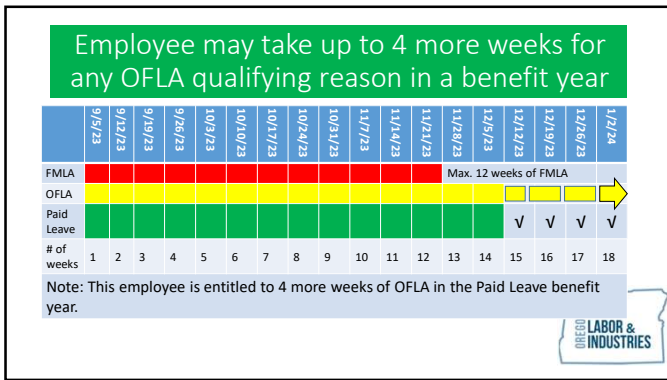
CALL THE MIDWIFE



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151



152

Pregnant employees and OFLA when Paid Leave is taken

- Once an employee is approved for Paid Leave they will be limited to a combined total of 16 weeks of Paid Leave and OFLA leave, if they can meet the OFLA eligibility requirements, with no more than 12 weeks as Paid Leave, and two additional weeks of Paid Leave for pregnancy for a total of 18 weeks in a benefit year.
- Once a pregnant employee starts taking Paid Leave they are foreclosed from taking 12 + 12 = 24 weeks of OFLA, or 12 + 12 + 12 = 36 weeks of OFLA in a Paid Leave benefit year.
- ORS 657B.020



153

Question from a Benefit Specialist

- Are you saying that if a pregnant employee takes Paid Leave at the same time as (any) OFLA, the employee will essentially forfeit any additional weeks of OFLA that could have been available to them? (I'm referring to the "up to 36 weeks." The would-be full 12 additional weeks of bonding and then would-be 12 weeks of OFLA-Sick Child.)
- What do you tell this colleague?



154

Group Discussion

- If someone has post-partum depression, can they use Paid Leave, OFLA or FMLA? Will the Oregon Employment Department (or the employer's equivalent plan administrator) or employer just take their word for it, or do they need some kind of documentation?




155


Questions?



156



2. Parental Leave




157

Parental leave is called "Family Leave" under Paid Leave

"Family leave" means leave from work taken by a covered individual to care for and bond with a child during the first year *after* the child's birth or during the first year *after* the placement of the child through foster care or adoption.


[ORS 657B.010\(17\)\(a\)\(A\)](#)



158

Interaction between parental leave and family leave


Parental leave:		
	OFLA/FMLA	Paid Leave Oregon
a. Bonding with and the care for the employee's newborn (within 12 months following birth);	Yes	Yes
b. Bonding with and the care for a newly adopted or newly placed foster child under the age of 18 (within 12 months of placement);	Yes	Yes
c. Care for a newly adopted or newly placed foster child over 18 years of age who is incapable of self-care because of a physical or mental impairment (within 12 months of placement);	Yes	Yes
d. Time to effectuate the legal process required for before the placement of a foster child or the adoption of a child.	Yes	No



159

Major differences


Paid Leave Oregon	OFLA	FMLA
After	Before or after	Before or after
the child's birth or placement of the child through foster care or adoption.		



160

Does not have to commence immediately after delivery


- An eligible employee is not legally required to take their OFFLA/FMLA parental leave or family leave under Paid Leave Oregon *immediately* following the delivery of a child.



161

Use by date

FMLA	OFLA	Paid Leave
An employee's entitlement to FMLA leave for a birth expires at the end of the 12-month period beginning on the date of the birth. An employee's entitlement to leave for adoption or foster care expires at the end of the 12-month period beginning on the date of the placement.	OFLA parental leave must be taken completed within 12 months of the birth, adoption or placement of the child.	Family leave is leave taken to care for and bond with a child during the first year after the child's birth, or during the first year after the placement of the child through foster care or adoption.
29 CFR §825.120(a)(2); 29 CFR §825.121(a)(2)	OAR 839-009-0240(8)	ORS 657B.010(17)(a)(A)



162

A continuous block of leave or intermittent leave

FMLA	OFLA	Paid Leave
An eligible employee may use intermittent or reduced schedule leave after the birth to be with a healthy newborn child only if the employer agrees.	Unless the covered employer approves otherwise, parental leave shall be taken in one uninterrupted period within 12 months of the birth, adoption or placement of the child.	A claimant may request family leave provided under Paid Leave Oregon in either consecutive, or intermittent periods of leave.
29 CFR §825.120(b)	OAR 839-009-0240(8)	OAR 471-070-1420(1)

We will discuss the potential challenges when an employee requests intermittent parental leave later in the "Intermittent Leave" discussion.

163

Intermittent Leave in daily or weekly increments

- Benefits may be claimed for leave that is taken by a covered individual in increments that are equivalent to one work day or one work week as those terms are defined by the director by rule.
- If a covered individual takes leave in increments that are equivalent to one work day, benefits may be claimed for leave that occurs in nonconsecutive periods of leave that, when combined, provide the minimum benefit amount provided in ORS 657B.050.

[ORS 657B.090\(3\)](#)
[OAR 471-070-1420\(2\)](#)

164

Using the 12-month measuring forward leave year

	2023												2024												2025											
Month	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	M	J	J	A	S	O	N	D	J	F											
	OFLA measuring forward leave year																																			
	FMLA measuring forward leave year																																			


Must change to new OFLA leave year method

165

Juan applies for PLO benefits for family leave

2023		2024										
Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov

Juan files an application for benefits for 7 weeks of paid leave and is approved to care for a family member (a parent) with a serious health condition.




175

A benefit year commences

2023		2024										
Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov
5												

Juan begins a benefit year on November 5, 2023.




176

Seven Weeks of PLO benefits

2023		2024										
Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov
5												
		1	2	3	4	5	6	7				

7 Weeks of Paid Leave to care for Juan's parent.




177

Benefit year: 11-5-23 to 11-2-24

2023		2024										
Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov
5												2
1	2	3	4	5	6	7						


In Juan's example, he take 7 weeks of PLO in the benefit year that begins Nov. 5, 2023 and ends Nov. 2, 2024.



178

Coordination of leave


- Any family leave or medical leave taken under this chapter (Paid Leave) must be taken concurrently with any leave taken by an eligible employee under ORS 659A.150 to 659A.186 (OFLA) or under the federal Family and Medical Leave Act of 1993 (P.L. 103-3) for the same purposes.
- ORS 657B.025



179

FMLA and OFLA tracking

- We assume that Juan is eligible for FMLA and OFLA and has not taken any FMLA or OFLA leave before the seven weeks to care for his parent.
- To keep the illustration simple, we assume that Juan's employer has opted to legally change its OFLA/FMLA leave year to "a period of 52 consecutive weeks beginning on the Sunday immediately preceding the date on which family leave commences."
- SB 999 Section 8(2)



180

PLO, FMLA and OFLA tracking

2023		2024										
Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov
5												2
1 2 3 4 5 6 7												
▶ PLO benefit year and the new OFLA/FMLA Leave Year												
FMLA	1 2 3 4 5 6 7											
OFLA	1 2 3 4 5 6 7											

We assume Juan is eligible for FMLA/OFLA and has not used any FMLA/OFLA leave previously. Using the new OFLA/FMLA leave year, the seven weeks are counted concurrently as FMLA/OFLA Serious Health Condition Leave to care for a family member. Do you follow the tracking?

181

Leave balances

2023		2024										
Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov
5												2
1 2 3 4 5 6 7												
▶ PLO benefit year and the new OFLA/FMLA Leave Year												
FMLA	1 2 3 4 5 6 7											
OFLA	1 2 3 4 5 6 7											

After returning from his leave to care for his parent, Juan has 5 weeks of PLO, OFLA and FMLA remaining in the benefit year. Do you follow the math?

182

Juan and his partner adopt a child



In March 2024, Juan and their partner adopt a child.

183

Application for family leave for the adoption

2023				2024								
Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov
5												2
1	2	3	4	5	6	7						

Juan files an application for Paid Leave benefits and is approved for the remaining 5 weeks of paid leave in the benefit year to care for and bond with the newly adopted child.

184

Juan takes 5 more weeks of Paid Leave in the benefit year

2023				2024								
Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov
5												2
1	2	3	4	5	6	7						
5 Weeks												

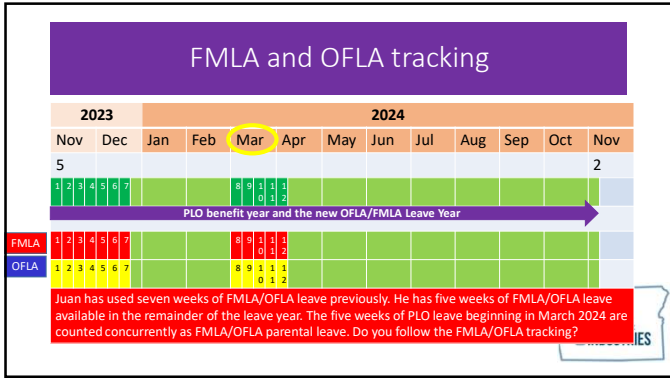
185

Juan is entitled to 12 weeks of Paid Leave per benefit year

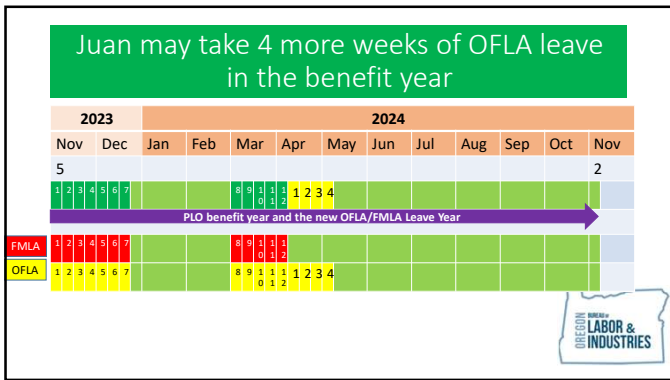
2023				2024								
Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov
5												2
1	2	3	4	5	6	7						
7 weeks + 5 weeks												
Juan has exhausted 12 weeks of paid leave in this benefit year ending Nov. 2, 2024.												

Do you follow the math?

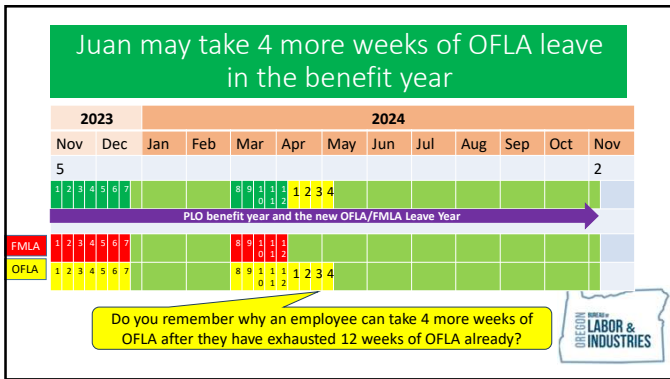
186



187



188



189


Life goes on in Juan's new family




190

Family Leave: 12 weeks in the first year


- An individual may not exceed 12 weeks of paid leave per child for the purpose of caring for and bonding with the child during the first year after the birth or initial placement of the child regardless if a new benefit year starts during the first year following birth or initial placement.
- OAR 471-070-1010(2)



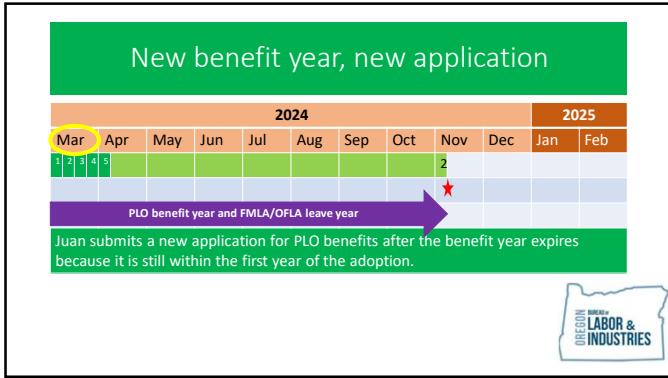
191

Juan has taken 5 weeks of PLO for the adoption

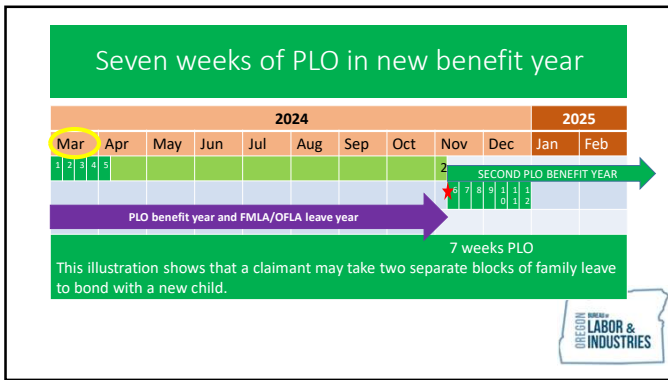
2024											2025	
Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	
1	2	3	4	5				2				
PLO benefit year and FMLA/OFLA leave year												
Juan has taken 5 weeks of PLO – family leave in the benefit year that expires on November 2, 2024												



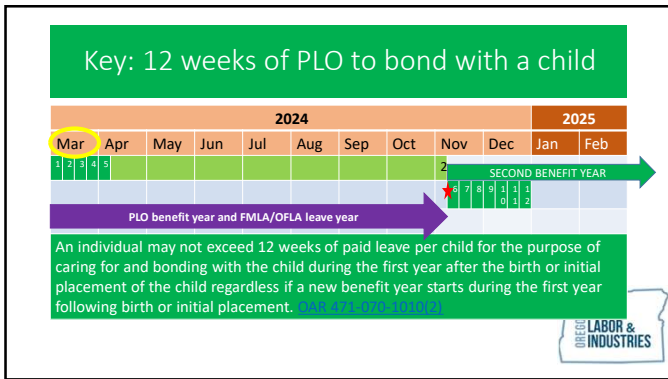
192



193




194



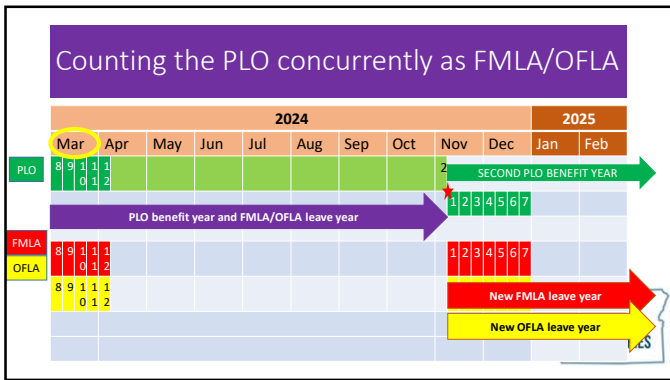
195

New OFLA/FMLA leave year

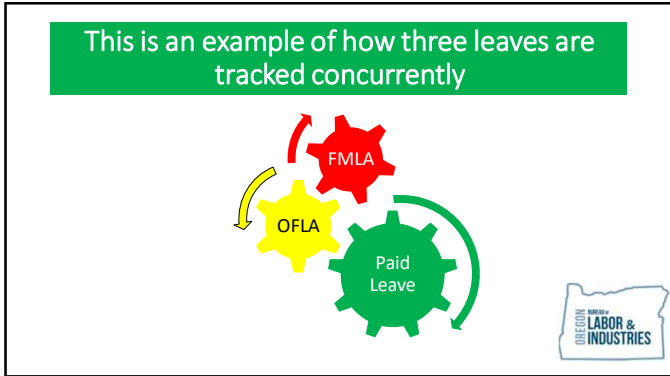
- Remember: We assume that Juan's employer has opted to legally change its OFLA/FMLA leave year to "a period of 52 consecutive weeks beginning on the Sunday immediately preceding the date on which family leave commences."
- SB 999 Section 8(2)



196



197



198

Group discussion (1)

An employee has decided that they want to become a foster parents. To qualify, they have to go through an intensive training course. They want to know if they can use the Paid Leave law for that training, even though they haven't yet taken in a child. Can they?



199

Julie's case

(1) Medical leave: Employee's own serious health condition

(2) Family leave: To bond with twins



200

Julie files a claim for medical leave and starts a PLO benefit year

2023				2024								
Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep
17												
9-17-23				9-14-24								

Julie files an application for Paid Leave benefits and is approved for their own serious health condition (medical leave) and begins a benefit year on September 17, 2023. [OAR 471-070-1010\(3\)](#)




201

Two weeks of medical leave

2023				2024								
Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep
17												
PLO 1 2 9-17-23 PLO benefit year 9-14-24												


Julie takes two weeks of medical leave to recover from her own serious health condition.



202

Counting the PLO concurrently as OFLA/FMLA


- Any family leave or medical leave taken under this chapter must be taken concurrently with any leave taken by an eligible employee under ORS 659A.150 to 659A.186 or under the federal Family and Medical Leave Act of 1993 (P.L. 103-3) for the same purposes.
- ORS 657B.025



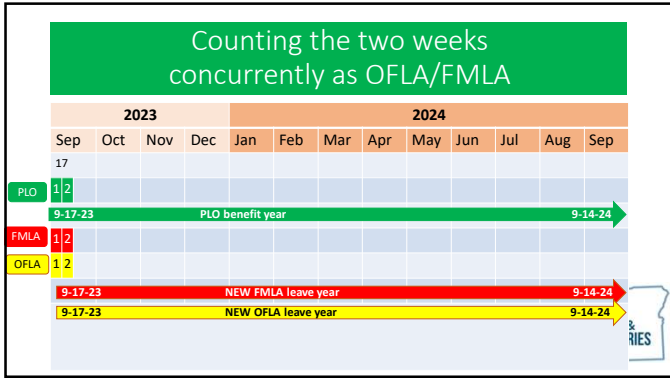
203

FMLA and OFLA tracking

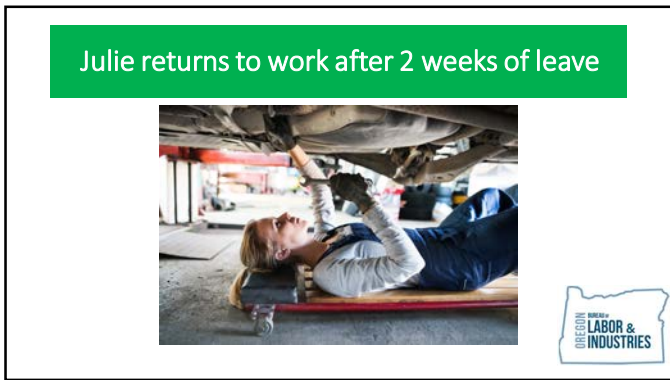
- We assume that Julie is eligible for FMLA and OFLA and has not taken any FMLA or OFLA leave before the two weeks of medical leave for her own serious health condition.
- To keep the illustration simple, we assume that Julie's employer has opted to legally change its OFLA/FMLA leave year to "a period of 52 consecutive weeks beginning on the Sunday immediately preceding the date on which family leave commences."
- SB 999 Section 8(2)



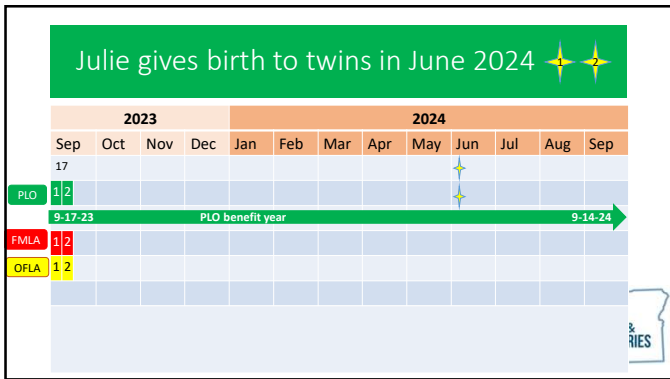
204



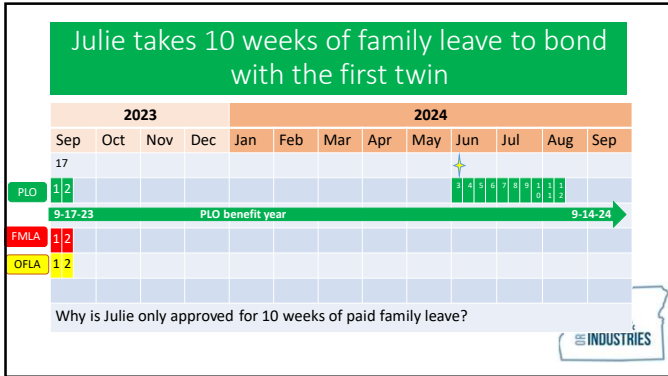
205



206




207



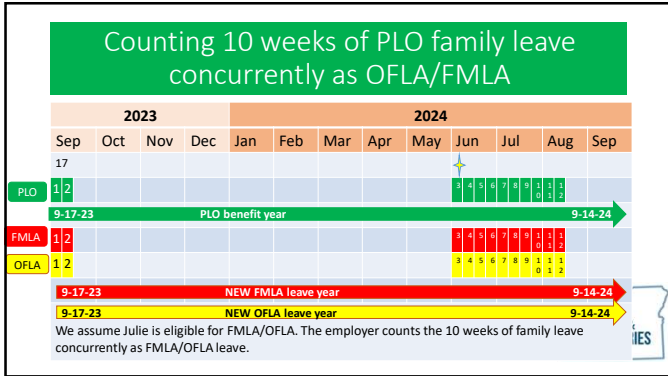
208

Counting the PLO concurrently as OFLA/FMLA

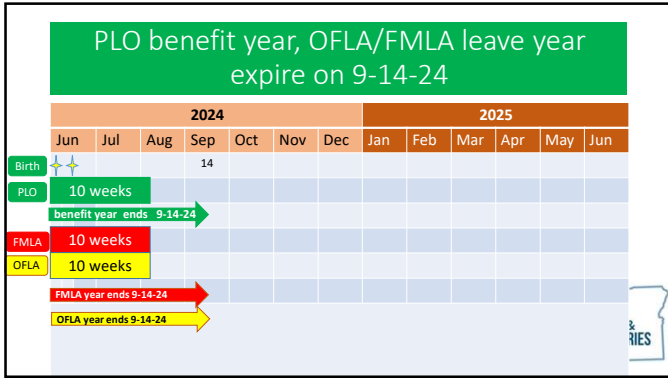
- Any family leave or medical leave taken under this chapter must be taken concurrently with any leave taken by an eligible employee under ORS 659A.150 to 659A.186 or under the federal Family and Medical Leave Act of 1993 (P.L. 103-3) for the same purposes.
- ORS 657B.025



209




210



211

Paid Leave benefits are on a “per-child” basis

- [ORS 657B.020 \(1\)](#) states, “A covered individual may qualify for up to 12 weeks of family and medical leave insurance benefits per benefit year for leave taken for any of the following purposes, in any combination: (a) *Family leave*; (b) *Medical leave*; or (c) *Safe leave*.
- [OAR 471-070-1010\(2\)](#) An individual may not exceed 12 weeks of paid leave **per child** for the purpose of caring for and bonding with the child during the first year after the birth or initial placement of the child regardless if a new benefit year starts during the first year following birth or initial placement.




212

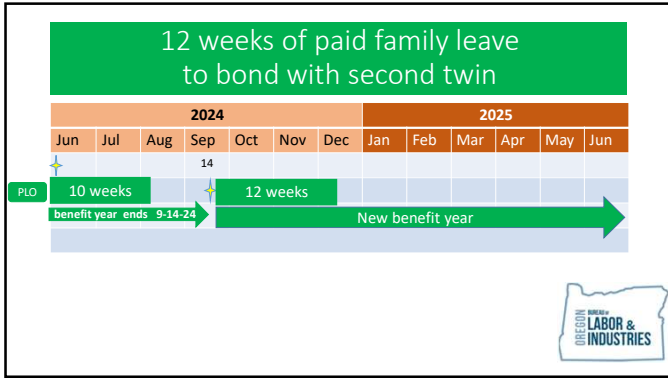
12 weeks of paid leave in a new benefit year

2024								2025							
Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun			
Birth			14												
PLO 10 weeks			benefit year ends 9-14-24												

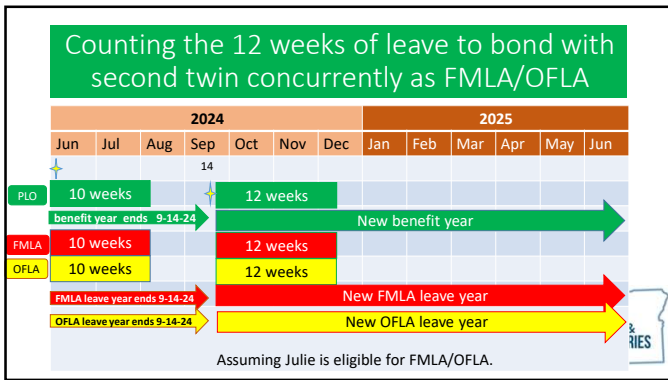
Julie’s twins were born in June 2024. The second twin will still be within 12 months of birth on 9-14-24 when the benefit year ends. Julie submits another application for family leave benefits to care for and bond with the SECOND twin after the benefit year ends.



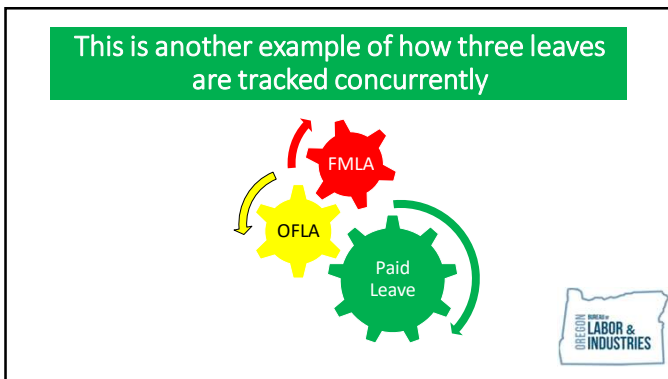
213



214



215



216

District's policy: Leave duration

weeks of qualified leave during the district's designated leave period.⁵¹ Spouses who work for the district may be limited to a combined 12 weeks of FMLA leave during the district's designated leave period when the purpose of the leave is for the birth of a child or to care for a child after birth, placement of an adopted or foster child or the care for an adopted or foster child after placement, or to care for the employee's parent's serious medical condition. 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 qualified leave during the district's designated leave period. However, a woman is entitled to an additional, full 12 weeks of parental leave during the district's designated leave period following the birth of a child regardless of how much OFLA qualified leave she has taken prior to the birth of such child during the district's designated leave period. Likewise, an employee who uses the full 12


217

Spouses work for the same employer: FMLA

- Spouses who are eligible for FMLA leave and are employed by the same covered employer may be limited to a combined total of 12 weeks of leave during any 12-month period if the leave is taken:
- For birth of the employee's son or daughter, or
- to care for the child after birth,
- for placement of a son or daughter with the employee for adoption or foster care, or
- to care for the child after placement.

• [29 CFR 825.120\(a\)\(3\)](#)

No such limitations under Paid Leave



218

District's policy: Leave duration (3)

designated leave period for the purpose of caring for a child(ren) with a non-serious health condition requiring home care.⁶¹ 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.⁷¹

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 district's designated leave period.


Except as otherwise noted above, qualified leave under FMLA and OFLA for an eligible employee will run concurrently during the district's designated leave period.

219

Spouses work for the same employer: OFLA

- Spouses working for the same covered employer, may take OFLA parental leave at the same time with that covered employer *if* the employer allows them to take concurrent leave.
- [OAR 839-009-0240\(7\)](#)

No such limitations under Paid Leave



220



3. Sick Child Leave



221

Remember: SECRET OF SUCCESS IN TRACKING

For each leave request, ask the following questions:

	FMLA	OFLA	Paid Leave
1. What are the leave year and benefit year?	Identify the three 12-month periods		
2. Is the employee eligible?	Yes/No	Yes/No	Yes/No
3. Does the employee have a qualifying event?	Yes/No	Yes/No	Yes/No




222


When an employee takes sick child leave

For each leave request, ask the following questions:

	FMLA	OFLA	Paid Leave
1. What are the leave year and benefit year?	Identify the three 12-month periods		
2. Is the employee eligible?	Yes/No	Yes/No	Yes/No
3. Does the employee have a qualifying event?	No	Yes	No




223



Sick Child Leave


"Family leave" does not include sick child leave.
<https://www.dli.state.or.us>



224

Tracking sick child leave

FMLA	OFLA	Paid Leave
No	Yes	No



225

This is an example of tracking OFLA only

226

Possible scenario (1.0)

2023				2024				2025															
S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A
X																							
<div style="background-color: yellow; border: 1px solid black; display: inline-block; padding: 2px;">OFLA leave year</div> ➔																							

We assume that the employer has opted to legally change its OFLA leave year to "a period of 52 consecutive weeks beginning on the Sunday immediately preceding the date on which family leave commences" and FMLA to a rolling forward year. In September 2023, the employee takes 1 day (x) of OFLA sick child leave. They have commenced an OFLA leave year. Usually, in an OFLA leave year the employee may take up to 12 weeks (or 40 x 12 = 480 hours) of leave intermittently for a single qualifying reason or a combination of OFLA qualifying reasons.

227

Possible scenario (1.1)

2023				2024				2025															
S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A
X																							
<div style="background-color: yellow; border: 1px solid black; display: inline-block; padding: 2px;">OFLA leave year</div> ➔																							
<div style="background-color: green; border: 1px solid black; display: inline-block; padding: 2px;">YY</div>				<div style="background-color: green; border: 1px solid black; display: inline-block; padding: 2px;">PLO benefit year</div> ➔																			

In November 2023, the employee takes 2 weeks (YY) of PLO medical leave due to their own serious health condition. Now they have commenced a PLO benefit year and their number of weeks of OFLA/Paid Leave is capped to a combined total of 16 weeks including no more than 12 weeks of Paid Leave.

228

Possible scenario (1.2): Counting the leave concurrently as OFLA and FMLA

2023				2024				2025															
S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A
X		YY																					
<div style="background-color: yellow; border: 1px solid black; padding: 2px; display: inline-block;">OFLA leave year</div>																							
		YY																					
<div style="background-color: green; border: 1px solid black; padding: 2px; display: inline-block;">PLO benefit year</div>																							
		YY																					
<div style="background-color: red; border: 1px solid black; padding: 2px; display: inline-block;">FMLA leave year</div>																							

The two weeks (YY) Paid Leave are counted concurrently as OFLA and FMLA.

229

Possible scenario (1.3): the leave balances

2023				2024				2025															
S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A
X		YY																					
<div style="background-color: yellow; border: 1px solid black; padding: 2px; display: inline-block;">OFLA leave year</div>																							
		YY																					
<div style="background-color: green; border: 1px solid black; padding: 2px; display: inline-block;">PLO benefit year</div>																							
		YY																					
<div style="background-color: red; border: 1px solid black; padding: 2px; display: inline-block;">PLO benefit year</div>																							



Once the employee has taken any amount of PLO the number of weeks for OFLA/PLO is capped. The amount of OFLA sick child leave taken prior to November does not diminish the employee's PLO or FMLA entitlement. They may take up to the total number of weeks of PLO and FMLA for the qualifying reasons respectively under each law.


230

4. Serious Health Condition Leave

231

**Under OFLA and FMLA:
Two types of serious health condition leave**

<p>Employee's own serious health condition</p> 	<p>Employee's family member's serious health condition</p> 
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232

**Under Paid Leave:
the vocabulary is different**


<p>Employee's own serious health condition</p> <p style="background-color: #008000; color: white; padding: 2px;">Medical Leave</p> 	<p>Employee's family member's serious health condition</p> <p style="background-color: #008000; color: white; padding: 2px;">Family Leave</p> 
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233

Group Discussion

- If an employee has already used up all of the vacation and sick leave they're due, can they still get Paid Leave Oregon to take care of a sick family member?



234

Group Discussion

- An employee takes intermittent leave because of anxiety, and one day when they're at work, their supervisor comes up to them and says "I'm sorry you're feeling so anxious. What can I do to help make things easier for you here?" The employee says they don't want to talk about it, but their supervisor replies that "I can't help you if you don't help me understand what's going on and what we can do." The employee is afraid that if they don't share personal details, they'll be considered a 'problem employee' and will affect their career advancement. Does management have the right to ask these questions? Is the employee compelled to divulge this kind of personal information to their supervisor?



235

Tracking "serious health condition leave" and "medical leave"

2023				2024				2025															
S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A
XX	XX	XX	XX																				
FMLA leave year																							
OFLA leave year																							
Paid Leave benefit year																							

If the employee is eligible for FMLA, OFLA and Paid Leave, the time taken (XX) will be counted concurrently. If the FMLA/OFLA leave year and Paid Leave benefit year all align up, that is very straight forward.



236

Tracking "serious health condition leave" and "medical leave"

2023				2024				2025															
S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A
XX				YY																			
								ZZ ZZ ZZ															
								FMLA leave year															
								OFLA leave year															
								Paid Leave benefit year															

If a new employee is only eligible for Paid Leave and not yet eligible for OFLA or FMLA, the time taken cannot be taken concurrently. When the employee becomes eligible for OFLA and/or FMLA, then the time taken can be counted concurrently.
 In this example, the employee was hired in June 2023.
 The leave taken in Oct. 2023 is counted only as Paid Leave.
 The leave taken in Jan. 2024 is counted as Paid Leave and OFLA after the employee becomes eligible for OFLA.
 The leave taken in June 2024 and thereafter is counted as Paid Leave, OFLA and FMLA.



237

When the serious health condition is the result of an on-the-job injury

- In any week in which an employee is eligible to receive workers' compensation benefits under ORS chapter 656, the employee is disqualified from receiving family and medical leave insurance benefits.
- [ORS 657B.030\(3\)](#)



238

When a workers' comp claim is denied

- A complete application for PFMLI may be submitted to the department up to 30 calendar days after the start of leave. Applications submitted outside of this timeframe, either early or late, will be denied, except in cases where an employee can demonstrate an application was submitted late for reasons that constitute good cause.
- [OAR 471-070-1100\(4\)](#)



239

Good cause

- Good cause for the late submission of an application is determined at the discretion of the department and includes, but is not limited to, the following:
- (a) A serious health condition that results in an unanticipated and prolonged period of incapacity and that prevents an individual from timely filing an application; or
- (b) A demonstrated inability to reasonably access a means to file an application in a timely manner, such as an inability to file an application due to a natural disaster or a significant and prolonged department system outage. [OAR 471-070-1100\(5\)](#)



240

Extension of PLO application deadline

- In cases where a claimant demonstrates good cause for the late submission of an application, the department may accept the application up to one year after the start of leave.

- [OAR 471-070-1100\(6\)](#)



241

When the serious health condition is the result of an on-the-job injury

- If you want a refresher on the interplay between workers' compensation injury and OFLA/FMLA, please stay after class for a quick review.
- Shameless self-promotion: A workers' comp defense lawyer from Reinisch Wilson, PC, and I co-present a seminar called the "Life of a Worker's Compensation Claim."



242

Tracking leave to care for a family member


- You will have to find out who the family member is before you can determine whether you can count the leave concurrently as:
 - FMLA, OFLA and Paid Leave, or
 - OFLA and Paid Leave, or
 - FMLA only.
- See the charts on the next two slides.



243

Tracking leave to care for a family member


Family member	FMLA	OFLA	Paid Leave
(a) The spouse of a covered individual;	Yes	Yes	Yes
(b) A child of a covered individual or the child's spouse or domestic partner;	Yes	Yes	Yes
(c) A parent of a covered individual or the parent's spouse or domestic partner;	No	Yes	Yes
(d) A sibling or stepsibling of a covered individual or the sibling's or stepsibling's spouse or domestic partner;	Yes	Yes	Yes
	May be	Yes	Yes
	No, usually, Yes, in loco parentis	Yes	Yes
Effective 9-3-2023		SB 999 Sec. 6(4)	ORS 657B.010(18)



244

Tracking leave to care for a family member



Family member	FMLA	OFLA	Paid Leave
(e) A grandparent of a covered individual or the grandparent's spouse or domestic partner;	No	Yes	Yes
(f) A grandchild of a covered individual or the grandchild's spouse or domestic partner;	No	Yes	Yes
(g) The domestic partner of a covered individual; or	No	Yes	Yes
(h) Any individual related by blood or affinity whose close association with a covered individual is the equivalent of a family relationship.	No, usually, Yes, in loco parentis	Yes	Yes
Effective 9-3-2023		SB 999 Sec. 6(4)	ORS 657B.010(18)




245

To care for a spouse

Can you track the leave concurrently as FMLA, OFLA and Paid Leave?



246

To care for a son and Daughter



Can you track the leave concurrently as FMLA, OFLA and Paid Leave?



247

To care for a parent



Can you track the leave concurrently as FMLA, OFLA and Paid Leave?



248

To care for a sibling

Can you track the leave concurrently as FMLA, OFLA and Paid Leave?



249

Intergenerational family: To care for a grandparent or grandchild

Can you track the leave concurrently as FMLA, OFLA and Paid Leave?



250

Family member: OFLA and Paid Leave are harmonized



251

How does that impact tracking?

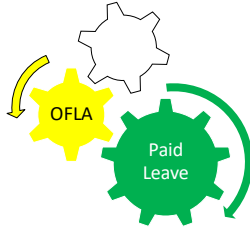


- If an employee applies for Paid Leave when they take leave to care for a family member, and the employee is eligible for OFLA, the employer will be able to count the leave concurrently as Paid Leave and OFLA.



252

In some cases, only Paid Leave and OFLA are counted concurrently



253

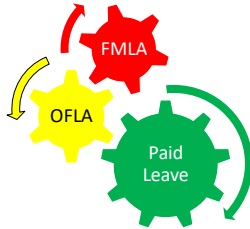
Tracking tip

- For the purposes of “family member” Paid Leave and OFLA leave are very inclusive.
- FMLA still maintains the traditional concept of “family:”
 - Spouse,
 - Parent (including *in loco parentis*), and
 - Son or daughter
- When an employee takes leave to care for a “family member,” double check to see if the leave time can be counted concurrently under all three laws, two laws or just one.



254

In some cases, all three leaves are counted concurrently



255

Tracking “serious health condition leave” to care for a family member and “family leave”

2023				2024				2025															
S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A
	XX	XX	XX																				
FMLA leave year																							
OFLA leave year																							
Paid Leave benefit year																							

If the employee is eligible for FMLA, OFLA and Paid Leave, and the employee is approved for Paid Leave benefits, the time taken (XX) will be counted concurrently. If the FMLA/OFLA leave year and Paid Leave benefit year all line up perfectly, that is very straight forward.

Remember to check the span of the OFLA/FMLA leave year and PLO benefit year.



256

Tracking “serious health condition leave” to care for a family member and “family leave”

2023				2024				2025															
S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A
	XX																						
								FMLA leave year															
OFLA leave year																							
Paid Leave benefit year																							

If the employee takes 4 weeks of Paid Leave to care for a sibling, these four weeks are counted concurrently as OFLA, if they are eligible for OFLA, but the leave time cannot be counted as FMLA because FMLA does not recognize a sibling as a family member.

From June to August 2024, the employee takes Paid Leave to care for their parent. The leave taken in June to August 2024 are counted as OFLA and FMLA.

Remember to check the definitions of “family member.”




257

Group Discussion


- What if an employee is depressed, but doesn't want there to be a public record of that – can they get leave approved without having to establish a public record of depression?



258



5. Bereavement Leave




259


Remember: SECRET OF SUCCESS IN TRACKING

For each leave request, ask the following questions:

	FMLA	OFLA	Paid Leave
1. What are the leave year and benefit year?	Identify the three 12-month periods		
2. Is the employee eligible?	Yes/No	Yes/No	Yes/No
3. Does the employee have a qualifying event?	Yes/No	Yes/No	Yes/No




260



Bereavement Leave

"Family leave" does not include OFLA bereavement leave.

[VIEW MORE INFORMATION](#)



261

Tracking bereavement leave

FMLA	OFLA	Paid Leave
No	Yes	No
<p style="color: red; font-size: small;">Exception: A military family member may take up to 12 weeks of FMLA qualifying exigency leave for bereavement after the death of a covered service member.</p>		

262

This is another example of tracking OFLA only

263

Possible scenario (2.0)

2023				2024				2025															
S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A
XX																							
OFLA leave year																							

We assume that the employer has opted to legally change its OFLA/FMLA leave year to "a period of 52 consecutive weeks beginning on the Sunday immediately preceding the date on which family leave commences." SB 999 Section 8(2)
 In September the employee takes 2 weeks (XX) of OFLA bereavement leave. They have commenced an OFLA leave year. In an OFLA leave year the employee may take up to 12 weeks (or 40 x 12 = 480 hours) of OFLA leave for a combination of OFLA qualifying reasons.

264

Possible scenario (2.1)

2023				2024				2025															
S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A
XX																							
OFLA leave year																							
PLO benefit year																							

In November 2023, the employee takes 12 weeks (YY) of PLO medical leave due to their own serious health condition intermittently. Now they have commenced a PLO benefit year and their number of weeks of OFLA leave is capped.
What is the cap?

265

The cap under Paid Leave:

- Notwithstanding ORS 657B.025 and except as provided under subsection (3) of this section, a covered individual who has taken any amount of paid leave available under subsection (1) of this section may take a total of 16 weeks of leave in the benefit year in any combination of the paid leave available under subsection (1) of this section, not to exceed 12 weeks, and unpaid leave under ORS 659A.159 for which the covered individual is eligible under ORS 659A.156. The leave may be taken for any purpose for which leave is allowable under the respective leave programs.
- ORS 657B.020(2)

266

The cap under OFLA:

- Except as specifically provided by ORS 657B.020 and 659A.150 to 659A.186, an eligible employee is entitled to up to a total of 12 weeks of family leave within any one-year period.
- ORS 659A.162(1)

267

Possible scenario (2.2): Counting the leave concurrently

2023				2024				2025															
S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A
XX	YY	YY	YY	YY	YY	YY	YY	YY	YY	YY	YY	YY	YY	YY	YY	YY	YY	YY	YY	YY	YY	YY	YY
OFLA leave year																							
				PLO benefit year																			
				FMLA leave year																			

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Possible scenario (2.3): Surprise!

2023				2024				2025															
S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A
XX	YY	YY	YY	YY	YY	YY	YY	YY	YY	YY	YY	YY	YY	YY	YY	YY	YY	YY	YY	YY	YY	YY	YY
OFLA leave year																							
				PLO benefit year																			
				FMLA leave year																			

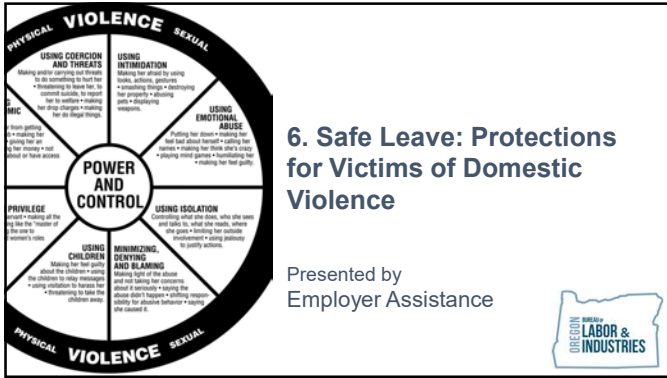
Once the employee has taken any amount of PLO the combined total of PLO/OFLA weeks is capped. The amount of OFLA bereavement leave taken prior to November does not diminish the employee PLO entitlement. For example: They may take up to 12 weeks of PLO and 4 weeks of OFLA leave for any OFLA qualifying reason in the benefit year for a combined total of 16 weeks, if the employee is eligible for OFLA.

269

Group Discussion

1. Is bereavement leave only available for funerals?
2. Will I receive Paid Leave benefits for attending the funeral after the death of a family member?
3. What if I want to visit a dying parent who's out of state, and I want to see them before they die – is that allowed, or only the funeral?
4. What if I can't make the funeral but want to go to the place they died a couple months later in order to grieve and mourn – is that allowed?
5. What if it's a close friend but not a blood relative?

270



271

Underlying principles

- Economic security is one of the primary indicators of whether a victim will be able to escape abuse and achieve safety.
- Victims should not have to choose between economic security and physical safety.

272

Structural inequities perpetuate domestic violence

Opinion | Structural inequities perpetuate domestic violence

May 6, 2022 at 5:04 p.m. EDT

Source:
<https://www.willametteonline.com/story/news/2022/05/06/structural-inequities-perpetuate-domestic-violence/8287042002>

Employers play a critical role in any coordinated community response.

273

12 weeks of safe leave

- A covered individual may qualify for up to 12 weeks of family and medical leave insurance benefits per benefit year for leave taken for any of the following purposes, in any combination:
 - (a) Family leave;
 - (b) Medical leave; or
 - (c) **Safe leave.**
- [ORS 657B.020\(1\)](#)



274

Undue hardship

- There are no exceptions for “undue hardship.”



275

What is safe leave for?

- “Safe leave” means leave taken for any purpose described in ORS 659A.272.
- [ORS 657B.010\(21\)](#)



276

Purpose (1)

- (1) To seek legal or law enforcement assistance or remedies to ensure the health and safety of the employee or the employee's minor child or dependent, including preparing for and participating in protective order proceedings or other civil or criminal legal proceedings related to [domestic violence](#), [harassment](#), [sexual assault](#) or [stalking](#).



277

Purpose (2)

- (2) To seek medical treatment for or to recover from injuries caused by [domestic violence](#) or [sexual assault](#) to or [harassment](#) or [stalking](#) of the eligible employee or the employee's minor child or dependent.



278

Purpose (3)

- (3) To obtain, or to assist a minor child or dependent in obtaining, counseling from a licensed mental health professional related to an experience of [domestic violence](#), [harassment](#), [sexual assault](#) or [stalking](#).



279

Safe Leave will include leave for victims of bias crime

SECTION 12. ORS 659A.272 is amended to read:

659A.272. Except as provided in ORS 659A.275, a covered employer shall allow an eligible employee to take reasonable leave from employment for any of the following purposes:

- (1) To seek legal or law enforcement assistance or remedies to ensure the health and safety of the employee or the employee's minor child or dependent, including preparing for and participating in protective order proceedings or other civil or criminal legal proceedings related to domestic violence, harassment, sexual assault, **bias** or stalking.
- (2) To seek medical treatment for or to recover from injuries caused by domestic violence or sexual assault to, (or) harassment or stalking of **or the commission of a bias crime against** the eligible employee or the employee's minor child or dependent.
- (3) To obtain, or to assist a minor child or dependent in obtaining, counseling from a licensed mental health professional related to an experience of domestic violence, harassment, sexual assault, **bias** or stalking.
- (4) To obtain services from a victim services provider for the eligible employee or the employee's minor child or dependent.
- (5) To relocate or take steps to secure an existing home to ensure the health and safety of the eligible employee or the employee's minor child or dependent.

283


Employee notice to employer prior to commencing safe leave

- An eligible employee who takes safe leave shall give the employer reasonable advance notice of the individual's intention to take safe leave, unless giving the advance notice is not feasible.
- An eligible may commence leave without 30 days' advance notice if the safe leave is not foreseeable.
- ORS 657B.040(5) and (2)



284

Safe leave eligibility requirements


Leave	Eligibility
Safe leave	You are automatically covered if:
	You work in Oregon;
	You earned at least \$1,000 the year before you apply for benefits; and
	You need leave for one of the purposes described in the law
	Source: https://paidleave.oregon.gov/employees/overview.html



285



Tracking Safe Leave

- Any safe leave taken may not be counted concurrently with OFLA or FMLA because ORS 657B.025 says, "Any family leave or medical leave taken under this chapter must be taken concurrently with any leave taken by an eligible employee under ORS 659A.150 to 659A.186 or under the federal Family and Medical Leave Act of 1993 (P.L. 103-3) for the same purposes."



286

This is an example of tracking Paid Leave only

287

Protections for domestic violence survivors

An employee may not meet the eligibility requirements for safe leave (e.g., leave for a partial day) or they may have exhausted their 12 weeks of Paid Leave in a benefit year.

Protections because of [domestic violence](#), [harassment](#), [sexual assault](#) or [stalking](#) are separate from and in addition to the safe leave under Paid Leave Oregon.

ORS [659A.270](#) to [659A.290](#);
OAR [839-020-0325](#) to [0365](#)



288

Employees eligible for protections

- The statute refers to victims of violations of the criminal code in Oregon
 - NOTE: Existence of protective order NOT necessary (and cannot be required by the employer)
- Rules expand definition of victim:
 - Include any other person who has suffered financial, social, psychological or physical harm as a result of these crimes committed against the victim or immediate family member
 - Immediate family member means spouse, same-gender domestic partner, father, mother, sibling, child, stepchild, grandparent, or any person who had the same primary residence as the victim.
 - NOT the alleged perpetrator



289

Two categories of protections

(1) Protected Leave

Employers with six or more employees:

- Provide a victim a reasonable amount of protected leave unless the leave will create an undue hardship.
- Discrimination/retaliation against victims unlawful
- [ORS 659A.270\(1\)](#); [659A.272](#); [659A.275](#); [659A.277](#)

(2) Reasonable Safety Accommodation

All employers:

- Upon request, provide a victim reasonable workplace [safety accommodations](#), which include unpaid leave from employment, unless the safety accommodation will create an undue hardship.
- Discrimination/retaliation against victims unlawful
- [ORS 659A.290](#)



290

Employer's notice to employees



- In addition to the poster, Oregon state government agencies must annually inform all employees of the provisions of the reasonable safety accommodations under [ORS 659A.290](#).

- [ORS 659A.283\(4\)](#)



291

Amount of protected leave

- Except when the employer has an undue hardship, a covered employer must allow an eligible employee to take **reasonable** leave from employment. [ORS 659A.272\(1\)](#)
- A “reasonable safety accommodation” for a victim of domestic violence, harassment, sexual assault or stalking may include, but is not limited to, use of available paid leave from employment or unpaid leave from employment in response to actual or threatened domestic violence, harassment, sexual assault or stalking. [OAR 839-005-0170\(1\)](#)



292

Use of accrued paid Leave

- A covered employer is not required to grant leave with pay to an eligible employee under the domestic violence victims leave unless otherwise provided by the terms of an agreement between the eligible employee and the covered employer, a collective bargaining agreement or an employer policy.
- An eligible employee who takes leave pursuant to ORS 659A.272 may use any paid accrued vacation leave, any accrued sick leave or personal business leave, or any other paid leave that is offered by the covered employer in lieu of vacation leave during the period of leave. [ORS 659A.285](#)



293

Permissible uses

- **Time off may be used for employee to:**
 - Seek legal or law enforcement assistance or remedies;
 - Get medical treatment or recover from injuries;
 - Get counseling from a licensed mental health professional;
 - Obtain services from a victim services provider;
 - Relocate or make an existing home safe.



294

Reasonable safety accommodations

- Changes in the workplace to facilitate safety
- In response to actual or threatened domestic violence, sexual assault, or stalking
- The needed changes are fact-dependent:
 - What does employee think will help?
 - What can employer provide?



295

Potential reasonable safety accommodations

- Think creatively:
 - Transfer?
 - Reassignment?
 - Modified Schedule?
 - Leave from employment?
 - Changed work phone/email?
 - Different or modified workstation?
 - Locks, security lights, escort?
 - Any other safety adjustment



296

Undue hardship

- There are exceptions for “undue hardship.”



297

Undue hardship: protected leave

- A covered employer may limit the amount of (unpaid) leave an eligible employee takes under the additional protections if the employee's leave creates an *undue hardship* on the employer's business.
- [ORS 659A.275\(2\)](#)



298

Undue hardship: reasonable safety accommodations

- It is an unlawful employment practice for an employer to refuse to make a reasonable safety accommodation requested by an individual who is a victim of domestic violence, harassment, sexual assault or stalking, unless the employer can demonstrate that the accommodation would impose an *undue hardship* on the operation of the business of the employer, as determined under ORS 659A.121.
- [ORS 659A.290\(2\)\(c\)](#)



299

What constitutes an undue hardship?

- "undue hardship" means a significant difficulty and expense to a covered employer's business and includes consideration of the size of the employer's business and the employer's critical need for the eligible employee.



300

Undue hardship: other factors to consider (1)

- Other factors to consider in determining whether granting leave under ORS 659A.270 to 659A.285 for victims of domestic violence, harassment, sexual assault or stalking will cause an undue hardship on a covered employer's business include, but are not limited to:
 - (1) The length of leave under ORS 659A.270 to 659A.285 for victims of domestic violence, harassment, sexual assault or stalking requested and the relative cost to a covered employer's business;
 - [ORS 659A.275](#)
 - [OAR 839-009-0355](#)



301

Undue hardship: other factors to consider (2)

- (2) The overall financial resources of the covered employer's facility or facilities, the number of persons employed at the facility and the effect on expenses and resources or other impacts on the operation of the facility if the leave under ORS 659A.270 to 659A.285 for victims of domestic violence, harassment, sexual assault or stalking were granted;
 - [ORS 659A.275](#)
 - [OAR 839-009-0355](#)



302

Undue hardship: other factors to consider (3)

- (3) The overall financial resources of the covered employer, the overall size of the business of the covered employer with respect to the number of its employees and the number, type and location of the covered employer's facilities;
 - [ORS 659A.275](#)
 - [OAR 839-009-0355](#)



303

Undue hardship: other factors to consider (4)

- (4) The type of operations conducted by the covered employer, including the composition, structure and functions of the covered employer's workforce.
- [ORS 659A.275](#)
- [OAR 839-009-0355](#)



304

Employee notice to employer for leave

- Employees must give reasonable advance notice of intent to take leave, unless such notice is not feasible.
 - What is reasonable will depend on the circumstances.
 - If able to give advance notice, should follow "known, reasonable, and customary procedures for requesting leave."
- If advance notice not feasible, oral or written notice should be given as soon as practicable, and can be given by someone else on employee's behalf.



305

Certification

- Any of the following is sufficient certification:
 - Copy of a police report; or
 - A copy of a protective order or other evidence from a court or attorney; or
 - Documentation from a qualified third party.
- Employee may choose what type of certification to provide to the employer.
- The employer must protect the employee's confidentiality and keep records apart from supervisor's file.



306

Sample certification request form for domestic violence victims leave

State of Oregon
Certification for Requested Leave


This document is used to certify an employee's request for leave to address issues of domestic violence, harassment, sexual assault or stalking as defined in Oregon Revised Statute (ORS) 107.705, 163.305 to 163.467, 163.732, 659A.270 to 659A.285 or any other designation listed as a victim by rule adopted under ORS 659A.805.

1. EMPLOYEE NAME	2. AGENCY NAME
3. LEAVE IS FOR: <input type="checkbox"/> SELF <input type="checkbox"/> MINOR CHILD(REN) OR DEPENDENT(S)	4. DATES OF LEAVE: TO: _____ FROM: _____
5. NAME OF MINOR CHILD(REN) OR DEPENDENT(S):	5. TYPE OF LEAVE REQUESTED: <input type="checkbox"/> BLOCK OF TIME <input type="checkbox"/> INTERMITTENT <input type="checkbox"/> ALTERED/REDUCED SCHEDULE* REQUESTED SCHEDULE: _____
7. REASON EMPLOYEE TAKING LEAVE:	

307

Discrimination prohibited


- An employer may not:
 - Refuse to hire a qualified individual because the individual is a victim of domestic violence, harassment, sexual assault or stalking;
 - Threaten to discharge, demote, suspend, or in any manner discriminate or retaliate because an employee is a victim.



308

Employer actions items


- Employer's role when responding to victim of violence:
 - ✓ Apply the law;
 - ✓ Maintain confidentiality;
 - ✓ Provide initial support and offer referrals;
 - ✓ Discuss ways to help the victim stay safe in the workplace



309

Tracking Oregon military family leave concurrently


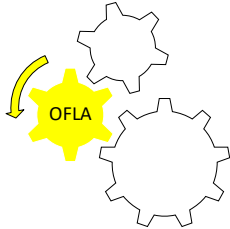
FMLA	OFLA	Paid Leave
Yes	Yes	No
Up to 14 days as FMLA qualifying exigency leave	Up to 14 working days	ORS 657B.010(17)(b)(C)



313

OMFLA leave can be tracked as OFLA


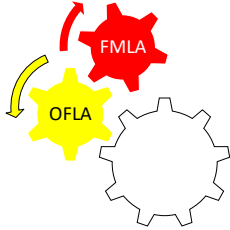
In some cases, only the OFLA Leave applies.



314

If the employee is also eligible for FMLA qualifying exigency leave

In some cases, the 14 working days taken as OMFLA leave can be tracked as FMLA qualifying exigency leave.



315

8. FMLA qualifying exigency leave



- Whether an employer can track FMLA qualifying exigency leave as Paid Leave will depend on the type of exigency.
- [29 CFR §825.126](#)
- [ORS 657B.010\(17\)\(a\)\(B\)](#)



316

Category #1

- Issues arising from the military member's short notice deployment (i.e., deployment within seven or fewer days of notice).



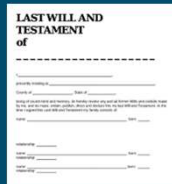
Probably not qualify for Paid Leave Oregon benefits



317

Category #2

- To make or update financial and legal requirements to address a military member's absence.



Probably not qualify for Paid Leave Oregon benefits



318

Category #3

- To attend counseling for: the employee, the military member, or a child of the military member, when the need for that counseling arises from the covered active duty or call to covered active duty status of the military member and the counseling is provided by someone other than a health care provider.



May qualify for Paid Leave Oregon benefits

319

Category #4

- To attend military events and related activities, including official military ceremonies and programs or informational briefings related to the military member's covered active duty sponsored or promoted by the military or military service organization.



Probably not qualify for Paid Leave Oregon benefits



320

Category #5

- To spend up to 15 calendar days with a military member who is on rest and recuperation leave.

Probably not qualify for Paid Leave Oregon benefits



321

Category #6

- Certain childcare and related activities for the military member's child while the military member is on covered active duty.

Eligible Employee → PARENT, SPOUSE, or CHILD → Military Member on Covered Active Duty → Son or Daughter → Child

NO RELATIONSHIP NECESSARY

May qualify for Paid Leave Oregon benefits

322

Category #7

- To attend post-deployment activities within 90 days of the end of the military member's covered active duty, or to attend to issues arising from the death of a military member while on covered active duty.

Probably not qualify for Paid Leave Oregon benefits

323

Category #8

- Certain parental care activities for the military member's parent who is incapable of self-care.

Eligible Employee → PARENT, SPOUSE, or CHILD → Military Member on Covered Active Duty → Parent

NO RELATIONSHIP NECESSARY

May qualify for Paid Leave Oregon benefits

324

Category #9

- Any other event that the employee and the employer agree is a qualifying exigency.
- Both the employee and employer must agree to the timing and duration of the leave.

May qualify for Paid Leave Oregon benefits







325

9. Military caregiver leave


- If the covered service member is a family member of the employee as defined in Paid Leave Oregon, the eligible employee may take up to 12 weeks of Paid Leave in a benefit year but 26 weeks in a single 12-month period beginning on the first day of military caregiver leave. [29 CFR §825.127](#)
- [ORS 657B.010\(17\)\(a\)\(B\)](#)

326

Tracking military caregiver leave and Paid Leave

- If the covered service member or veteran, who needs care, is a family member as defined by FMLA military caregiver leave, the employee may take up to 26 weeks of leave in a "single 12-month period" measured forward based on the first day of the FMLA military caregiver leave.
- Note: A benefit year and a "single 12-month" period may not be an identical period of time.*
- Paid Leave Oregon does not limit an employee's FMLA entitlement.



327

Tracking military caregiver leave

Paid Leave
12 weeks

FMLA
12 weeks

OFLA
12 weeks

Effective 9-3-2023

Military caregiver leave
26 weeks

328

IV. DURATION OF LEAVE

329

Remember: SECRET OF SUCCESS IN TRACKING

For each leave request, ask the following questions:

	FMLA	OFLA	Paid Leave
1. What are the leave year and benefit year?	Identify the three 12-month periods		
2. Is the employee eligible?	Yes/No	Yes/No	Yes/No
3. Does the employee have a qualifying event?	Yes/No	Yes/No	Yes/No
4. Does the employee have any available balance within the leave year or benefit year?	Yes/No	Yes/No	Yes/No

330

Graphic illustration: Duration of leave

Paid Leave 12 weeks

FMLA 12 weeks

OFLA 12 weeks

Effective 9-3-2023, if an employee applies for benefits

331

Coordination of leave

FMLA	OFLA	Paid Leave Oregon
If leave qualifies for FMLA leave and leave under State law (e.g., OFLA or Paid Leave), the leave used counts against the employee's entitlement under both laws.	OFLA leave taken must be taken concurrently with any leave taken under the FMLA and Paid Leave if the employee is eligible for FMLA and the reason for leave is qualified under all three laws.	Any family leave or medical leave taken under [Paid Leave Oregon] must be taken concurrently with any leave taken by an eligible employee under [OFLA] or under the FMLA for the same purposes.
29 CFR §825.701(a)	Senate Bill 999	ORS 657B.025

332

SB 999 Section 8 (2)

- Once an employee uses OFLA, in most cases, they will set the other two in motion, meaning the three leaves will be counted concurrently if the employee meets the eligibility requirements and the qualifying event is covered under all three laws, *and* the employee is approved for Paid Leave benefits.

333

Impact of SB 999 on duration of leave

- Under PLO, an employee who opts to apply for benefits must also run any available applicable OFLA leave. See [ORS 657B.025](#).
- The opposite scenario has remained on the table – an employer could not deny OFLA to an employee who declined to apply also for PLO benefits. Thus, an employee could take OFLA (assuming they can afford unpaid leave) prior to starting a benefit year via a claim for PLO benefits and stretch the caps on total leave in a benefit year.
- Section 8 of the SB 999 is apparently aimed at closing off that possibility. The intent seems to be there to prevent “double dipping/stacking consecutive leaves.”



334

(a) Duration of leave for a pregnant employee when there is no application for Paid Leave



335


When Paid Leave is operative: 2 additional weeks for pregnancy

- In addition to the leave available under subsections (1) and (2) of this section, a covered individual may qualify for up to *two additional weeks of benefits for limitations related to pregnancy*, childbirth or a related medical condition, including but not limited to lactation, for a total amount of leave under this subsection and subsections (1) and (2) of this section, not to exceed 18 weeks per benefit year.
- [ORS 657B.020\(3\)](#)



336

Funneling effects




12 weeks of OFLA leave

OREGON DEPARTMENT OF LABOR & INDUSTRIES

337

Funneling effects



12 weeks of OFLA leave

12 weeks of pregnancy disability

OREGON DEPARTMENT OF LABOR & INDUSTRIES

338

Funneling effects



12 weeks of OFLA leave

12 weeks of pregnancy disability

12+2+4 weeks in a PLO benefit year

OREGON DEPARTMENT OF LABOR & INDUSTRIES

339

Duration of leave in a benefit year for a pregnant employee

Effective 9-3-2023:
If an employee is approved for Paid leave, in a PLO benefit year:

340

(b) Duration of leave for an employee who takes 12 weeks of OFLA parental leave

341

**When Paid Leave is operative:
A combined total 16 weeks of PLO and OFLA**

- Notwithstanding ORS 657B.025 and except as provided under subsection (3) of this section, a covered individual who has taken any amount of paid leave available under subsection (1) of this section may take *a total of 16 weeks of leave in the benefit year* in any combination of the paid leave available under subsection (1) of this section, not to exceed 12 weeks, and unpaid leave under ORS 659A.159 for which the covered individual is eligible under ORS 659A.156. The leave may be taken for any purpose for which leave is allowable under the respective leave programs.
- [ORS 657B.020\(2\)](#)

342

When Paid Leave is operative: Duration of Leave

Effective 9-3-2023:
If an employee is approved for Paid leave, in a PLO benefit year:

343

(c) Duration of leave after a pregnant employee gives birth

344

Paid Leave: 12 + 4 + 2 bonus leaves

- In addition to the leave available under subsections (1) and (2) of this section, a covered individual may qualify for up to two additional weeks of benefits for limitations related to pregnancy, childbirth or a related medical condition, including but not limited to lactation, for a total amount of leave under this subsection and subsections (1) and (2) of this section, not to exceed 18 weeks per benefit year.
- [ORS 657B.020\(3\)](#)

345

**When Paid Leave is operative:
Duration of Leave**

Effective 9-3-2023:
If an employee is approved for Paid leave, in a PLO benefit year:

346

Two employees working for the same employer: OFLA

- Two employees who are family members of each other, e.g., husband and wife, husband and husband, or wife and wife, working for the same covered employer, may take OFLA leave at the same time with that covered employer *if* the employer allows them to take concurrent leave.
- [OAR 839-009-0240\(7\)](#)

No such limitations under Paid Leave

347

Spouses work for the same employer: FMLA

- Spouses who are eligible for FMLA leave and are employed by the same covered employer may be limited to a combined total of 12 weeks of leave during any 12-month period if the leave is taken:
- For birth of the employee's son or daughter, or
- to care for the child after birth,
- for placement of a son or daughter with the employee for adoption or foster care, or
- to care for the child after placement.
- [29 CFR 825.120\(a\)\(3\)](#)

No such limitations under Paid Leave

348

Group Discussion

- Can a represented employee add up the days they're allowed under the union contract, under FMLA and OFLA, and under Paid Leave Oregon, and get the biggest possible amount of leave?



349



Considerations for Intermittent Leave



350

Group Discussion


- What kind of mental health issues count as “serious”?
- What if an employee is struggling with anxiety, and some days just can't come in to work – can they get intermittent leave for that? What kind of documentation do they need?



351

Major differences


Absences	FMLA	OFLA	Paid Leave
Full day	Yes	Yes	Yes
Partial day	Yes	Yes	No



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Example (1)


- A pregnant employee may take a partial day off for their pre-natal appointments. They will not be eligible for Paid Leave benefits.
- The employer will only count the intermittent leave as OFLA and FMLA, if the employee is eligible for OFLA/FMLA.
- If this is the employee's first time using OFLA and FMLA, they will start an OFLA/FMLA leave year but they have not established a Paid Leave benefit year.



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Example (2)

- An employee, who has been diagnosed with migraine, may take intermittent leave whenever there is a flare-up. They may miss a full day of work due to migraine. If so, they are eligible for Paid Leave and the full day absences can be counted concurrently as OFLA and FMLA, if the employee is eligible for OFLA/FMLA.
- On the other hand, the employee may leave work early when there is a flare-up. They may miss a partial day of work due to migraine. If so, they are not eligible for Paid Leave. The partial day absences can only be counted as OFLA and FMLA, if the employee is eligible for OFLA/FMLA.



354

Kelsey's case: family leave



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Kelsey has two part-time jobs

Kelsey works in two part-time jobs

	At School District	In an architecture firm	Leave status
Sun	OFF	OFF	
Mon	8 am to 12 pm	1 pm to 5 pm	
Tue	8 am to 12 pm	1 pm to 5 pm	
Wed	8 am to 12 pm	1 pm to 5 pm	
Thu	8 am to 12 pm	1 pm to 5 pm	
Fri	8 am to 12 pm	1 pm to 5 pm	
Sat	OFF	OFF	



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Paid Leave: Kelsey must take leave from both jobs

Kelsey applies for family leave to care for a seriously ill child

	At School District	In an architecture firm	Leave status
Sun	OFF	OFF	
Mon	8 am to 12 pm	1 pm to 5 pm	Kelsey must take leave from both places of employment for the work day in order to claim Paid Leave benefits for the work day. www.michigan.gov/lmi
Tue	Family leave	Family leave	
Wed	8 am to 12 pm	1 pm to 5 pm	
Thu	Family leave	Family leave	
Fri	8 am to 12 pm	1 pm to 5 pm	
Sat	OFF	OFF	

If the employers are covered by FMLA or OFLA, and the Kelsey is eligible for FMLA or OFLA, the Paid Leave may be counted concurrently as FMLA, OFLA or both.



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Partial day absences

Kelsey only needs to take her seriously ill child to the pediatrician in the morning

	At School District	In an architecture firm	Leave status
Sun	OFF	OFF	
Mon	Doctor's appt.	1 pm to 5 pm	If Kelsey only missed work from the School District due to the doctor's appointments for the absences she would not qualify for benefits.
Tue	8 am to 12 pm	1 pm to 5 pm	
Wed	Doctor's appt.	1 pm to 5 pm	
Thu	8 am to 12 pm	1 pm to 5 pm	
Fri	Doctor's appt.	1 pm to 5 pm	
Sat	OFF	OFF	

Note: If Kelsey is eligible for OFLA/FMLA, she may take OFLA/FMLA intermittent leave for the doctor's appointments.



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Absences: OFLA sick child leave

Kelsey needs to stay home with her sick child

	At School District	In an architecture firm	Leave status
Sun	OFF	OFF	
Mon	Stay home	1 pm to 5 pm	If Kelsey only misses work from the School District to stay home to care for the child with a non-serious health condition she would be taking OFLA sick child leave only.
Tue	8 am to 12 pm	1 pm to 5 pm	
Wed	Stay home	1 pm to 5 pm	
Thu	8 am to 12 pm	1 pm to 5 pm	
Fri	Stay home	1 pm to 5 pm	
Sat	OFF	OFF	

Note: OFLA sick child leave is not a qualifying event under Paid Leave or FMLA.



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Chloe's case: Medical leave




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Chloe's case: Medical leave

Chloe has two part-time jobs and work four work days

			Leave Status
Sun	OFF	OFF	
Mon	8 am to 5 pm	At a school district	
Tue	8 am to 5 pm	At a school district	
Wed	10 am to 10 pm	Self-employed delivery driver	
Thu	OFF	OFF	
Fri	OFF	OFF	
Sat	10 am to 10 pm	Self-employed delivery driver	




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Missing work from all employment

Chloe applies for medical leave

			Leave Status
Sun	OFF	OFF	
Mon	Medical leave	From school district	Chloe must take leave for all four work days from both jobs in order to claim a full work week of benefits. www.illinois.gov/2023/04/20/2023-04-20-01
Tue	Medical leave	From school district	
Wed	Medical leave	From delivery work	
Thu	OFF	OFF	
Fri	OFF	OFF	
Sat	Medical leave	From delivery work	




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Intermittent medical leave

Chloe applies for medical leave


Sun	OFF	OFF	
Mon	Medical leave	From school district	If Chloe only missed work on Monday and Saturday due to medical leave, Chloe would qualify for benefits for two work days instead of a work week. www.illinois.gov/2023/04/20/2023-04-20-01
Tue	8 am to 5 pm	At a school district	
Wed	10 am to 10 pm	Self-employed delivery driver	
Thu	OFF	OFF	
Fri	OFF	OFF	
Sat	Medical leave	From delivery work	



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Tracking Intermittent Leave: Difference between Paid Leave and OFLA/FMLA

- An employee's claim for Paid Leave benefits is payable only when the employee takes leave in a daily or weekly increment.
- **What is the impact on leave tracking?**
- If the employee is eligible for OFLA or FMLA, and they only need a partial day absence, they may take OFLA or FMLA intermittent leave for the qualifying reason. The employer cannot track the partial-day absences as Paid Leave.



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District's policy: Intermittent Leave

Intermittent Leave
 With the exception of parental leave which must be taken in one continuous block of time, an eligible employee is permitted under FMLA and OFLA to take intermittent leave for any qualifying reason.
 Intermittent leave is taken in multiple blocks of time (i.e., hours, days, weeks, etc.) rather than in one continuous block of time and/or requires a modified or reduced work schedule.

When an employee is eligible for OFLA leave, but not FMLA leave, the employer:

1. May allow an exempt employee, as defined by state and federal law, with accrued paid time off to take OFLA leave in blocks of less than a full day, but;
2. May not reduce the salary of an employee who is taking intermittent leave when they do not have accrued paid leave available. To do so would result in the loss of exemption under state law.

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District's policy: Intermittent Leave

Intermittent Leave
 With the exception of parental leave which must be taken in one continuous block of time, an eligible employee is permitted under FMLA and OFLA to take intermittent leave for any qualifying reason.
 Intermittent leave is taken in multiple blocks of time (i.e., hours, days, weeks, etc.) rather than in one continuous block of time and/or requires a modified or reduced work schedule.

When an employee is eligible for OFLA leave, but not FMLA leave, the employer:

Be careful! Under PLO, OAR 471-070-1420(1) states, "A claimant may request family ... leave provided under ORS chapter 657B in either consecutive or intermittent periods of leave."

in the loss of exemption under state law.

366

A word about intermittent parental leave

- Regarding intermittent leave (either on a full-day or full-week basis) for bonding time, due to the eligibility status, there are SEVEN possibilities. We will examine each possibility in the following slides.



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#1. Intermittent Parental Leave: Paid Leave Only

- If an employee is only eligible for Paid Leave, for example, a new employee with fewer than 180 days of service, submits a claim for Paid Leave for bonding time and they want to work 3 full days/week and take 2 full days of Paid Leave/week, The employer is required to accept the schedule once the Paid Leave claim is approved by the Employment Department or the Paid Leave administrator for the employer's approved equivalent plan.
- OAR 471-070-1420(1) states, "A claimant may request family ... leave provided under ORS chapter 657B in either consecutive or intermittent periods of leave."



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PLO intermittent leave: 1 workday or 1 workweek increment

- [OAR 471-070-1420 \(2\)](#) states, "Leave may be taken, and benefits may be claimed in increments that are equivalent to one work day or one work week, as defined in OAR 471-070-1000. When claiming an increment of less than a full work week, the number of work days that can be reported during a week is established by the average number of work days worked per week by the claimant."
- OAR 471-070-1420 (3) states, "When benefits are claimed in an increment that is equivalent to one work day or one work week, leave must be taken from all employers and from all self-employed work for the entirety of that period to receive benefits."



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#2. Intermittent Parental Leave + OFLA

- If an employee is eligible for Paid Leave and OFLA, for example, a relatively new employee with more than 180 days but fewer than 365 days of service, submits a claim for Paid Leave for bonding time and they want to work 3 full days/week and take 2 full days of Paid Leave/week. The employer is required to accept the schedule once the Paid Leave claim is approved by the Employment Department or the Paid Leave administrator for your employer's approved equivalent plan.
- But, under OFLA, [OAR 839-009-0240\(8\)](#) states, "Unless the covered employer approves otherwise, parental leave shall be taken in one uninterrupted period, and shall be completed within 12 months of the birth, adoption or placement of the child." Now, the employer has a dilemma:
 - (a) If the employer has an operational need and does NOT offer interrupted periods of OFLA parental leave, i.e., intermittent periods of leave, the employer will deny their OFLA request but the Oregon Department or the employer's Paid Leave administrator will still approve the intermittent periods of Paid Leave, in effect, the employee will be entitled to take their 2 days off a week under PLO only. There is one consolation, i.e., in a PLO benefit year, the amount of leave that this employee may take is capped with 16 weeks of combined PLO and OFLA, with no more than 12 weeks as PLO.
 - (b) If the employer begrudgingly approves the intermittent PLO leave for bonding time and OFLA leave, they may be short-handed operationally.



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#3. Intermittent Parental Leave: OFLA only

- If an employee is eligible for OFLA only, for example, the employee does not apply for Paid Leave Oregon, or they have used 12 weeks of PLO's family leave already and they want to take four more weeks of OFLA parental leave within the PLO benefit year, only OFLA applies for these four weeks of leave.
- [OAR 839-009-0240\(8\)](#) states, "Unless the covered employer approves otherwise, parental leave shall be taken in one uninterrupted period, and shall be completed within 12 months of the birth, adoption or placement of the child." In this case, the employer will get to decide whether it wants to offer interrupted periods. If the employer does not offer four weeks of intermittent OFLA parental leave, the employee will still be able to take four consecutive weeks of OFLA leave in a block after they have exhausted 12 weeks of PLO.



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#4. Intermittent Parental Leave: OFLA/FMLA

- If an employee is eligible for OFLA and FMLA, for example, an employee opts NOT to apply for Paid Leave benefits via the Employment Department or the employer's Paid Leave administrator, the employer will get to decide whether it wants to offer interrupted periods because:
 - (a) Under OFLA, [OAR 839-009-0240\(8\)](#) states, "Unless the covered employer approves otherwise, parental leave shall be taken in one uninterrupted period, and shall be completed within 12 months of the birth, adoption or placement of the child."
 - (b) Under FMLA, [29 CFR 825.202\(c\)](#) states, "When leave is taken after the birth of a healthy child or placement of a healthy child for adoption or foster care, an employee may take leave intermittently or on a reduced leave schedule only if the employer agrees."



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#5. Intermittent Parental Leave: FMLA only

• If an employee is eligible for FMLA only, for example, an employee may have exhausted their PLO and OFLA prior to their 12 months of employment, when they reach their first employment anniversary, they may take FMLA only, or when they take PLO and OFLA leave they exercise their *Escriba* rights to affirmatively decline their FMLA leave, which leaves them with their FMLA entitlement untouched, and now they request FMLA leave only, the employer will get to decide whether it wants to offer interrupted periods because under FMLA, 29 CFR 825.202(c) states, "When leave is taken after the birth of a healthy child or placement of a healthy child for adoption or foster care, an employee may take leave intermittently or on a reduced leave schedule only if the employer agrees."



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#6. Intermittent Parental Leave: FMLA and Paid Leave

• If an employee is eligible for Paid Leave and FMLA, for example, an employee who has exhausted a combined total of 12 weeks of OFLA leave for OFLA sick child leave, bereavement leave or Oregon military family leave prior to taking intermittent parental leave, the employer will be required to accept the intermittent schedule once the Paid Leave claim is approved by the Employment Department or the Paid Leave administrator for your employer's equivalent plan. OAR 471-070-1420(1) states, "A claimant may request family ... leave provided under ORS chapter 657B in either consecutive or intermittent periods of leave." But, under FMLA, 29 CFR 825.202(c) states, "When leave is taken after the birth of a healthy child or placement of a healthy child for adoption or foster care, an employee may take leave intermittently or on a reduced leave schedule only if the employer agrees." Now, the employer has a dilemma:
• (a) If they employer has an operational need and does NOT offer interrupted periods of FMLA parental leave, i.e., intermittent periods of leave, the employer will deny their FMLA request but the Oregon Employment Department or the employer's Paid Leave administrator will still approve the intermittent periods of Paid Leave. In effect, the employee will be entitled to take their intermittent days off under PLO and the employee will preserve their entire 12 weeks of FMLA leave to be used after their PLO is exhausted.
• (b) If the employer begrudgingly approves the intermittent PLO leave for bonding time and FMLA leave, they may be short-handed operationally.



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#7. Intermittent Parental Leave when FMLA, Paid Leave and OFLA apply

If an employee applies for and is approved by the Oregon Employment Department or the employer's Paid Leave administrator for their equivalent plan for intermittent bonding time, the employer will not be able to deny the request.


- If the employer does not approve intermittent FMLA/OFLA parental leave:
 - (a) the employee will be able to preserve their 12 weeks of FMLA entitlement; and
 - (b) the employee will only get four more weeks OFLA leave in the PLO benefit year.
- If the employer begrudgingly approves the intermittent leave for bonding time and FMLA/OFLA leave concurrently, they may be short-handed operationally.



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Group Discussion


- Can an employee get partial leave – what if they want to work just 3 full days/week for the first year after a kid is born/adopted – can they apply for and receive 2 full days/week Paid Leave for a year?



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Group Discussion


- An employee has a new baby and wants to take intermittent leave to spend more time with them. They want to take off every Friday and Monday (so they have a four-day weekend) for 6 months. Their supervisor says that's not fair to the other employees in the department – because it makes the operation short-staffed on those days and makes it impossible for other people to take off Mondays or Fridays. The supervisor says the employee can take two days a week off, but they can't always be Mondays and Fridays. Does the district have the right to make this demand, or can the employee choose whatever days they want to take off intermittently?



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Wage and Hour considerations for granting intermittent parental leave

Intermittent leave with partial day absences			
	FMLA only	OFLA only	FMLA and OFLA
Hourly employees	Pay an hourly employee on intermittent parental leave based on the number of hours worked		
Salaried exempt employees	Deduction of salary is allowed	Deduction of salary is NOT allowed	Deduction of salary is allowed
	29 CFR §825.206(a); 29 CFR §541.602(b)(7)	OAR 839-009-0240(14)(a) OAR 839-020-0004(30)	OAR 839-009-0240(14)(b)




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Wage and Hour considerations for granting intermittent parental leave

Intermittent leave with full day or entire week absences


Hourly employees	Pay an hourly employee on intermittent parental leave based on the number of hours worked
Salaried exempt employees	<ol style="list-style-type: none"> 1. Deduction of salary is allowed for full day absences for personal reasons or due to illness or injury. 2. No salary payment is required when an employee does not work for an entire week.



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V. PROPER UTILIZATION OF ACCRUED TIME



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Estimating Paid Leave Benefits

65% + 50% = Your approximate weekly benefit amount

You get 65% of the State Average Weekly Wage (SAWW) plus 50% of your wages that exceed that amount (\$1,269.69) in your base year

Many employees do not receive 100% income replacement when they take Paid Leave.



* Through the summer of 2023 – summer of 2024

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Use of Sick Time (or PTO) to “top-up” Paid Leave Benefits (DRAFT)

OREGON LABOR & INDUSTRIES

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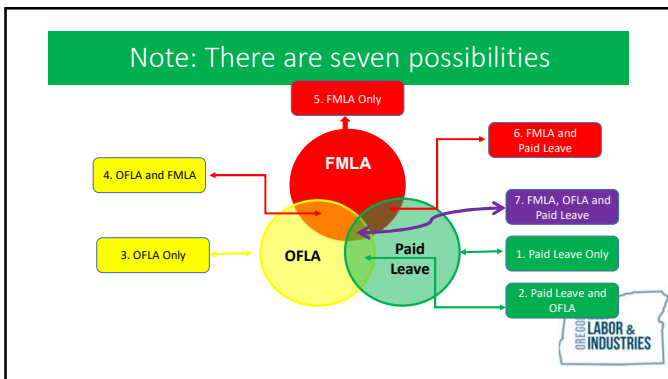
Sick time and qualifying reasons

- There are about 18 [permissible uses](#) for Oregon sick time.
- Some permissible uses are identical to the qualifying reasons to take Paid Leave.
- Regardless of the qualifying reason for leave under PLO, an employee may use accrued Oregon sick time (or PTO under a substantially equivalent plan) in addition to their PLO benefits or “top-up” their PLO benefits.



OREGON LABOR & INDUSTRIES

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Use of accrued time matrix			
Type of leave	FMLA	OFLA	Paid Leave
1. Paid Leave only			<p>Employer may permit an employee who requests to use accrued time to "top-off" their Paid Leave benefits.</p> <p>Employer may NOT require an employee to do so if they do not request it.</p> <p>ORS 657B.030(2)</p>

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Use of accrued time matrix			
Type of leave	FMLA	OFLA	Paid Leave
2. Paid Leave and OFLA leave			<p>If an employee asks to use their accrued time to "top-off" their paid leave benefits they are entitled to do so.</p> <p>If they do not ask for it, employer may not require the employees to "top-off" their Paid Leave benefits with their accrued time.</p> <p>See 4-7-2023 BOLI opinion letter</p>

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Use of accrued time matrix			
Type of leave	FMLA	OFLA	Paid Leave
3. OFLA leave only			<p>The employee is entitled to use their accrued time when they are on OFLA leave.</p> <p>If they do not ask for it the employer may require them to do so.</p> <p>OAR 839-009-0280</p>

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Use of accrued time matrix

Type of leave	FMLA	OFLA	Paid Leave
4. OFLA and FMLA leave	The employee is entitled to use their accrued time when they are on unpaid OFLA/FMLA leave. If the employee does not request to use their accrued time the employer may require them to do so with the proper notices. 29 CFR 825.207 ; OAR 839-009-0280		

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Use of accrued time matrix

Type of leave	FMLA	OFLA	Paid Leave
5. FMLA only	When an employee is on unpaid FMLA leave, if they meet the employer's requirements to use accrued time, they may do so. If the employee does not ask for it, the employer may require them to do so with the proper notice. 29 CFR 825.207		

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Use of accrued time matrix

Type of leave	FMLA	OFLA	Paid Leave
6. FMLA and Paid Leave			Check with your employer's lawyer. See PLO Fact Sheet

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Use of accrued time matrix

Type of leave	FMLA	OFLA	Paid Leave
7. FMLA, OFLA and Paid Leave			Check with your employer's lawyer.
			See PLO Fact Sheet



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One more thing: SB 913 on the use of accrued time

Senate Bill 913

Sponsored by COMMITTEE ON LABOR AND BUSINESS (at the request of Employment Department)

CHAPTER _____

AN ACT

Relating to the family and medical leave insurance program; creating new provisions; amending ORS 183.471, 305.410, 657B.010, 657B.015, 657B.030, 657B.090, 657B.150, 657B.175, 657B.210, 657B.400, 657B.410 and 657B.420 and section 12, chapter 120, Oregon Laws 2023 (Enrolled Senate Bill 913); and prescribing an effective date.

Be It Enacted by the People of the State of Oregon:

SECTION 1. Section 2 of this 2023 Act is added to and made a part of ORS chapter 657B.

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SB 913 Section 14:
Use "all or a portion of" accrued time

SECTION 14. ORS 657B.030 is amended to read:

657B.030. (1) Family and medical leave insurance benefits are in addition to any paid sick time under ORS 653.606, vacation leave or other paid leave earned by an employee.

(2) An employer may permit an employee to use **all or a portion of** paid sick time, vacation leave or any other paid leave earned by the employee in addition to receiving paid family and medical leave insurance benefits (to replace an employee's wages up to 100 percent of the eligible employee's average weekly wage) during a period of leave taken for family leave, medical leave or safe leave.

(3) In any week in which an employee is eligible to receive workers' compensation or unemployment benefits under ORS chapter 656 or 657, the employee is disqualified from receiving family and medical leave insurance benefits.

SECTION 15. ORS 305.410 is amended to read:

305.410. (1) Subject only to the provisions of ORS 305.445 relating to judicial review by the Supreme Court and to subsection (2) of this section, the tax court shall be the sole, exclusive and final judicial authority for the hearing and determination of all questions of law and fact arising under the tax laws of this state. For the purposes of this section, and except to the extent that they preclude the imposition of other taxes, the following are not tax laws of this state:

(a) ORS chapter 577 relating to Oregon Beef Council contributions.

(b) ORS 576.051 to 576.455 relating to commodity commission assessments.

(c) ORS chapter 477 relating to fire protection assessments.

(d) ORS chapters 731, 732, 733, 734, 737, 742, 743, 745A, 745B, 744, 746, 748 and 750 relating to

393

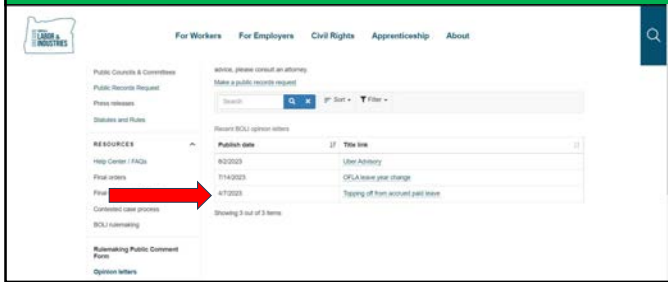
How much should the "top-up" amount be?

As of 9-14-23, we are waiting for legal guidance



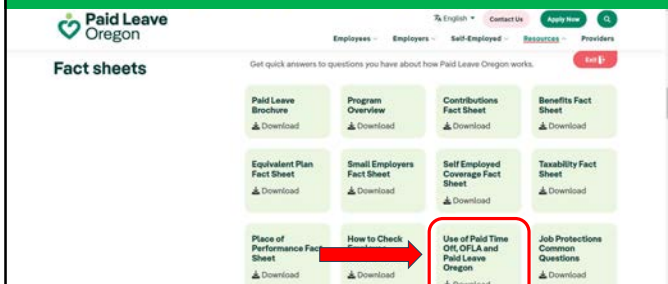
394

4/7/2023 BOLI Opinion letter: Topping off from accrued paid leave



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Paid Leave Fact Sheet: Use of Paid Time Off, OFLA and Paid Leave Oregon



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Use of accrued paid leave does not include use of "Paid Leave"

Under OFLA employees are entitled to use any accrued paid leave during a period of leave. At the same time, an employer may *require* an employee to use available paid leave during OFLA leave, and *may dictate the order* in which any paid leave banks used so long as the practice is consistent with any collective bargaining agreement (or other written agreement between the eligible employee and the covered employer) or the employer's policy, and if:

- Prior to the commencement of OFLA leave, the employer provides written notice to the employee that accrued paid leave is to be used during OFLA leave; or

* "Paid Leave" here refers to an employer-offered benefit as opposed to wage replacement benefits available under Paid Leave Oregon.


See footnote #8 on page 100 of the current edition of BOLI's Leave Laws Handbook

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Group Discussion


- An employee has some vacation leave, some sick leave, do they get this on top of the Paid Leave benefits? Does this give the employee additional days of leave with pay?



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VI. EFFECTS ON PAY AND BENEFITS



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PAID LEAVE OREGON'S DASHBOARD

PAID LEAVE OREGON			
For the week of September 1 - September 8, 2023			
3,890	1,679	\$0	11,435
Applications Received	Applications Approved	Benefits Paid	Applications Currently in Progress
0:02:14		5,781	
Average Call Wait Time		Call Volume	
14,460		80	
Applications Received		Benefits paid	

*Seasonally Adjusted
**Phone Jan '21 of current year through report date
††††† Jan-Mar '22 - Apr-Jun '22 - July-Aug '24 - Sep '26
††††† State Average Weekly Wage from Statistics Oregon and the nonprofit National Labor Exchange (NLE)
*Initial claim applications filed online or by telephone processed or not, not including additional or resumed claims

Media Contacts

General Employment Department Inquiries:
 Rebecca Depoun-King, Communications Director
rebecca.king@oregon.gov

Source:
<https://www.oregon.gov/employ/Agency/Pages/News-and-Media.aspx>

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Estimating Paid Leave Benefits

65% + 50% =

Your approximate weekly benefit amount

You get 65% of the State Average Weekly Wage (SAWW) plus 50% of your wages that exceed that amount (\$1,224.82*) in your base year

Many employees do not receive 100% income replacement when they take Paid Leave.

*Through the summer of 2023

401

Interface between your employer and Oregon Employment Department

- I don't know how long it will take the Oregon Employment Department to process the Paid Leave claims or how long it will take them to notify your employer and the claimant of their determination on a claimant's Paid Leave claim application.

402

Approved Equivalent Plan Requirements

- An employer with an approved equivalent plan, the employer or administrator must make all reasonable efforts to make a decision on whether to allow the claim and issue the first payment of any benefits to an employee *within two weeks after receiving the claim or the start of leave, whichever is later*. Subsequent benefit payments must be provided weekly by the fully insured equivalent plan and benefit payments may be paid according to the existing paycheck schedule for employees under an employer administered equivalent plan.
- [OAR 471-070-2220\(14\)](#)



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Interface between your employer and the equivalent plan administrator

- If your employer has an approved equivalent plant, you may want to review the insurance contract that your employer has purchased to see how long it will take the insurance company to notify your employer and the employee of their determination on an employee's Paid Leave claim application.



404

Effect on an employee's pay when they take PLO

- The effect on an employee's pay will depend on the timeliness of claim processing and your employer's pay cycle.



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While the employee is waiting....

- While an employee is waiting for the Paid Leave benefit checks and if they are eligible for OFLA or FMLA, and your district **REQUIRES** the employee on OFLA / FMLA leave to use their accrued PTO, you may follow the district's policy until the PLO benefit claim is approved. After which you may have to go back to tell the employee about the use of accrued paid sick time or PTO and offer them the opportunity to return their money.



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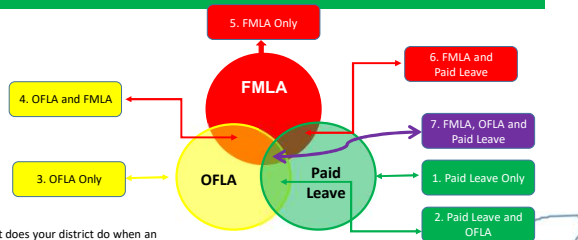
While the employee is waiting...

- While an employee, who has applied for Paid Leave benefit, is waiting for the Paid Leave benefit check to be directly deposited into their checking or saving account they may ask the employer to access their accrued paid sick time or PTO.



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Remember the "Use of Accrued Time" matrix



What does your district do when an employee is granted Paid Leave benefits?



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SHORT-TERM DISABILITY INSURANCE: oebb

Short-Term Disability (STD) and Long-Term Disability (LTD) Plans

We're aligning our disability plan offerings with the new state leave program, **Paid Leave Oregon**. This program is offered to all Oregon workers. (However, your employer may have chosen to offer an equivalent plan instead of Paid Leave Oregon.) This alignment means:

- Some STD and LTD plan options will be the same.
- Some new STD and LTD plan options will be available.
- Some STD and LTD plan options will no longer be offered.

If you're enrolled in a plan that's no longer offered, you may need to enroll during



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OREGON EDUCATORS BENEFIT

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Continuation of insurance benefits

FMLA	OFLA	Paid Leave
During any FMLA leave, OFLA leave or Paid Leave, an employer must maintain the employee's coverage under any group health plan on the same conditions as coverage would have been provided if the employee had been continuously employed during the entire leave period.		
OAR 839-009-0270(6)	29 CFR §825.209(a)	ORS 657B.060(2); OAR 471-070-1330(7)

411

FMLA/OFLA:
Employer's option when employee fails to pay

EE cannot or will not pay their share of the premiums


ER may elect to discontinue EE's insurance coverage following proper notice

Caution: EE must be allowed to re-enroll without delay upon reinstatement

ER may pay EE's share of premiums

ER may deduct up to 10% EE's gross pay after reinstatement for repayment


OFLA and FMLA:
[OAR 839-009-0270\(6\)\(c\)](#);
 29 CFR §§[825.212](#); [825.213](#)



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Paid Leave:
Employer's option when employee fails to pay


- If the employer pays (directly or indirectly, voluntarily or as required by state or federal statute) any part of the employee's share of health or other insurance premium while an employee is on PFMLI leave, the employer may deduct from their pay the employee's share of health or other insurance premiums paid by the employer until the amount is repaid. The employer may deduct up to 10 percent of the employee's gross pay each pay period after the employee returns to work until the health or other insurance premium amounts paid by the employer are repaid.. [OAR 471-070-1330\(7\)\(c\)](#)



416

Coverage lapses, guaranteed re-enrollment

FMLA	OFLA	Paid Leave
If coverage lapses because an employee has not made required premium payments, upon the employee's return from FMLA leave the employer must still restore the employee to coverage/benefits equivalent to those the employee would have had if leave had not been taken and the premium payment(s) had not been missed, including family or dependent coverage.	If coverage lapses because an employee has not made required premium payments, upon the employee's return from OFLA leave the employer must still restore the employee to coverage/benefits equivalent to those the employee would have had if leave had not been taken and the premium payment(s) had not been missed, including family or dependent coverage.	If coverage lapses because an employee has not made required premium payments, upon the employee's return from PFMLI leave the employer must restore the employee to coverage/benefits equivalent to those the employee would have had if leave had not been taken and the premium payment(s) had not been missed, including family or dependent coverage.
29 CFR 825.212(c)	OAR 839-009-0270(6)(b)	OAR 471-070-1330(7)(b)



417

Waiting period

- What is the waiting period for group OEGB health insurance coverage?



0
DAYS






418

New employee is on Paid Leave, what happens to their OEGB benefits

- ORS 657B.060(2) states, "During a period in which an eligible employee takes leave described under subsection (1) of this section, the employer shall maintain any health care benefits the employee had prior to taking such leave for the duration of the leave, as if the employee had continued in employment continuously during the period of leave."
- But, ORS 657B.060(7) states, "The protections provided under this section apply only to an eligible employee who was employed by the employer for at least 90 days before taking leave described under subsection (1) of this section."




419

Monthly insurance premium subsidy when a new employee is on Paid Leave

What does your district do?

Moda Health 2023-24 Plan Year
Plans and Monthly Rates
(Effective October 1, 2023)



OEGB Plan	Medical & Pharmacy				Composite Rated Groups
	Employee Only	Employee + Spouse or Domestic Partner	Employee + Child(ren)	Employee + Spouse or Domestic Partner + Child(ren)	
Moda Medical Plan 1	\$717.25	\$1,687.83	\$1,457.80	\$2,378.52	\$1,626.03
Moda Medical Plan 2	\$711.74	\$1,565.82	\$1,262.33	\$2,266.43	\$1,603.92
Moda Medical Plan 3	\$667.73	\$1,489.03	\$1,268.73	\$2,270.03	\$1,599.00
Moda Medical Plan 4	\$630.50	\$1,387.10	\$1,197.96	\$1,854.59	\$1,500.59
Moda Medical Plan 5	\$554.42	\$1,251.38	\$1,109.64	\$1,859.71	\$1,380.16
Moda Medical Plan 6*	\$554.09	\$1,307.51	\$1,128.81	\$1,841.73	\$1,413.84
Moda Medical Plan 7*	\$554.47	\$1,219.82	\$1,053.02	\$1,718.89	\$1,319.82

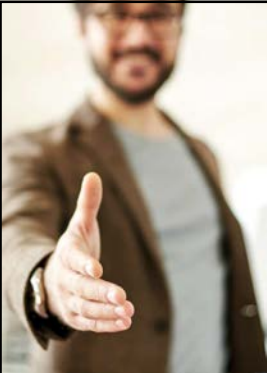
* This plan MAY be paired with an HSA (Health Savings Account), but the HSA is not required. Pharmacy is included in this plan as any other covered medical expense. RRs are applied to the deductible. Once the deductible is met RRs are paid at the same level as other covered medical expenses.

OEGB Plan	Vision		Composite Rated Groups
	Tier-Rated Groups		


420

Accruals of "paid leave"		
FMLA	OFLA	Paid Leave
An employee's entitlement to benefits other than group health benefits during a period of FMLA leave (e.g., holiday pay) is to be determined by the employer's established policy for providing such benefits when the employee is on other forms of leave (paid or unpaid, as appropriate).	Unless the terms of a collective bargaining agreement, other agreement or the employer's policy provide otherwise: An employee on OFLA leave does not accrue seniority, production bonuses or other non-health-related benefits that would accrue while the employee is working.	Unless the terms of a collective bargaining agreement, other employment agreement, or the employer's policy provides otherwise, an employee on PFMLI leave is not entitled to accrue employment benefits during a period of leave. Employment benefits include but are not limited to: accrual of seniority, production bonuses, or other non-health-care-related benefits that would have accrued if the employee was working.
29 CFR 825.209(h)	OAR 839-009-0270(5)(a)	OAR 471-070-1330(6)(a)

421




VII. REINSTATEMENT UPON RETURN FROM LEAVE

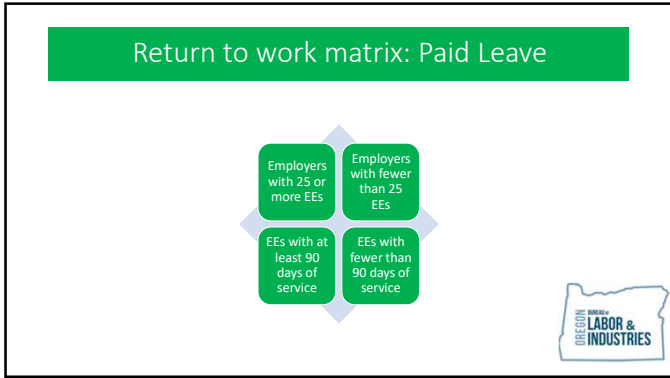


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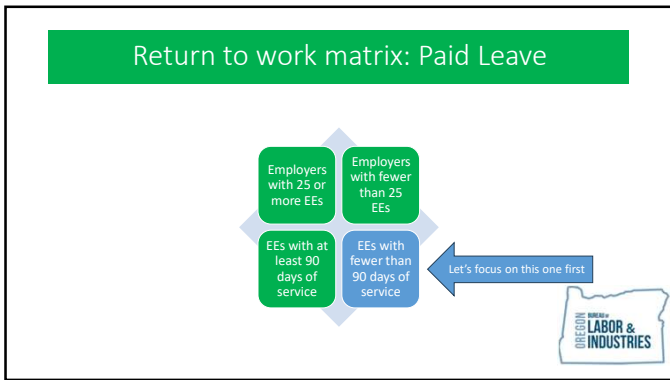
Job Security for Employees after their leave		
FMLA	OFLA	Paid Leave
You know: Former position Or equivalent position	You know: Former position	The following discussion: Focuses on Paid Leave and the collateral issues



423



424



425

Employees with fewer than 90 days of service

FMLA	OFLA	PAID LEAVE
FMLA does not apply because the employee, who takes Paid Leave in this case, does not have one year of service.	OFLA does not apply because the employee, who takes Paid Leave in this case, does not have 180 days of service.	No job security because the employee, who takes Paid Leave has fewer than 90 days of service.
		Be cautious!

426

Employees with fewer than 90 days of service

- The job protections provided under Paid Leave Oregon apply only to an eligible employee who was employed by the district for at least 90 consecutive calendar days prior to taking Paid Family and Medical Leave Insurance (PFMLI) leave. 90 consecutive calendar days include the days the employee is not scheduled to work but is still employed with the employer.
- [OAR 471-070-1330\(1\)](#); [ORS 657B.060\(7\)](#)



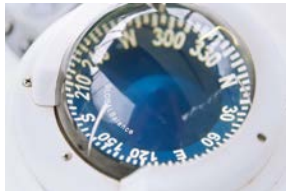
427

Caution: Don't just look at Paid Leave

Don't suffer from tunnel vision



Take a 360° look



428

Example (1): Pregnancy-related conditions

- An eligible employee, who is employed by the employer for fewer than 90 consecutive calendar days prior to taking Paid Leave for a reason related to pregnancy, may not have reinstatement rights under Paid Leave Oregon but the employer may want to review the job protections under the [pregnancy accommodations at work](#).



429

Example (2): Family leave + leave for pregnancy-related conditions

- An eligible employee, who is employed by the employer for fewer than 90 consecutive calendar days prior to taking family leave to care for a newborn and leave for pregnancy-related conditions, may not have reinstatement rights under Paid Leave Oregon, but the HR department may want to review the employee's [eligibility](#) and [job protections](#) under the OFLA.
- Potential scenario: An employee who takes 14 weeks of Paid Leave beginning in the latter part of the first 90 days of employment, chronologically, it is possible that the employee may meet the [length of service](#) requirement under OFLA (180 days of employment). If so, they may commence OFLA [parental leave](#), up to 4 weeks in a benefit year, which will provide job protections.
- Remember: To be eligible for OFLA parental leave, employee must be employed by the employer for 180 calendar days.



430

Example (3): Medical leave

- An eligible employee, who is employed by the employer for fewer than 90 consecutive calendar days prior to taking medical leave due to their own serious health condition, may not have reinstatement rights under Paid Leave Oregon, but the HR department may want to review the employee's [Disability Rights](#) under the Americans with Disabilities Act (ADA) and the Oregon version of the ADA. If the employer can provide the leave of absence as a reasonable accommodation without creating an undue hardship for the business operation, the employee will be entitled to job protection.



431

Example (4): Safe leave

- An eligible employee who is employed by the employer for fewer than 90 consecutive calendar days prior to taking safe leave for a reason related to domestic violence, may not have reinstatement rights under Paid Leave Oregon, but the HR department may want to review the [protected leave](#) and the [reasonable safety accommodations](#) for victims of domestic violence, sexual assault, harassment or stalking. If the leave does not create an undue hardship for the business operation, the employee will have reinstatement rights.



432

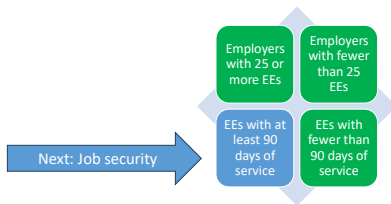
Example (5) : Employee is permitted to use paid sick time to “top-up” Paid Leave benefits

• An eligible employee, who was employed by the employer for fewer than 90 consecutive calendar days prior to taking Paid Leave Oregon, may not have reinstatement rights. (A) Some employers frontload up to 40 hours of paid sick time to a new employee, and also waive the 90-day eligibility period for using sick time. (B) An employee, who is reemployed within 180 days of separation of employment, has access to their previously accrued unused sick time. Some employers permit their employees to use accrued paid sick time to “top-up” their Paid Leave benefits. If so, the employer may want to review the provision for [job protections](#) when an employee uses Oregon paid sick time.



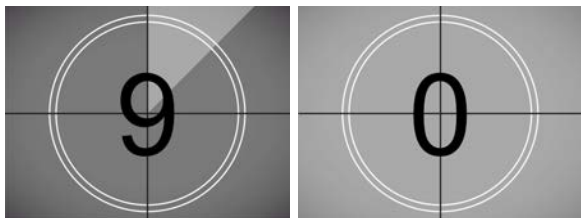
433

Return to work matrix: Paid Leave



434

Employees with 90 or 90+ days of service



435

Former position, please

- An employer must restore an employee returning from PFMLI leave to the employee's former position, if the position still exists, even if the former position has been filled by a replacement worker during the employee's PFMLI leave. The employee's former position is the position held by the employee at the time PFMLI leave commenced, regardless of whether the job has been renamed or reclassified. (For example, a delivery driver must be returned to the same route, at the same rate of pay and benefits, driving the same type of truck, delivering the same type of goods, on the same shift, and working from the same location as when the driver started PFMLI leave.)
- [OAR 471-070-1330\(2\)](#); [ORS 657B.060\(1\)\(a\)](#)



436

Timing of reinstatement, if return earlier

- For the purposes of returning to work following Paid Leave, any worker hired or reassigned during an eligible employee's leave to perform the same work in the same position that the eligible employee held before the leave was taken is a replacement worker. If the eligible employee on PFMLI leave notifies the employer that **they are ready to return to work earlier than anticipated**, the employer must give the eligible employee the opportunity to work any hours that the replacement worker would otherwise have been scheduled to work beginning on the **second business day** following the date the eligible employee notified the employer they were ready to end their leave and return to work.
- [OAR 471-070-1330\(3\)](#)



437

Point of No Return

- Notwithstanding section (2) of this rule, an employee is not entitled to return to the former position if the employee would have been terminated or reassigned from their current position to another position if PFMLI leave had not been taken.
- [OAR 471-070-1330\(4\)](#)
- For example, a funder may not continue to support a school program. The program is discontinued and all the program staff members are terminated.



438

Position has been eliminated: Paid Leave

- If the position held by the employee at the time PFML leave began has been eliminated, and not merely renamed or reclassified, then:

```

    graph TD
      A[Position has been eliminated] --> B[The employer is a large employer]
      A --> C[The employer is a small employer]
  
```

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439

Return to work matrix: Paid Leave

Next: Let's focus on the small employers

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440

Small employer's obligations when former position no longer exists

- For employers that employ fewer than 25 employees, if the position held by an eligible employee when the employee's leave commenced no longer exists, an employer **may**, at the employer's discretion based on business necessity, restore the eligible employee to a different position with similar job duties and with the same employment benefits and pay.

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441

Return to work matrix: Paid Leave

Next: Job security

Employers with 25 or more EEs

Employers with fewer than 25 EEs

EEs with at least 90 days of service

EEs with fewer than 90 days of service

442

Large employer's obligations

- Subject to section (6)(d) of this rule, if the position held by the employee at the time PFMLI leave began has been eliminated, and not merely renamed or reclassified, then:
 - (a) If the employer is a large employer as defined in OAR 471-070-3150, the employer must restore the employee to any available, equivalent position for which the employee is qualified, within a 50 mile radius of the employee's former job site.
 - (A) An available position is a position that is vacant or not permanently filled.
 - (B) An equivalent position is a position that is virtually identical to the employee's former position in as many aspects as possible in terms of employment benefits and pay, and similar working conditions, including privileges, perks, and status. It must involve substantially the same or similar duties and responsibilities, which must entail equivalent skill, effort, responsibility, and authority.
 - (C) If an equivalent position is available at multiple job sites, and the employee is not able to return to the employee's former position because it no longer exists, the employer shall first offer the employee the position at the job site closest to the employee's former job site.
- OAR 471-070-1330(5)(a)

443

No accrual of certain benefits: Paid Leave

- Unless the terms of a collective bargaining agreement, other employment agreement, or the employer's policy provides otherwise, an employee on PFMLI leave is not entitled to accrue employment benefits during a period of leave. Employment benefits include but are not limited to:
 - accrual of seniority,
 - production bonuses, or
 - other non-health-care-related benefits that would have accrued if the employee was working.
- OAR 471-070-1330(6)(a)

444

Prompt restoration of employment benefits upon reinstatement

- Benefits an employee was entitled to and that accrued prior to starting PFMLI leave, including, but not limited to seniority or pension rights, must be restored in full upon the employee's return to work. The benefits do not have to be restored if such benefits have been eliminated or changed for all similarly situated employees.
- [OAR 471-070-1330\(6\)\(b\)](#)



445

On the other hand, employee has no greater rights

FMLA	OFLA	Paid Leave
<p>An employee has no greater right to reinstatement or to other benefits and conditions of employment than if the employee had been continuously employed during the FMLA leave period. An employer must be able to show that an employee would not otherwise have been employed at the time reinstatement is requested in order to deny restoration to employment,</p>	<p>Unless the terms of a collective bargaining agreement, other agreement or the employer's policy provide otherwise:</p> <ul style="list-style-type: none"> • An employee has no greater right to a job or other employment benefits than if the employee had not taken OFLA leave; and • An employee is subject to layoff the same as similarly situated employees not taking OFLA leave. 	<p>An employee is not entitled to a right, benefit, or position of employment other than a right, benefit, or position to which the employee would have been entitled to if the employee had not taken PFMLI leave; and</p> <p>An employee is subject to layoff on the same terms or under the same conditions as similarly situated employees who have not taken PFMLI leave.</p>
<p>29 CFR §825.216(a)</p>	<p>OAR 839-009-0270(3) and OAR 839-009-0270(5)(c), (d)</p>	<p>OAR 471-070-1330(6)(c), (d)</p>



446

Issues specific to public school teachers



447

**For example – District policy:
Special rules for instructional employees**

transfer does not result in a reduced schedule, time worked in any such alternate position shall not be considered for the purpose of FMLA and/or OFLA leave. An employee working in an alternate position retains the right to return to the employee's original position unless all FMLA and/or OFLA leave 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, "school employee" means those whose principal function is to teach and instruct students in a class, a small group or an individual settlement. Athletic coaches, driving instructors and special education assistants,


10

448

Special rules for instructional employees

- In a school setting, the absences of an instructional employee could interrupt the routine in a classroom and/or the continuity of the students' learning.
- Some special rules are in place under FMLA and OFLA that allow the district, in some cases, to excuse the instructional employee for a longer period of time than what they need for FMLA or OFLA leave.
- [OAR 839-009-0290](#)
- [29 CFR §§825.600 – 825.604](#)

How often does your district activate these special rules for teachers?



449

Additional leave will not be counted against the employee's FMLA or OFLA entitlement

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

Paid/Unpaid Leave
FMLA and OFLA do not require the district to pay an eligible employee who is on a qualified leave. Subject to any related provisions in any applicable collective bargaining agreement, the district requires the eligible employee to use any available accrued sick leave, 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.


The district will notify the eligible employee that the requested leave has been

450

The catch Paid Leave Oregon does not have special rules for teachers

- If an instructional employee is only eligible for Paid Leave Oregon, there are no special rules for teachers under Paid Leave Oregon.
- Paid Leave Oregon has job protections and the district must permit the employee to return.
- If we hear differently we'll let you know.


Is it time to call OSBA to lobby the legislature?



451

The catch Paid Leave Oregon does not have special rules for teachers


- If an instructional employee is eligible for Paid Leave Oregon, OFLA, and FMLA, and the district does require an instructional employee to remain on leave beyond what Paid Leave Oregon would approve for benefits:
 - The instructional employee may accept the district's offer to remain on leave prescribed under FMLA/OFLA special rules, but when they find out that they will not receive any cash benefit payments from Paid Leave Oregon because they are taking leave beyond what the doctor certifies or what they actually need, they may demand reinstatement under Paid Leave Oregon, then what?
 - I would assume Paid Leave Oregon is the more beneficial statute for employees in permitting the employee to return.



452

If an instructional employee is eligible for FMLA

- If State law prohibits mandatory leave beyond the actual period of *pregnancy disability*, an instructional employee of an educational agency subject to special FMLA rules may not be required to remain on leave until the end of the academic term, as permitted by FMLA under certain circumstances. See Subpart F of this part.
- [29 CFR 825.701\(a\)\(4\)](#)



453

If an instructional employee is eligible for FMLA

- Nothing in FMLA supersedes any provision of State or local law that provides greater family or medical leave rights than those provided by FMLA.
- [29 CFR 825.701\(a\)](#)



454



Alternate Work Assignment



455

**For example – district’s policy:
Alternate work assignments**

Alternate Work Assignment

The district may transfer an employee recovering from a serious health condition to an alternate position which accommodates the serious health condition provided:

1. The employee accepts the position voluntarily and without coercion;
2. The transfer is temporary, lasts no longer than necessary and has equivalent pay and benefits;
3. The transfer is compliant with any applicable collective bargaining agreement;
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

456

Paid Leave: Alternate work assignments

- Paid Leave Oregon does not have any provisions to transfer an employee on Paid Leave to alternate work assignments.
- An employee is either approved or denied Paid Leave benefits.
- If an employee's claim is approved, when the employee is ready to return from Paid Leave, they have job security and are returned to their former position. They may ask for reasonable accommodation due to some medical issues that make them a person with disabilities. If so, the district will initiate an interactive process to see if the district could provide a reasonable accommodation.



457



VIII. EXTENDED LEAVE



458

An employee has a serious health condition



They do not apply for Paid Leave and they affirmative decline to use FMLA.



459

Taking OFLA Leave but affirmatively declining to use FMLA may extend the amount of leave

2 ESCRIBA V. FOSTER POULTRY FARMS

SUMMARY**

Labor Law

The panel affirmed the district court’s judgment, after a jury trial, in favor of the defendant in an action under the Family and Medical Leave Act and its California equivalent.

460

Horizontal lines for notes.

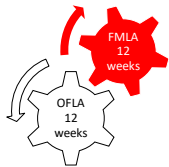
U.S. 9th Circuit Court of Appeals

The panel held that the district court did not err in denying the plaintiff’s motion for summary judgment because an employee can affirmatively decline to use FMLA leave, even if the underlying reason for seeking leave would have invoked FMLA protection. The panel held that the district court did not err in denying the plaintiff’s motion for judgment as a matter of law because, viewing the evidence in the light most favorable to the jury’s verdict, there was substantial evidence that the plaintiff elected not to take FMLA leave. In addition, the district court did not err in admitting evidence about the plaintiff’s prior FMLA leave.

461

Horizontal lines for notes.

An employee has a serious health condition



After 12 weeks of OFLA, they still have a serious health condition. They then apply for FMLA leave without applying for Paid Leave.



462

Horizontal lines for notes.

An employee has a serious health condition



After 12 weeks of FMLA, they still have a serious health condition. They then apply for Paid Leave benefits.



463

Extended leave: Paid Leave + OFLA

- Notwithstanding ORS 657B.025 and except as provided under subsection (3) of this section, a covered individual who has taken any amount of paid leave available under subsection (1) of this section may take a total of 16 weeks of leave in the benefit year in any combination of the paid leave available under subsection (1) of this section, not to exceed 12 weeks, and unpaid leave under ORS 659A.159 for which the covered individual is eligible under ORS 659A.156. The leave may be taken for any purpose for which leave is allowable under the respective leave programs.

[ORS 657B.020\(2\)](#)



464

Employee's OFLA eligibility

- An employee who has previously qualified for and taken some portion of OFLA leave must requalify as an "eligible employee" as defined in OAR 839-009-0210 each time the employee begins additional OFLA leave within the same leave year. Exceptions:
 - (a) An employee who has been granted OFLA leave for a qualifying serious health condition of the employee ... need not requalify under OAR 839-009-0210 each time the employee takes leave for the same individual and the same serious health condition during the same leave year. OAR 839-009-0240(13)



465

An employee has a serious health condition

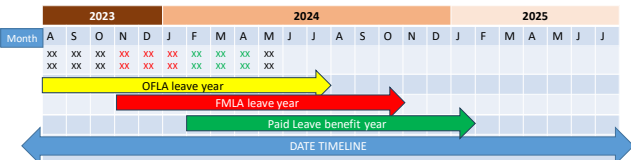


After 12 weeks of medical leave, they still have a serious health condition. They then request four more weeks of OFLA within the same Paid Leave benefit year.



466

An employee with a serious health condition

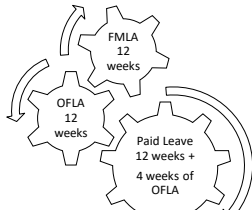


Each (X) represents one week of leave. They may take up to 40 weeks off.



467

Now, the employee has a disability



After 40 weeks of leave, they still have a serious health condition. They then request a leave of absence as a reasonable accommodation.



468

Reasonable accommodation?

- If they are still unable to work after 40 weeks off, they may request additional leave of absence. Can your school district reasonably accommodate this employee's request without creating an undue hardship on the operation?



469

Group Discussion

- Can an application for Paid Leave be rejected by HR? Or only by the Oregon Employment Department (or the equivalent plan administrator)?
- If the district thinks the employee is not really sick, or doesn't really need to be on leave, can HR challenge the employee's medical documentation by bringing in their own doctor and making the employee get examined by the district's doctor?



470

Extended leave for pregnancy-related conditions

- In addition to the leave available under subsections (1) and (2) of this section, a covered individual may qualify for up to *two additional weeks* of benefits for limitations related to pregnancy, childbirth or a related medical condition, including but not limited to lactation, for a total amount of leave under this subsection and subsections (1) and (2) of this section, not to exceed 18 weeks per benefit year. [ORS 657B.020\(3\)](#).




471

Protections for domestic violence survivors

An employee may have exhausted their 12 weeks of Paid Leave in a benefit year. Protections because of [domestic violence](#), [harassment](#), [sexual assault](#) or [stalking](#) are separate from and in addition to the safe leave under Paid Leave Oregon.


ORS [659A.270](#) to [659A.290](#);
OAR [839-020-0325](#) to [0365](#)



472

Extended Leave: Paid Leave & more

- An employee who needs more than the maximum allowed under Paid Leave in any benefit year, they may want to review their employer's employee leave policy.
- For example:
 - an employee, who has exhausted 12 weeks of medical leave due their own serious health condition, may want to review their employer's ADA reasonable accommodation policy.
 - an employee, who has exhausted 12 weeks of safe leave, may want to review their employer's policy on domestic violence victim leave or crime victim leave.




473

Finally: SECRET OF SUCCESS IN TRACKING

For each leave request, ask the following questions:

	FMLA	OFLA	Paid Leave
1. What are the leave year and benefit year?	Identify the three 12-month periods		
2. Is the employee eligible?	Yes/No	Yes/No	Yes/No
3. Does the employee have a qualifying event?	Yes/No	Yes/No	Yes/No
4. Does the employee have any available balance within the leave year or benefit year?	Yes/No	Yes/No	Yes/No
5. If yes to #4, how many hours, days, or weeks are available? How many will be taken for the current request? Record it in the tracking file.			



474



The End

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Training and Development Specialist
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Contact us!



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