

Federal and Oregon Leave Laws

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The Laws on Your Chart

- Paid Leave Oregon/Paid Family and Medical Leave Insurance (new!)
- The federal Family Medical Leave Act (FMLA)
- The Oregon Family Leave Act (OFLA)
- Oregon's Paid Sick Leave Law
- No longer on the chart:
 - The Oregon Military Family Leave Act (OMFLA)
 - Oregon's Law Providing Leave to Crime Victims to Attend Criminal Proceedings
 - Oregon's Law Providing Leave to Victims of Domestic Violence, Sexual Assault, Harassment or Stalking (but this is now included in PFMLI)

Paid Leave Oregon/Paid Family and Medical Leave Insurance (PFMLI) - General Information

- HB 2005 in 2019 established the Paid Family and Medical Leave Insurance (PFMLI) program, which is now called “Paid Leave Oregon.”
- Statute: ORS 657B.005 *et seq.*
- Oregon Employment Department Rules: OAR 471-070-0010 *et seq.*
- OED Resources: <https://paidleave.oregon.gov>; paidleave@oregon.gov; (833)854-0166
- OED has staff assigned to work with unions and labor advocates on Paid Leave Oregon, so use them!

Paid Leave Oregon/PFMLI Payroll Contributions



- OED sets the contribution amount annually, not to exceed 1% of employee wages. It is set at 1% for this year.
- Contributions began 1/1/23
- Employers with 25 or more employees must contribute at least 40% of the total rate, and the remaining 60% (or less) will be deducted from employees' wages. Employers may pay part or all of the employee's portion, so **BARGAIN FOR THIS!**
- Employers with fewer than 25 employees are not required to pay the employer contribution, but if they do, they can get grants to help cover the cost of replacement workers.
- Employers with approved equivalent plans need not pay the employer contributions (see later slide).

Paid Leave Oregon/PFMLI

Eligible Employee & Covered Employer

- “Eligible employee”
 - An employee who has earned at least \$1,000 in wages during the “base year” (first four of the last five completed calendar quarters preceding the benefit year) or during the “alternative base year” (last four completed calendar quarters preceding the benefit year).
- Covered “employer”
 - Any person that employs one or more employees working anywhere in the state
 - Political subdivisions of the state or any county, city, district, authority or public corporation
 - Does NOT include the federal government or tribal government

Paid Leave Oregon/PFMLI

Reasons for taking PFMLI

- Family leave:
 - To care for and bond with a child during the first year after the child's birth or placement through foster care or adoption; or
 - To care for a family member with a serious health condition.
- Medical Leave: Necessary due to the employee's own serious health condition.
- Safe Leave: For survivors (or parents of children survivors) of sexual assault, domestic violence, harassment, or stalking, to seek legal or law enforcement assistance, to seek medical treatment for or to recover from injuries, to obtain counseling from a mental health provider, to obtain services from a victim services provider, or to relocate or take steps to secure an existing home.

Paid Leave Oregon/PFMLI

Definition of “Family Member”



“Family member” includes:

- Spouse or domestic partner
- Child or child’s spouse or domestic partner
- Parent or parent’s spouse or domestic partner
- Sibling or stepsibling or their spouse or domestic partner
- Grandparent or grandparent’s spouse or domestic partner
- Grandchild or grandchild’s spouse or domestic partner
- “Any individual related by blood or affinity whose close association with a covered individual is the equivalent of a family relationship.”

Family Member Definition Comparison

- FMLA: spouse, minor or adult disabled child, or parent (or one standing in the place of a parent or child)
- OFLA: same as FMLA plus grandparents and grandchildren, parents-in-law, registered same-gender domestic partners and children and parents of registered same-gender domestic partners, and all adult children.
- PFMLI: same as OFLA plus child's spouse or domestic partner, parent's spouse or domestic partner, sibling or stepsibling or their spouse or domestic partner, grandparent's spouse or domestic partner, grandchild's spouse or domestic partner, and "any individual related by blood or affinity whose close association with a covered individual is the equivalent of a family relationship."

Paid Leave Oregon/PFMLI

Interaction with Other Laws

- PFMLI is in addition to contractual or other statutory paid sick leave, PTO, or paid vacation. Employers cannot require employees to use contractual paid leave before PFMLI.
- Employees cannot take PFMLI leave during weeks they are eligible to receive workers' compensation or unemployment benefits.
- PFMLI leave must be taken concurrently with FMLA and OFLA leave if it qualifies, but not all PFMLI leave qualifies under those laws, and not all leave under FMLA or OFLA qualifies under PFMLI. Also, employees may take PFMLI leave before they are eligible under FMLA/OFLA.
 - Employees can only take a combined total of 16 (or 18 if 2 are for pregnancy or childbirth) weeks off per benefit year for PFMLI and OFLA (e.g. 12 (14) weeks of PFMLI and 4 additional weeks of OFLA for sick child, bereavement, military leave).

Paid Leave Oregon/PFMLI Interaction with FMLA/OFLA/OMFLA

PFMLI

Birth, adoption, foster placement of child

Care for family member with serious health condition (broader definition of “family member”)

Medical Leave (employee’s serious health condition)

Safe Leave (DV, sexual assault, etc.)

FMLA

Birth, adoption, foster placement of child

Care for family member with serious health condition

Medical Leave (employee’s serious health condition)

Military/Qualifying Exigencies

Military Caregiver

OFLA/OMFLA

Birth, adoption, foster placement of child
Care for family member with serious health condition

Medical Leave (employee’s serious health condition)

Military/Qualifying Exigencies

Sick Child Leave (not serious health condition)

Child’s School/Care Closed Due to Public Health Emergency

Bereavement Leave

Paid Leave Oregon/PFMLI Benefit Amount

- The weekly benefit amount is capped at 120% of the state average weekly wage (SAWW)* and has a floor of 5% of the SAWW.
- Employees who earn less than 65% of the SAWW will receive 100% of their average weekly wage.
- Employees who earn more than 65% of the SAWW will receive 65% of the state average weekly wage plus 50% of the amount by which the employee's average weekly wage exceeds the SAWW.
- Employees may also use vacation, sick time, or PTO to supplement their weekly benefit amount, up to 100% of their wages.

* The SAWW for 7/1/22 through 6/30/23 is \$1,224.82.

Paid Leave Oregon/PFMLI

Increments of Leave

- Leave may be taken and benefits may be claimed in increments of one work day or one work week. (Unlike FMLA/OFLA/Oregon Sick Time, which can be taken in as little as hourly increments.)
- Employees who work for more than one employer in the same work week must take the leave from all employers in order to claim for the week. Similarly, if they work for more than one employer in the same day, they must take leave from all employers in order to claim for the day.
- Benefits are prorated if leave is taken in day increments.

Paid Leave Oregon/PFMLI Employee Notice to Employer

- Foreseeable (e.g. planned surgery, anticipated birth/adoption): At least 30 days notice.
- Unforeseeable: verbal notice within 24 hours; written notice within three days.
- If the OED determines claimant did not provide the required notice to employer, it may impose a penalty of a 25% reduction of the first week's benefits (but no less than the minimum weekly benefit amount), unless good cause is shown (e.g. incapacitation).

Paid Leave Oregon/PFMLI Benefit Applications/Decisions

- Benefits begin 9/3/23.
- Claimants can submit applications to the OED up to 30 days prior to start of leave and up to 30 days after start of leave (unless there is good cause shown).
- Verification of need for leave is required, and OED may request additional information.
- OED notifies employer of application.
- OED provides written administrative decision allowing or denying benefits and reasons.
- Claimants have 60 days to request hearings to appeal administrative decisions.

Paid Leave Oregon/PFMLI

Job Protection

- If employed for at least 90 consecutive calendar days: right to return to former position.
- If the position has been eliminated (not merely renamed or reclassified):
 - Large employers (25 or more employees) must restore to available, equivalent position.
 - Small employers can restore to different position, but with the same pay/benefits and similar working conditions.
- Seniority and benefits accrued prior to the leave must be restored.
- Health care benefits must be maintained during the leave (if employee continues to pay premium share). If employer discontinues benefits due to non-payment of premium share, it must still restore the benefits upon employee's return to work.

Paid Leave Oregon/PFMLI Equivalent Plans

- Employers can apply for OED approval of equivalent plans that they either administer themselves or use a third-party (insurer) to administer.
- Employers are exempt from making *employer* (but not employee) contributions if they submit equivalent plan applications as follows:
 - by November 30, 2022 to be exempt from contributions beginning January 1, 2023
 - by February 28, 2023 to be exempt from contributions beginning April 1, 2023
 - by May 31, 2023 to be exempt from contributions beginning July 1, 2023

Paid Leave Oregon/PFMLI Equivalent Plans (cont.)

Requirements:

- 1) cover all employees who have been employed for 30 calendar days;
- 2) provide leave for the same family, medical, and safe leave reasons;
- 3) provide no less leave than under PFMLI;
- 4) provide benefits equal to or greater than PFMLI;
- 5) allow leave to be taken in one-day or one-week increments;
- 6) impose no greater conditions or restrictions on the use of paid leave;
- 7) require employee contributions no greater than those under PFMLI;
- 8) ensure that employee contributions are used solely for equivalent plan expenses, are not part of the employer's assets for any purpose and are held separately from other employer funds.

Paid Leave Oregon/PFMLI

Bargain It!!!

PAY AND LEAVE ARE MANDATORY SUBJECTS OF BARGAINING!

- ❖ The statute expressly states that employers may elect to pay employee contributions, in whole or in part, so bargain for them to pay 100% (or more than the 40% minimum).
- ❖ Seniority and benefits do not accrue during PFMLI, “unless the terms of a collective bargaining agreement . . . Provide otherwise.”
- ❖ Bargain for the employer to cover the employee’s health insurance premium share while they’re on leave (either completely or to be repaid upon return to work) so they don’t have to send in checks.
- ❖ Bargain for employees to choose whether to supplement their PFMLI benefits with accrued paid contractual leave (up to 100% wage replacement). Statute says employers “may” permit this, so lock it in!

Employee Eligibility Under FMLA & OFLA

Employees must meet both of these prongs:

1) Length of employment

- FMLA: 12 months
- OFLA: 180 days (special rules during public health emergency)

2) Hours worked

- FMLA: 1,250 hours in the preceding 12 months
- OFLA: average of 25 hours/week in preceding 180 days (except there is no hours worked requirement for parental leave under OFLA, and requirements relaxed during public health emergency)

FMLA/OFLA Reasons for Leave

FMLA	OFLA
Bonding after birth, adoption, foster placement	Bonding after birth, adoption, foster placement
Care for family member with serious health condition	Care for family member with serious health condition
Employee's own serious health condition	Employee's own serious health condition
Military-Qualifying Exigencies	Sick child leave
Military Caregiver	Child's school/care closed due to public health emergency
	Bereavement

FMLA/OFLA - Amount of Leave

- Generally 12 work weeks of leave in a “leave year”
- Exceptions:
 - 26 work weeks for FMLA military caregiver leave
 - Under OFLA, those giving birth can get 12 additional weeks for pregnancy disability/childbirth recovery
 - Under OFLA, if either parent uses all 12 weeks for parental leave (bonding), they can get up to 12 additional weeks of sick child leave
 - Under OFLA, bereavement leave: up to 2 weeks per death in the family per year (up to maximum of 12 weeks)

Leave Year - FMLA/OFLA

There are four ways to determine the leave year:

1. Calendar Year
2. Another Fixed Year (e.g. fiscal year)
3. Measuring Forward (12 months forward from date first leave begins; does not re-set until first time use leave again after the 12-month period)
4. Rolling Backward (12 months backward from date seek to use leave)

Medical Certification

- Must be provided before leave if leave is foreseeable
- If unforeseeable, have 15 days from employer's request to submit
- Employers can ask employees to cure deficiencies (e.g. answers left blank). FMLA: 7 days to cure; OFLA: reasonable time to cure
- FMLA: certain managers (not the employee's supervisor) can contact health care provider for purposes of "authentication" (did you complete/sign this) or "clarification" (I can't read what you wrote for #7); OFLA: only the employer's health care provider can contact employee's health care provider and only for these reasons.
- Employer can obtain 2nd opinion if it has reason to doubt the certification. Can't be the company doctor. If the two opinions differ, then the employer and employee can mutually select a third provider.

Recertification

- If the minimum duration of a condition is more than 30 days, then the employer must wait until that duration expires to request recertification.
- But, the employer can seek recertification of the same condition at least every six months, even if the duration of the condition is longer than six months.
- The only reasons justifying recertification in less than 30 days are:
 - the employee requests an extension of the leave;
 - circumstances described by the previous certification have changed significantly (e.g. use of substantially more intermittent leave)
 - the employer receives information that casts doubt on the validity of the certification
- There are no 2nd and 3rd opinions on recertifications

Oregon Sick Time Law

- Accrual Method: 1 hour of sick leave for every 30 hours worked
- Frontloading Method: 40 hours frontloaded at the beginning of the year
- It must be paid sick leave if the employer has at least 10 employees anywhere in Oregon or if it employs at least 6 employees in a city with a population greater than 500,000.
- Can be used for own or family member illness, injury, medical care (including preventative), any OFLA reason, safe leave reasons, to donate to sick bank, public health emergencies