

FEDERAL AND OREGON LEAVE LAWS

	<u>FEDERAL FAMILY MEDICAL LEAVE ACT (FMLA)</u>	<u>OREGON FAMILY LEAVE ACT (OFLA)</u>	<u>OREGON PAID SICK LEAVE LAW (2015), Eff. 1/1/16</u>	<u>OREGON MILITARY FAMILY LEAVE ACT (OMFLA)</u>	<u>OREGON LEAVE TO ATTEND CRIMINAL PROCEEDING</u>	<u>LEAVE FOR VICTIMS OF DOMESTIC VIOLENCE, SEXUAL ASSAULT, HARASSMENT OR STALKING</u>
<u>Aim of Law</u>	To provide leave to employees for their own or a family member's serious health condition, for birth, adoption, or foster placement, or for certain military-related exigencies or caregiving.	To provide leave to employees for their own or a family member's serious health condition, for a sick child, for birth, adoption, or foster placement, or for the death of a family member.	To provide paid sick leave to employees.	To provide leave to spouses or domestic partners of military service members who have been notified of an impending call or order to active duty or who have been deployed and are on leave.	To Provide crime victims unpaid leave to attend criminal proceedings.	To prohibit discrimination against and to require workplace accommodations, including leave, for victims of domestic violence ("DV"), harassment, sexual assault or stalking.
<u>Eligible Employee</u>	Must have been <u>employed</u> at least 12 months and <u>worked</u> at least 1,250 hours during 12-month period preceding date leave is to begin (approx. 25 hours/week). Special eligibility rules for flight crews (pilots, flight attendants): must have worked or been paid for at least 60% of the applicable total monthly guarantee and have worked or been paid for at least 504 hours during the previous 12 months.	Must have been <u>employed</u> more than 180 calendar days and <u>worked</u> an average of at least 25 hours/week over 180-day period (<i>except no average hour requirement for parental leave</i>).	All employees <u>except</u> those who receive paid sick time under federal law, those in official work training or work-study programs, railroad workers, and individuals employees by their parent, spouse or child. There is no minimum employment or hours worked requirement. As of 1/1/18, employee does not include certain individuals or parents, spouses, or children of individuals who are directors of corporations, LLC members, LLP partners, or sole proprietors. (2017 SB 299)	Must have performed services for compensation for an average of at least 20 hours/week.	Must have worked an average of more than 25 hours per week for at least 180 days. Must be a "crime victim," i.e. must have suffered financial, social, psychological or physical harm as a result of a person felony, or be a family member of a crime victim.	Must be a victim of domestic violence, harassment, sexual assault or stalking or is the parent or guardian of a minor child or dependent who is a victim of domestic violence, harassment, sexual assault or stalking. *The law formerly required eligible employees to have worked an average of 25 hours per week for at least 180 days. That threshold was removed by the 2013 Legislature, eff. 1/1/14.
<u>Covered Employer</u>	Employs 50 or more people within 75 miles (plus all government employers).	Employs 25 or more persons in Oregon (plus state and local government employers).	Employs 1 or more employees working anywhere in the state (plus state and local government employers).	Employs 25 or more persons in Oregon (plus state and local government employers).	Employs 6 or more persons in Oregon.	Employs 6 or more persons in Oregon.

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<u>Amount of Leave</u>	12 weeks in a “leave year” for most types of FMLA-covered leave, except 26 weeks during a “single 12 month period” for Military Caregiver Leave.	12 weeks in a “leave year” PLUS additional 12 weeks for: (1) mom’s birth- or pregnancy-related disability (includes routine pre-natal care); (2) care for sick child requiring home care if have already taken full 12 weeks for parental leave (Potential total of up to 36 weeks for females and 24 for males). (3) Bereavement leave*: up to two weeks per death of family member up to 12-week maximum in leave year. *new 2013 Legislature, eff. 1/1/14.	At least one hour of sick time for every 30 hours worked or 1-1/3 hours for every 40 hours worked, or must front-load at least 40 hours of sick leave at the beginning of the year. Must be paid sick leave if employers employs at least 10 employees anywhere in Oregon or if employs at least 6 employees at location in a city with a population greater than 500,000, i.e. Portland. Effective 1/1/18, if only location in Portland is a seasonal farm stand or trailer used temporarily on a construction site for office purposes only, it will not be considered a Portland location. (2017 SB 299) Employers that employ fewer employees than these thresholds must provide unpaid sick leave at same rates as above. Bargain higher accrual rates! Accrual begins on the first day of employment. Eligibility to use sick leave no later than the 91 st calendar day of employment. Bargain for earlier use! continued...	Up to 14 <i>work</i> days of leave per deployment. Days used count against total leave available under OFLA.	Leave to attend criminal proceeding unless would create undue hardship.	“Reasonable leave” unless would create undue hardship.

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			<p>Employers can limit annual accrual and use to 40 hours. Employees can carry over up to 40 hours of unused sick time from one year to the next for a total accrual of 80 hours. No carry over is required if employer and employee (or union) mutually agree that employee will be paid for unused sick time at the end of the year and at least 40 hours are front-loaded at beginning of new year.</p> <p>A “year” is any consecutive 12-month period (e.g. calendar year, fiscal year, from anniversary date, etc.).</p> <p><i>Bargain for higher accrual, use, and carryover limits!</i></p>			
<u>Reasons for Leave</u>	<p>(1) birth of child and to care for child following birth; (2) placement of child with employee for adoption or foster care; (3) care for spouse*, child (under 18 or incapable of self-care), or parent with serious health condition; (4) care for own serious health condition; (5) qualifying exigencies due to spouse, son, daughter or parent’s active duty or continued...</p>	<p>Same as (1)-(4) of federal PLUS: (3) care for “family member” with serious health condition also includes registered same-sex domestic partner (and parents and children of such partner, step parent), parent-in-law, grandparent, adult child (except for sick child and parental leave), grandchild; (7) care for sick child requiring home care (need not continued...</p>	<p>1) employee’s own illness, injury or health condition, need for medical diagnosis, care or treatment, or need for preventative medical care; 2) care of a family member’s illness, injury or health condition, care of family member who needs diagnosis, care or treatment or care of family member who needs preventative medical care; 3) any other reason that qualifies for OFLA leave; continued...</p>	<p>Spend time with spouse or domestic partner and attend to needs associated with call or order to active duty or leave from deployment during period of military conflict.</p>	<p>To attend criminal proceeding at which crime victim has right to be present.</p>	<p>(1) seek legal or law enforcement assistance or remedies to ensure health/safety; (2) seek medical treatment for or to recover from injuries caused by DV, harassment, sexual assault, or stalking; (3) obtain counseling from a licensed mental health professional related to an experience of DV, harassment, sexual assault, or stalking; (4) obtain services from a victim services provider; or (5) relocate or take steps to secure an existing home.</p>

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	impending call or order to active duty in the Armed Forces; (6) care for spouse, son, daughter, parent, or next of kin service member with serious injury or illness. * US DOL indicated 8/9/13, following <i>U.S. v. Windsor</i> , that “spouse” includes same-sex spouses where such marriages are recognized in the state where the employee resides.	rise to level of “serious health condition”); (8) to make arrangements necessitated by, to attend funeral/memorial service, or to grieve death of a family member*; *new eff. 1/1/14. * BOLI clarification 2015: an employee who has taken serious health condition leave to care for a family member who dies during that leave need not requalify for eligibility to take bereavement leave.	4) any purpose under the leave for victims of domestic violence, sexual assault, harassment and stalking law; 5) to donate accrued sick time to another employee to use for a covered purpose if the employer has a donation policy (<i>bargain it if you want it</i>); 6) in the event of a public health emergency (e.g. closure of the workplace or exclusion of employee by order of public official or law).			
<u>Effect of Workplace Injury on Leave</u>	Time absent due to workers compensation injury counts against 12-week leave entitlement.	Time absent due to workers compensation injury does <i>not</i> count against 12-week leave entitlement, unless employee refuses light duty work. Also, employees off on an approved workers compensation claim need not requalify for eligibility to use OFLA leave after they return to work.* *BOLI clarification 2015.	N/A	N/A	N/A	N/A
<u>Paid Versus Unpaid Leave</u> <i>MOST IMPORTANT PROVISION TO BARGAIN!</i>	Employee may elect or employer may require employee to substitute any form of paid leave (including compensatory leave), <i>consistent with continued...</i>	Employee may elect or employer may require employee to substitute any accrued paid sick leave, personal leave, vacation leave, or any other paid leave <i>continued...</i>	Whether required sick leave is paid or unpaid depends on employer size/location. See Amount of Leave above.	Leave is generally unpaid, unless otherwise provided by CBA, but employee may substitute any accrued paid sick leave, personal leave, vacation leave, or any other paid leave <i>continued...</i>	Leave is generally unpaid, but may substitute any paid accrued vacation leave or any other paid leave offered in lieu of vacation leave.	Leave is generally unpaid, unless otherwise provided by CBA, but employee may substitute any paid accrued vacation leave, sick leave*, personal business leave*, or any other paid leave that is <i>continued...</i>

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	<i>employer's paid leave policy.</i> Subject to CBA, employer can choose order in which paid leave is used.	offered in lieu of vacation leave. Subject to CBA, employer can choose order in which paid leave is used. As of 1/1/08, employee has had right to use paid leave for <i>any</i> OFLA-covered leave, regardless of employer policy.		offered in lieu of vacation leave for any part of covered leave. Subject to CBA, <i>employee</i> can choose order in which paid leave is used.		offered in lieu of vacation leave. Subject to CBA, employer can determine order in which paid leave is used. *sick leave and personal business leave added by 2015 Legislature, eff. 1/1/16 Eligible employees of the State of Oregon must be granted <u>paid</u> leave under this law. 2013 Legislature, eff. 7/2/13.
<u> Serious Health Condition</u>	An illness, injury, impairment or physical or mental condition that involves: (1) inpatient care; (2) incapacity for more than three full consecutive calendar days, in-person treatment by a health care provider within 7 days of the first day of incapacity, plus either: (a) at least one more in-person treatment by a health care provider within 30 days of the first day of incapacity (unless extenuating circumstances exist); or (b) a regimen of continuing treatment under the supervision of a health care provider; (3) incapacity due to continued...	An illness, injury, impairment or physical or mental condition that: (1) requires inpatient care; (2) imposes imminent danger of death or is terminal; (3) requires "constant" or "continuing" care; (4) involves incapacity for more than three calendar days, plus two or more treatments by a health care professional or one treatment plus a regimen of continuing care; (5) results in incapacity due to a chronic serious health condition that requires periodic visits for treatment over an extended period of time with episodic incapacity; (6) involves permanent or long-term incapacity; (7) involves multiple continued...	N/A	N/A	N/A	N/A

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	pregnancy or prenatal care; (4) incapacity or treatment due to a chronic serious health condition requiring at least two periodic visits to health care provider per year with episodic incapacity; (5) permanent or long-term incapacity; (6) multiple treatments (e.g. dialysis).	treatments; or (8) involves any period of disability due to pregnancy or childbirth or any absence for prenatal care.				
<u>Employee Notice to Employer</u>	<p>If leave is foreseeable, 30 days unless not practicable (e.g. actual birth of child comes earlier than anticipated due date). If unforeseeable, as much notice as is practicable.</p> <p>Notice can be given by someone on employee's behalf if employee is unable to provide notice.</p> <p>Employee need not specifically mention FMLA first time, but if seeking leave for reason employer has previously granted FMLA leave, then employee must specifically mention qualifying reason or FMLA.</p>	<p>If leave is foreseeable, 30 days, or as much advance notice as is practicable. If unforeseeable, employee (or someone on employee's behalf) must provide notice 24 hours before or after leave begins, and employer may also require written notice within 3 days after employee returns to work.</p> <p>Employee is <i>not</i> required to specify that request is for OFLA leave (even for reason employer has previously granted OFLA leave).</p>	<p>Employer may require employee to comply with employer's usual and customary notice and procedural requirements for absences or requesting time off if they do not interfere with use of sick leave.</p> <p>If need to use sick leave is foreseeable, employer may require reasonable advance notice of intent to use, not to exceed 10 days prior or as soon as otherwise practicable.</p> <p>Employee must make reasonable attempt to schedule use of sick time in manner that does not unduly disrupt employer's operations.</p>	<p>Within 5 business days of receiving official notice of impending call or order to active duty or of a leave from deployment.</p>	<p>Employee must provide reasonable notice of the employee's intention to take leave to attend criminal proceeding.</p>	<p>Reasonable advance notice unless not feasible. If leave is unanticipated or for an emergency, employee or person on employee's behalf must give oral or written notice as soon as practicable.</p>

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<u>Certification</u>	Employer may require medical certification of serious health condition and need for leave. Employee has 15 calendar days from employer's request to provide it. If returned certification is incomplete or insufficient, employer can ask employee to cure defect within 7 calendar days. Failure to cure may result in denied FMLA leave. If employer has reason to doubt the validity of certification, can get 2 nd and 3 rd opinions at employer's expense. Periodic recertifications are permitted for ongoing conditions, but 2 nd and 3 rd opinions are not permitted on recertifications. Employer can require fitness-for-duty certification upon return to work.	Mostly same as Federal, except: Employer cannot seek certification of parental leave. Time to cure incomplete or insufficient certification is "reasonable period of time." Employer can only seek certification of sick child leave for subsequent occurrences if employee "has taken sick child leave on all or any part of three separate days during a leave year." No 2 nd opinion permitted for sick child leave. Employer must pay employee's out-of-pocket costs for any required medical verification.	Employer may require verification from a health care provider (or certification pursuant to DV victim law) of the need for sick time if employee takes more than 3 consecutive scheduled work days of sick time or if the employer suspects employee is abusing sick time. Employee has 15 calendar days after request to provide verification. Employer must pay any reasonable costs for providing verification, including lost wages and out-of-pocket medical expenses. Nature of illness or details related to DV, SA, H, S may not be required.	Employer may require photocopy of service member's orders to verify leave is for covered purpose.	Employee must provide employer with copies of any notices of scheduled criminal proceedings that employee receives from law enforcement agency.	Employer may seek certification
<u>Employer's Contact with Health Care Provider</u>	Employer's leave administrators, human resources professionals, and management official who are not the employee's supervisor, or the employer's own health care providers may directly continued...	Employer may not directly request additional information beyond certification from health care provider. With employee's or family member's permission, health care provider representing employer may contact continued...	No provision for contacting health care provider. (But note that some circumstances may also be OFLA-covered and therefore fall under OFLA rule).	N/A	N/A	No provision for contacting health care provider. (But note that some circumstances may also be OFLA-covered and therefore fall under OFLA rule).

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	communicate with an employee's health care provider for the purposes of "authentication" or "clarification," but not to seek information beyond what is required on the certification.	employee's or family member's health care provider to clarify or authenticate certification.				
<u>Employer Notice to Employee of Eligibility and Qualification for Leave</u>	<p><i>Eligibility Notice:</i> Absent extenuating circumstances, employer must notify employee orally or in writing within 5 business days of acquiring knowledge that leave may be FMLA-qualifying whether employee is eligible for leave. If ineligible, must explain why.</p> <p><i>Rights and Responsibilities Notice:</i> Employer must provide written notice that leave will count against FMLA entitlement, applicable 12-month period, certification requirements, rules regarding substitution of paid leave, any obligation to make benefit premium contributions, right to maintenance of benefits, and job restoration rights.</p> <p>continued...</p>	Absent extenuating circumstances, employer must notify employee within 5 business days of acquiring knowledge that leave may be for OFLA-qualifying reason whether employee is eligible and qualifies for OFLA leave. Denial must be in writing with explanation.	Employer must provide written notification to employee at least quarterly of the amount of accrued and unused sick time available for use. Pay stub notice is sufficient.	Statute and rules are silent.	Statute and rules are silent.	Statute and rules are silent.

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	<i>Designation Notice:</i> Within 5 business days of determining leave is being taken for FMLA-qualifying reason (e.g. after receiving certification), employer must provide written notice whether leave will be counted as FMLA leave. If employer will require fitness-for-duty certification upon return to work, must provide notice of that requirement in designation notice or must be in handbook/policy.					
<u>Maintenance of Health Insurance During Leave</u>	Group health plan coverage must be maintained during leave subject to regular employer/employee premium contributions (as long as employee returns to work before expiration of leave or is unable to do so).	2015 HB 2600, eff. 1/1/16: OFLA now requires continuation of group health coverage during the period of family leave subject to regular employee premium contributions.	Statute and rules are silent, but health insurance is presumably maintained during paid sick leave.	Employer is <i>not</i> required to pay for employee's insurance benefits during leave, but is required to restore benefits upon return. OMFLA not amended by 2015 HB 2600.	Statute and rules are silent.	Statute and rules are silent. Clearly if leave also qualifies for OFLA, insurance must be continued as of 1/1/16.
<u>Temporary Transfer During Intermittent Leave or Reduced Schedule</u>	If need for intermittent leave or reduced schedule is foreseeable, employer may require employee to transfer temporarily, during the period of intermittent or reduced schedule leave, to an available alternative position with equivalent pay continued...	Employer may transfer to alternate position only if: 1) employee accepts transfer voluntarily and without coercion; 2) transfer is temporary, lasts no longer than necessary; 3) alternate position has equivalent pay and benefits; continued...	Statute and rules are silent.	Statute and rules are silent.	N/A	Statute and rules are silent.

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	and benefits (but not duties) for which the employee is qualified and which better accommodates recurring leave. Employer cannot transfer in order to discourage use of leave or work hardship on employee (e.g. cannot transfer day shift employee to graveyard shift).	4) transfer complies with applicable collective bargaining agreement; 5) transfer is used only when there is no other reasonable option available; and 6) transfer is not used to discourage intermittent leave or reduced schedule or to create hardship for employee.				
<u>Right to Return to Job</u>	To same position held when leave began or to equivalent position with equivalent pay, benefits, and other terms and conditions of employment (e.g. OT opportunities, shift, duties). Employer can require fitness-for-duty certification as condition of return to work, provided notice of this requirement was provided with designation notice, requirement is uniformly applied, and certification is limited to condition that caused need for leave. No 2 nd or 3 rd opinions are allowed on fitness-for-duty certifications. Employer can seek clarification or continued...	To same position held when leave began or, if position has been eliminated for legitimate business reasons, to equivalent position. Employer can require medical verification that employee is able to resume work, provided requirement is uniformly applied. No 2 nd opinions are allowed on return to work verification.	There are no specific return to work provisions, but it is unlawful to deny, interfere with, restrain, fail to pay for, retaliate, or in any way discriminate against an employee because the employee has inquired about, requested, or used sick leave.	To same position held when leave began or, if position has been eliminated for legitimate business reasons, to equivalent position.	There are no specific return to work provisions, but it is unlawful to deny covered leave or to discharge, threaten to discharge, intimate or coerces because the employee takes covered leave.	No specific provision, but law prohibits discharge, demotion, suspension or discrimination or retaliation for taking protected leave.

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	authentication, but may not delay return to work while does so.					
<u>Attendance Bonuses</u>	Bonuses based on attendance may be denied to employees on FMLA leave to the same extent they would be denied to employees on other types of leave.	Bonuses based on attendance may not be denied to employees based on use of protected OFLA leave.	Employers may not apply an absence control policy that counts covered sick time absences as an absence that may result in an adverse employment action.	Statute and rules are silent.	Statute and rules are silent.	Statute and rules are silent.
<u>Enforcement</u>	Wage and Hour Division of the U.S. Department of Labor (USDOL) complaint or civil suit within 2 years (or 3 years if willful violation).	Oregon Bureau of Labor and Industries (BOLI) complaint or civil suit within 1 year of violation.	Oregon Bureau of Labor and Industries (BOLI) complaint or civil suit within 1 year of violation.	Oregon Bureau of Labor and Industries (BOLI) complaint or civil suit within 1 year of violation.	Oregon Bureau of Labor and Industries (BOLI) complaint or civil suit within 1 year of violation.	Oregon Bureau of Labor and Industries (BOLI) complaint or civil suit within 1 year of violation.
<u>Remedies</u>	(1) Equitable relief (e.g. reinstatement); (2) monetary losses, including lost wages, benefits, or other actual monetary losses (e.g. if denied leave, cost of providing alternate care); (3) “liquidated damages” equal to monetary losses, unless employer acted in good faith; (4) attorney fees and costs.	(1) Equitable relief (e.g. reinstatement); (2) Lost wages and benefits; (3) attorney fees and costs.	(1) Equitable relief (e.g. reinstatement); (2) Lost wages and benefits; (3) attorney fees and costs.	(1) Equitable relief (e.g. reinstatement); (2) Lost wages and benefits; (3) attorney fees and costs.	(1) Equitable relief (e.g. reinstatement); (2) Lost wages and benefits; (3) attorney fees and costs.	(1) Equitable relief (e.g. reinstatement); (2) Lost wages and benefits; (3) attorney fees and costs; (4) compensatory damages; (5) punitive damages.