

SELECT FEDERAL AND OREGON LEAVE LAWS¹

	<u>PAID LEAVE OREGON/PAID FAMILY & MEDICAL LEAVE INSURANCE (PFMLI)</u>	<u>FEDERAL FAMILY MEDICAL LEAVE ACT (FMLA)</u>	<u>OREGON FAMILY LEAVE ACT (OFLA)</u>	<u>OREGON PAID SICK LEAVE LAW</u>
<u>Aim of Law</u>	To provide PAID family, medical, and safe leave to Oregon employees through a payroll-contribution-funded and state-administered insurance program or equivalent plan.	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 child who needs home care, for birth, adoption, or foster placement, or for the death of a family member.	To provide paid sick leave to employees.
<u>Eligible Employee</u>	All employees working in Oregon who have earned at least \$1,000 in the prior year. NO PRIOR EMPLOYMENT DURATION OR HOURS OF WORK REQUIREMENT TO BE ELIGIBLE FOR BENEFITS (but must have worked for at least 90 days to have job protection upon return to work)	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 except: - those who receive paid sick time under federal law; - those who are in official work training or work-study programs; - railroad workers; - those employed by their parent, spouse or child; NOTE: former exemption for hiring hall workers, covered by CBA and multiemployer-employee trust or benefit plan no longer exists as of 1/1/23 Begin accruing (or get frontloaded) sick time immediately, but employer can require 90 days of employment before using sick leave.
<u>Covered Employer</u>	All employers with at least one employee working in Oregon (plus state and local government employees)	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).
<u>Amount of Leave</u>	12 weeks per year, plus 2 additional weeks for pregnancy/childbirth related reasons	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.	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 employer 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. Employers that employ fewer employees than these thresholds must provide unpaid sick leave at same rates as above. Bargain higher accrual rates!

¹ This chart no longer includes the Oregon Military Family Leave Act (OMFLA), the Oregon law providing Leave for Victims of Domestic Violence, Sexual Assault, Harassment or Stalking (although this is now also covered by PFMLI), or Oregon leave for crime victims to attend criminal proceedings.

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				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. A “year” is any consecutive 12-month period (e.g. calendar year, fiscal year, from anniversary date, etc.). <i>Bargain for higher accrual, use, and carryover limits!</i>
<u>Reasons for Leave</u>	<u>Family Leave:</u> (1) to care for and bond with a child during the first year after the birth, adoption, or foster placement; (2) to care for a family member with a serious health condition (broad definition of family member) <u>Medical Leave:</u> leave necessary due to the employee’s serious health condition <u>Safe Leave:</u> leave for survivors or parents of children survivors of sexual assault, domestic violence, harassment, stalking, or bias crimes [new 1/1/24] , 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.	(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 family member (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 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.	Same as (1)-(4) of federal PLUS: • care for “family member” with serious health condition is broader [definition broadened further in 2023]; • care for sick child requiring home care (need not rise to level of “serious health condition”); • care for child requiring home care due to school or daycare closure as a result of public health emergency; • bereavement: to make arrangements necessitated by, to attend funeral/memorial service, or to grieve death of a family member;	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; 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) public health emergency
<u>Effect of Workplace Injury on Leave</u>	N/A (cannot collect PLO benefits while receiving workers compensation timeloss benefits)	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.	N/A
<u>Paid Versus Unpaid Leave</u> <i>MOST IMPORTANT PROVISION TO BARGAIN!</i>	Always paid. Employer may permit employees to use other accrued paid leave to supplement benefits.	Employee may elect or employer may require employee to substitute any form of paid leave (including compensatory leave), <i>consistent with employer’s paid leave policy</i> . Subject to CBA, employer can choose order in which paid leave is used.	Employee may elect or employer may require employee to substitute any accrued paid sick leave, personal leave, vacation leave, or any other paid leave offered in lieu of vacation leave. Subject to CBA, employer can choose order in which paid leave is used.	Whether required sick leave is paid or unpaid depends on employer size/location. See Amount of Leave above.

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<u> Serious Health Condition</u>	Same definition as OFLA.	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 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).	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 treatments; or (8) involves any period of disability due to pregnancy or childbirth or any absence for prenatal care.	N/A
<u>Employee Notice to Employer</u>	If leave is foreseeable, 30 days. If leave is unforeseeable, verbal within 24 hours, written within 3 days.	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. Notice can be given by someone on employee’s behalf if employee is unable to provide notice. 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.	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. Employee is <i>not</i> required to specify that request is for OFLA leave (even for reason employer has previously granted OFLA leave).	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. 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. Employee must make reasonable attempt to schedule use of sick time in manner that does not unduly disrupt employer’s operations.
<u>Certification</u>	OED application/verification process.	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.	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 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.

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		<p>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.</p> <p>If employer has reason to doubt the validity of certification, can get 2nd and 3rd opinions at employer's expense. Periodic recertifications are permitted for ongoing conditions, but 2nd and 3rd opinions are not permitted on recertifications.</p> <p>Employer can require fitness-for-duty certification upon return to work.</p>	<p>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 2nd opinion permitted for sick child leave.</p> <p>Employer must pay employee's out-of-pocket costs for any required medical verification.</p>	<p>Employee has 15 calendar days after request to provide verification.</p> <p>Employer must pay any reasonable costs for providing verification, including lost wages and out-of-pocket medical expenses.</p> <p>Nature of illness or details related to DV, SA, H, S may not be required.</p>
<u>Employer's Contact with Health Care Provider</u>	N/A	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 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.	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 employee's or family member's health care provider to clarify or authenticate certification.	No provision for contacting health care provider. (But note that some circumstances may also be OFLA-covered and therefore fall under OFLA rule).
<u>Employer Notice to Employee of Eligibility and Qualification for Leave</u>	N/A	<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>	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.

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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.	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).	Group health plan coverage must be maintained during leave subject to regular employer/employee premium contributions.	Statute and rules are silent, but health insurance is presumably maintained during paid sick leave.
<u>Temporary Transfer During Intermittent Leave or Reduced Schedule</u>	N/A	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 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).	Employer may transfer to alternate position only if: 1) employees accepts transfer voluntarily and without coercion; 2) transfer is temporary, lasts no longer than necessary; 3) alternate position has equivalent pay and benefits; 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.	Statute and rules are silent.
<u>Right to Return to Job</u>	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 within 50 mile radius, and shall offer the one closest to the employee's former job site. Small employers can restore to different position, but with the same pay/benefits and similar working conditions.	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.	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.

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		Employer can seek clarification or authentication, but may not delay return to work while does so.		
<u>Attendance Bonuses</u>	N/A	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.
<u>Enforcement</u>	OED (claims) BOLI (discrimination/job protection)	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.
<u>Remedies</u>	Civil and criminal penalties for employer failure to pay contributions, file reports, or maintain equivalent plan. Discrimination/job protection: (1) Equitable relief (e.g. reinstatement); (2) Lost wages and benefits; (3) Attorney fees and costs; (4) Compensatory damages.	(1) Equitable relief (e.g. reinstatement); (2) Monetary losses, including lost wages, benefits, or other actual monetary losses); (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.