Clatskanie School District 6J

Code: **GCBDA/GDBDA-AR(1)**
Revised/Reviewed: 9/24/07; 4/22/13; 4/28/14; 12/14/15; 6/19/17; 3/08/21; 5/09/22

Family Leave *

{Highly recommended administrative regulation (AR). The law does not require districts to have this information in an AR, but the district is required to follow the law. Having an AR in place can assist with compliance. This AR is intended for districts with 50 or more employees. If the district has between 25 and 50 employees, use version 2 of GCBDA/GDBDA-AR(1) - Family Leave *. If the district does not have 25 employees, the district should not use this AR.}

~~**Coverage**~~

~~The federal Family and Medical Leave Act (FMLA) applies to districts with 50 or more employees within 75 miles of the employee's work site, based on employment during each working day during any of the 20 or more workweeks in the calendar year in which the leave is to be taken, or in the calendar year preceding the year in which the leave is to be taken. The 50 employee test does not apply to educational institutions for determining employee eligibility.~~

~~The Oregon Family Leave Act (OFLA) and the Oregon Military Family Leave Act (OMFLA) applies to districts that employ 25 or more part-time or full-time employees in Oregon, based on employment during each working day during any of the 20 or more workweeks in the calendar year in which the leave is to be taken, or in the calendar year immediately preceding the year in which the leave is to be taken.~~

Employee Eligibility

FMLA benefits are available~~applies~~ to employees who have been employed by ~~worked for~~ the district for at least 12 months, have ~~(not necessarily consecutive) and~~ worked ~~for~~ at least 1,250 hours during the past 12-month period and work at a worksite that employs 50 district employees within 75 miles~~immediately preceding the start~~ of the worksite~~leave~~.

An employee who has previously qualified for and has taken some portion of FMLA leave may request additional FMLA leave within the same leave year. In such instances, the employee may not need to~~not~~ requalify as an eligible employee~~, if the additional leave applied for is in the same leave year and for the same condition~~.

Generally, in order for an employee~~OFLA applies~~ to be eligible for the benefits under OFLA, the employee must~~employees who~~ work an average of 25 hours or more per week during the 180 calendar days~~ or more~~ immediately prior to the first day of the start of the requested leave.[1] For parental leave purposes, an employee becomes eligible upon completing at least 180 days immediately preceding the date on which the parental leave begins:~~.~~ t~~T~~here is no minimum average number of hours worked per week ~~when determining employee eligibility for parental leave~~.

[1] The requirements of OFLA do not apply to any employer offering eligible employees a nondiscriminatory cafeteria plan, as defined by section 125 of the Internal Revenue Code of 1986, which provides as one of its options employee leave at least as generous as the leave required by OFLA.

An employee~~ of a covered employer~~ is eligible to take leave for purposes of OFLA during a period of time covered by a public health emergency except:

1. An employee who has worked for the district~~covered employer~~ for fewer than 30 days immediately before the date on which the family leave would commence; or

2. An employee who has worked for the district~~covered employer~~ for an average of fewer than 25 hours per week in the 30 days immediately before the date on which the family leave would commence.

An employee of the district~~a covered employer~~ is eligible to take leave for purposes of OFLA if the employee:

1. Separates from employment with the district~~covered employer~~, irrespective of any reason:

    a. Is eligible to take ~~OFLA~~ leave OFLA at the time the employee separates; and
    b. Is reemployed by the district~~covered employer~~ within 180 days of separation from employment; or

2. Is eligible to take OFLA leave:

    a. At the beginning of a temporary cessation of scheduled hours of 180 days or less; and
    b. Returns to work at the end of the temporary cessation of scheduled hours of 180 days or less.

Any OFLA leave taken by the employee within any one-year period continues to count against the length of time of OFLA leave the employee is entitled. The amount of time that an employee is deemed to have worked for the district~~a covered employer~~ prior to a break in service due to a separation from employment or a temporary cessation of scheduled hours shall be restored to the employee when the employee is reemployed by the district~~employer~~ within 180 days of separation from employment or when the employee returns to work at the end of the temporary cessation of scheduled hours of 180 days or less.

An employee who has previously qualified for and has taken some portion of OFLA leave, may request additional OFLA leave within the same leave year. In such instances, the employee must requalify as an eligible employee for each additional leave requested unless one of the following exceptions apply:

1. An~~A female~~ employee taking, in any order, some or all of~~who has taken~~ 12 weeks of OFLA pregnancy disability leave and some or all of 12 weeks of OFLA leave for any other purpose, need not requalify leave in the same leave year~~ for any other purpose~~;

2. An employee who has taken 12 weeks of parental leave need not requalify to take an additional 12 weeks in the same leave year for sick child leave;~~ and~~

3. An employee granted leave for a serious health condition for the employee or a family member need not requalify if additional leave is taken in this leave year for the same reason;~~.~~

4. An employee unable to work because of a disabling compensable injury[2] need not requalify in order to use OFLA leave following a period the employee is off work due to the compensable injury; and

[2] As defined in ORS 656.005.

5. An employee who has taken serious health condition leave to care for a family member who dies during the employee's serious health condition need not requalify to take leave for the death of that family member.

OMFLA applies to employees who work an average of at least 20 hours per week. There is no minimum number of days worked when determining employee eligibility for OMFLA.

In determining if an employee has been employed for the preceding 180 calendar days, ~~when applicable,~~ the district~~employer~~ must consider days, ~~e.g.,~~ paid or unpaid, an employee is maintained on payroll. ~~for any part of a work week.~~ Full-time public school teachers who have been maintained on payroll by the~~a~~ district for 180 consecutive calendar days are thereafter deemed to have been employed for an average of at least 25 hours per week during the 180 days immediately preceding the start date of the OFLA leave. ~~This provision is eligible for rebuttal if for example, the employee was on a nonpaid sabbatical.~~

In determining average workweek, the employer must count the actual hours worked using the Fair Labor Standards Act (FLSA) guidelines.

Qualifying Reason

Eligible employees may access FMLA leave for the following reasons:

1. Serious health condition of the employee or the employee's covered family member. Serious health condition means an illness, injury, impairment or physical or mental condition that involves inpatient~~:~~ care[3] or continuing care[4] or continuing care provider[5].

   ~~a. Inpatient care;~~
   ~~b. Continuing treatment;~~
   ~~c. Chronic conditions;~~
   ~~d. Permanent, long-term or terminal conditions;~~
   ~~e. Multiple treatments;~~
   ~~f. Pregnancy and prenatal care.~~

2. Parental leave[6] (separate from eligible leave as a result of a child's serious health condition):

   a. Bonding with and the care for the employee's newborn (within 12 months following birth);
   b. Bonding with and the care for a newly adopted child or newly placed child in foster care{[7]}~~child~~ under the age of 18 (within 12 months of placement);

[3] Inpatient care means an overnight stay in a hospital, hospice, or residential medical facility, including any period of incapacity or any subsequent treatment in connection with such inpatient care. 29 CFR 825.114.

[4] Inpatient care means an overnight stay in a hospital, hospice, or residential medical facility, including any period of incapacity or any subsequent treatment in connection with such inpatient care. 29 CFR 825.114.

[5] Continuing treatment includes incapacity and treatment, pregnancy or prenatal care, chronic conditions, permanent or long-term conditions, conditions requiring multiple treatments, and absences attributable to incapacity. See 29 CFR 815.115.

[6] Parental leave must be taken in one continuous block of time within 12 months of the triggering event.

[7] {ORS 659A.159 uses the term "foster child." Districts can choose to use either "foster child" or "child in foster care" throughout this AR.}

c. Care for a newly adopted child or newly placed child in foster care~~child~~ over 18 years of age who is incapable of self-care because of a physical or mental impairment (within 12 months of placement);
d. Time to effectuate the legal process required for placement of a child in foster care~~child~~ or the adoption of a child.

3. Military Caregiver Leave: leave for the care for spouse, child~~son, daughter~~ or next-of-kin who is a covered servicemember~~/veteran~~ with a serious injury or illness;

4. Qualifying Exigency Leave: leave arising out of the foreign deployment of the employee's spouse, child~~son, daughter~~ or parent.

Eligible employees may access OFLA for the following reasons:

1. Serious health condition of the employee or the employee's covered family member. Serious health condition means:

~~a. Inpatient care;~~
~~b. Continuing treatment;~~
~~c. Chronic conditions;~~
~~d. Permanent, long-term or terminal conditions;~~
~~e. Multiple treatments;~~
~~f. Pregnancy and prenatal care.~~
~~g.~~a. An illness, injury, impairment or physical or mental condition that requires inpatient care in a hospital, hospice or residential medical care facility;
~~h.~~b. An illness, disease or condition that in the medical judgement of the treating health care provider poses an imminent danger of death, is terminal in prognosis with a reasonable possibility of death in the near future, or requires constant care;
~~i.~~c. Any period of disability due to pregnancy, or period of absence for prenatal care; or
~~j.~~d. 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.[8]

2. Parental leave (separate from eligible leave as a result of the child's serious health condition):

a. Bonding with and the care for the employee's newborn (within 12 months following birth);
b. Bonding with and the care for a newly adopted child or newly placed child in foster care~~child~~ under the age of 18 (within 12 months of placement);
c. Care for a newly adopted child or newly placed child in foster care~~child~~ over 18 years of age who is incapable of self-care because of a physical or mental impairment (within 12 months of placement);
d. Time to effectuate the legal process required for placement of a child in foster care~~child~~ or the adoption of a child.

3. Sick Child Leave: leave for non-serious health conditions of the employee's child. For OFLA, sick child leave includes absence to care for an employee's child whose school or child care provider has

[8] This definition is from ORS 659A.150(7). A more detailed definition is available in OAR 839-009-0210(22).

been closed[9] in conjunction with a statewide public health emergency declared by a public health official.[10]

4. Bereavement Leave: leave related to the death of a covered family member.[11]

Eligible employees may access OMFLA for the purpose of spending time with a spouse or ~~same-gender~~ domestic partner who is in the military and has been notified of an impending call or order to active duty, or who has been deployed during a period of military conflict.

The eligibility of an employee who takes multiple leaves for different qualified reasons during the same ~~district designated~~ leave year~~period~~ may be reconfirmed at the start of each qualified leave requested.

Definitions

1. Family member:

   a. For the purposes of FMLA, "family member" means:

      (1) Spouse[12];
      (2) Parent;
      (3) Child; or
      (4) Persons who are "in loco parentis".

   b. For the purposes of OFLA, "family member" means:

      ~~(1) Spouse;~~
      ~~(2) Registered, same-gender domestic partner;~~
      ~~(3) Parent;~~
      ~~(4) Parent-in-law;~~
      ~~(5) Parent of employee's registered, same-gender domestic partner;~~
      ~~(6) Child;~~
      ~~(7) Child of employee's registered, same-gender domestic partner;~~
      ~~(8) Grandchild;~~
      ~~(9) Grandparent; or~~
      ~~(10) Persons who are "in loco parentis".~~

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[9] "Closure" for the purpose of sick child leave during a statewide public health emergency declared by a public health official means a closure that is ongoing, intermittent, or recurring and restricts physical access to the child's school or child care provider. OAR 839-009-0210(4).

[10] The district may request verification of the need for sick child leave due to a closure during a statewide emergency. Verification may include:
1. The name of the child being cared for;
2. The name of the school or child care provider that has closed or become unavailable;~~ and~~
3. A statement from the employee that no other family member of the child is willing and able to care for the child; and~~.~~

With the care of a child older than 14, a statement that special circumstances exist requiring the employee to provide care to the child during daylight hours.

[11] Bereavement leave under OFLA must be completed within 60 days of when the employee received notice of the death.

[12] "Spouse" means individuals in a marriage, including "common law" marriage and same-sex marriage.~~ For OFLA, spouse also includes same-sex individuals with a Certificate of Registered Domestic Partnership.~~

~~(11)~~(1) Spouse or domestic partner;
~~(12)~~(2) Child or the child's spouse or domestic partner;
~~(13)~~(3) Parent or the parent's spouse or domestic partner;
~~(14)~~(4) Sibling or stepsibling, or the sibling's or stepsibling's spouse or domestic partner;
~~(15)~~(5) Grandparent or the grandparent's spouse or domestic partner;
~~(16)~~(6) Grandchild or the grandchild's spouse or domestic partner; or
~~(17)~~(7) Any individual related by blood or affinity whose close association with a covered individual is the equivalent of a family relationship.[13]

2. Child:

   a. For the purposes of FMLA, "child" means a biological or~~,~~ adopted child, a child in ~~or~~ foster care~~child~~, a stepchild, a legal ward or a child of a person standing "in loco parentis", who is either under the age of 18, or who is 18 years of age or older and who is incapable of self-care because of a physical or mental disability~~impairment~~.
   b. For the purposes of Military Caregiver Leave and Qualifying Exigency Leave under FMLA, "child" means the employee's child~~son or daughter~~ on covered active duty regardless of that child's age.
   c. For the purposes of OFLA, "child" means a biological or~~,~~ adopted child, a child in~~,~~ foster care~~child~~ or stepchild of the employee, the child of the employee's ~~same-gender~~ domestic partner, or a child with whom the employee is or was in a relationship of "in loco parentis".
   d. For the purposes of parental and sick child leave under OFLA, the child must be under the age of 18 or an adult dependent child substantially limited by a physical or mental impairment.

3. In loco parentis:

   a. For the purposes of FMLA, "in loco parentis" means persons with day-to-day responsibility to care for or~~and~~ financially support a child, or, in the case of an employee, who had such responsibility for the employee when the employee was a child. A biological or legal relationship is not necessary.
   b. For the purposes of OFLA, "in loco parentis" means person in the place of the parent, having financial or day-to-day responsibility for the care of a child. A legal or biological relationship is not required.

4. Next of kin:

   For the purposes of FMLA ~~and Military Caregiver Leave under FMLA~~, "next of kin" means the nearest blood relative other than the servicemember's spouse, parent~~, son~~ or child~~daughter~~ in the following order of priority (unless otherwise designated in writing by the servicemember):

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[13] "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. This bond may be demonstrated by, but is not limited to the following factors, with no single factor being determinative:

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.

a. Blood relatives who have been granted legal custody of the servicemember by court decree or statutory provisions;
b. Siblings;
~~c. Brothers or sisters;~~
~~d.~~c. Grandparents;
~~e.~~d. Siblings of parents and their spouses; and
~~f. Aunts and uncles; and~~
~~g.~~e. First cousins.

5. Covered servicemembers:

For the purposes of ~~Military Caregiver Leave under~~ FMLA, "covered servicemember" means a current member of the Armed Forces, including a member of the National Guard or Reserves, who is undergoing~~receiving~~ medical treatment, recuperation or therapy, ~~or~~ is otherwise in outpatient status, or is otherwise on the temporary disability retired list for a serious injury or illness; or a covered veteran who is undergoing medical treatment, recuperation, or therapy for a serious injury or illness.

6. Covered veteran:

For the purposes of ~~Military Caregiver Leave under~~ FMLA, "covered veteran" means an individual~~a veteran~~ who was:~~is undergoing medical treatment, recuperation or therapy for a serious injury or illness provided they were:~~

a. A member of the Armed Forces (including a member of the National Guard or Reserves);
b. Discharged or released under conditions other than dishonorable; and
c. Discharged within the five-year period prior to the first date~~before~~ the eligible employee ~~first~~ takes FMLA leave to care for the covered veteran~~, Military Caregiver Leave~~.

7. Public health emergency:

For OFLA a public health emergency means;

a. A public health emergency declared under ORS 433.441.
b. An emergency declared under ORS 401.165 if related to a public health emergency as defined in ORS 433.442.

Leave Period

For the purposes of calculating an employee's leave period, the district will use the 12-month period measured forward from the date the employee's leave begins ~~a "rolling" 12-month period measured backward from the date the employee uses any family and medical leave~~{[14]}. The same method for calculating the one-year~~12-month~~ period for FMLA and OFLA leave entitlement shall be used for all employees. However, in all instances, the leave period for the purposes of OMFLA and Military Caregiver

{[14] Beginning July 1, 2024, districts are required to use "a period of 52 consecutive weeks beginning on the Sunday immediately preceding the date on which family leave commences" for OFLA purposes. See SB 999 (2023). Prior to making a change to the leave period calculation, 60 days' notice must be provided to employees. FMLA continues to measure the leave year as 12 months, which could result in slight differences for some employees.}

Leave under FMLA shall be dependent on the start of any such leave regardless of the district's designated ~~12-month~~ leave period described above.

Leave Duration

For the purposes of FMLA, an eligible employee is generally entitled to a total of 12 weeks of qualified leave during the district's designated leave period[15].

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 child or child in foster care,~~child or~~ the care for an adopted child or child in foster care~~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, an ~~eligible~~ employee may be~~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 the employee has taken prior to the birth of such child during the ~~district's~~ designated leave period. Likewise, an employee who uses the full 12 weeks of parental leave during the ~~district~~ designated leave period, will be entitled to an additional 12 weeks of sick child leave under OFLA ~~during the district's designated leave period for the purpose of caring for a child(ren) with a non-serious health condition requiring home care~~.[16] 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.[17]

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.

For the purpose of tracking the number of leave hours an eligible employee is entitled and/or has used during each week of the employee's leave, leave entitlement is calculated by multiplying the number of

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[15] An eligible employee taking Military Caregiver Leave under FMLA is entitled to up to 26 weeks of leave in the 12-month period beginning with the first day of such leave and regardless of any FMLA leave taken previously during the district's leave period. However, once the 12-month period begins for the purposes of Military Caregiver Leave under FMLA, any subsequent FMLA qualified leave, regardless of reason for such leave, will count toward the employee's 26-week entitlement under Military Caregiver Leave under FMLA.

[16] Sick child leave under OFLA need not be provided if another family member, including a noncustodial biological parent, is willing and able to care for the child.

[17] Exceptions to the ability to require family members from taking OFLA qualified leave at different times are when 1) employee is caring for the other employee who has a serious medical condition; 2) one employee is caring for a child with a serious medical condition when the other employee is suffering a serious medical condition; 3) each family member is suffering a serious medical condition; 4) each family member wants to take Bereavement Leave under OFLA; and 5) the employer allows the family members to take concurrent leave.

hours the eligible employee normally works per week by 12[18]. If an employee's schedule varies from week-to-week, a weekly average of the hours worked over the 12 months~~weeks~~ worked prior to the beginning of the leave period shall be used for calculating the employee's normal workweek[19]. If an employee takes intermittent or reduced work schedule leave, only the actual number of hours of leave taken may be counted toward the 12 weeks of leave to which the employee is entitled.

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 requiring an altered~~requires a modified~~ or reduced work schedule. For OFLA this includes but is not limited to sick child leave taken requiring an altered or reduced work schedule because the intermittent or recurring closure of a child's school or child care provider due to a statewide public health emergency declared by a public health official.

When an exempt employee is eligible for both OFLA and FMLA leave, and ~~but not FMLA leave,~~ the ~~employer:~~ employee takes intermittent leave in blocks of less than one day, if done in accordance with 29 C.F.R. § 825.206, the district may reduce the employee's salary for the part-day absence without the loss of the employee's exempt status in accordance with OAR 839-020-0004(30)(a).

~~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.~~

When an exempt employee is eligible for OFLA but not FMLA leave, and the employee takes intermittent leave in blocks of less than one day, the district will jeopardize the employee's exempt status if the district reduces the employee's salary for the party-day absence.

An employee's FMLA and/or OFLA intermittent leave time is determined by calculating the difference between the employee's normal work schedule and the number of hours the employee actually works during the leave period. The result of such calculation is credited against the eligible employee's leave entitlement.

Holidays or days in which the district is not in operation, are not counted against the eligible employee's intermittent OFLA leave period unless the employee was scheduled and expected to work on any such day.

[18] For example, an employee normally employed to work 30 hours per week is entitled to 12 times 30 hours, or a total of 360 hours of leave.

[19] For example, an employee working an average of 25 hours per week is entitled to 12 times 25 hours, or a total of 300 hours of leave.

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 applicable protections provided for in FMLA and/or OFLA; and

5. The transfer is not used to discourage the employee from taking FMLA and/or OFLA leave for a serious health condition or to create a hardship for the employee.

The district may transfer an eligible employee who is on ~~a foreseeable~~ intermittent ~~FMLA and/or~~ OFLA leave to another position with the same or different duties to accommodate the leave, provided:

1. The employee accepts the transfer position voluntarily and without coercion;

2. The transfer is temporary, lasts no longer than necessary to accommodate the leave and has equivalent pay and benefits;

3. The transfer is compliant with any applicable collective bargaining agreements;

4. The transfer is compliant with state and federal law, including but not limited to the applicable protections provided for in FMLA and/or OFLA;

5. The transfer to an alternate position is used only when there is no other reasonable option available that would allow the employee to use intermittent leave or reduced work schedule; and

6. The transfer is not used to discourage the employee from taking intermittent or reduced work schedule leave, or to create a hardship for the employee.

If an eligible employee is transferred to an alternative position to accommodate the employee's serious health condition, and as a result the employee works fewer hours than the employee was working in the original position, the employee's ~~FMLA and/or~~ OFLA leave time is determined by calculating the difference between the employee's normal work schedule and the number of hours the employee actually works during the leave period. ~~The result of such calculation is credited against the eligible employee's leave entitlement.~~

When an employee is transferred to alternate position as described above but such 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, "instructional employee" means those whose principal function is to teach and instruct students in a class, a small group or an individual setting. Athletic coaches, driving instructors and special education assistants, such as interpreters for the hearing impaired, are included in this definition. This definition does not apply to teacher assistants or aides who do not have as their principal job actual teaching or instructing, counselors, psychologists, curriculum specialists, cafeteria workers, maintenance workers or bus drivers.

For the purposes of OFLA, "school employee" means employees employed principally as instructors in public kindergartens, elementary schools, secondary schools or education service districts.

FMLA and/or OFLA leave that is taken for a period that ends with the school year and begins with the next semester is considered consecutive rather than intermittent. In any such situation, the eligible school employee will receive any benefits during the break period that employees would normally receive if they had been working at the end of the school year.

1. Foreseeable Intermittent Leave Exceeding 20 Percent of Working Days

   When the qualified leave is foreseeable, will encompass more than 20 percent of the eligible school employee's regular work schedule during the leave period, and the purpose of such leave is to care for a family member with a serious medical condition, for a servicemember with a serious medical condition or because of the employee's own serious medical condition, the district may require the eligible school employee to:

   a. Take leave for a period or periods of a particular duration, not greater than the duration of the planned treatment; or
   b. Temporarily transfer the eligible school employee to an alternate position for which the employee is qualified, which has equivalent pay and benefits and which better accommodates recurring periods of leave than the employee's original position.

2. Limitation on Leave Near the End of the School Year

   When an eligible school employee requests leave near the end of the school year, the district may require the following:

   a. When the qualified leave begins more than five weeks before the end of the school year:

      (1) For the purposes of FMLA leave, the eligible school employee may be required to continue taking leave until the end of the school year provided:

         (a) The leave will last at least three weeks; and
         (b) The employee would return to work during the three-week period before the end of the term.

      (2) For the purposes of OFLA leave, if the reason for the leave is because of the eligible school employee's own serious health condition, the eligible school employee may be required to remain on~~in~~ leave until the end of the school year, provided:

         (a) The leave will last at least three weeks; and

(b) The employee's return to work would occur within three weeks of the end of the school year.

b. For the purposes of FMLA and/or OFLA leave, when the qualified leave begins within five weeks of the end of the school year and the purpose of such leave is parental leave, for the serious health condition of a family member or for the serious health condition of a servicemember, the eligible school employee may be required to remain on leave until the end of the school year provided:

(1) The leave will last more than two weeks; and
(2) The employee would return to work during the two-week period before the end of the school year.

c. For the purposes of FMLA and/or OFLA leave, when the qualified leave begins within three weeks of the end of the school year and the purpose of such leave is parental leave, for the serious health condition of a family member or for the serious health condition of a servicemember, the eligible school employee may be required to remain on leave until the end of the school year provided the length of the leave will last more than five working days.

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. Paid Family Medical Leave Insurance (PMFLI) leave taken via Paid Leave Oregon or an equivalent plan will run concurrently with OFLA and FMLA when taken for the same purpose. Subject to any related provisions in any applicable collective bargaining agreement~~, the district requires the eligible~~ an employee may elect to use any available accrued paid leave including personal and sick leave, ~~vacation or personal leave days (~~or ~~other~~ available accrued vacation leave~~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.{[20]} This includes when an employee is being paid through PMFLI.

The district will notify the eligible employee that the requested leave has been designated as FMLA and/or OFLA leave and ask the employee about the use of available accrued paid leave. ~~, if required by the district, that available accrued paid leave shall be used during the leave period. In the event the district is aware of an OFLA or FMLA qualifying exigency, the district shall notify the eligible employee of its intent to designate the leave as such regardless of whether a request has been made by the eligible employee. Such notification will be given to the eligible employee prior to the commencement of the leave or within two working days of the employee's notice of an unanticipated or emergency leave, whichever is sooner.~~

~~When the district does not have sufficient information to make a determination of whether the leave qualifies as FMLA or OFLA leave, the district will provide the required notice promptly when the~~

[20] {Coordinate with any language regarding use of accrued leave during PMFLI from GDBDF/GDBDF or any equivalent plan information.}

~~information is available but no later than two working days after the district has received the information. Oral notices will be confirmed in writing no later than the following payday. If the payday is less than one week after the oral notice is given, written notice will be provided no later than the subsequent payday.~~

Eligible employees who request OMFLA leave shall not be required to use any available accrued paid time off during the OMFLA leave period.

Benefits and Insurance

When an eligible employee returns to work following a FMLA or OFLA qualified leave, the employee must be reinstated to the same position the employee held when the leave commenced, or to an equivalent position with equivalent benefits, pay and other terms and conditions of employment.

During an OFLA qualified leave an eligible employee does not accrue seniority or other benefits that would have accrued while the employee was working, unless the terms of a collective bargaining agreement, other agreement or other district~~employer's~~ policy provide otherwise.[21] The eligible employee is also subject to layoff to the same extent similarly situated employees not taking OFLA leave are subject unless the terms of an applicable collective bargaining agreement, other agreement or the district's policies provide otherwise.

For the purposes of FMLA and OFLA, the district will continue to pay the employer portion of the eligible employee's group health insurance contribution (if applicable) during the qualified leave period. The eligible employee is required to pay the employee portion of any such group health insurance contribution as a condition of continued coverage.

For the purposes of FMLA qualified leave, the district's obligation to maintain the employee's group health insurance coverage will cease if the employee's contribution is remitted more than 30 calendar days late. The district will provide written notice that the premium payment is more than 30 calendar days late. Such notice will be provided within 15 calendar days before coverage is to cease.

For the purposes of OMFLA, the eligible employee is entitled to a continuation of benefits.

Fitness-for-Duty Certification

Prior to the reinstatement of an employee following a leave which was the result of the employee's own serious health condition, the district may require the employee to obtain and present a Fitness-for-Duty Certification. ~~The certification will specifically address the employee's ability to perform the essential functions of the employee's job as they relate to the health condition that was the reason for the leave.~~ If the district is going to require a fitness-for-duty certification upon return to work, the district must notify the employee of such requirement when the leave is designated as FMLA and/or OFLA leave. Failure to provide the certification may result in a delay or denial of reinstatement.

For the purposes of FMLA qualified leave, any costs associated with obtaining the fitness-for-duty certification shall be borne by the employee.

[21] See also ORS 342.934(4)(d) in reduction force situations.

For the purposes of OFLA qualified leave, any out-of-pocket costs associated with obtaining the fitness-for-duty certification shall be borne by the district.

If the leave is qualified under both FMLA and OFLA, any out-of-pocket costs associated with obtaining the fitness-for-duty certification shall be borne by the district.

Application

Under federal and state law, an eligible employee requesting FMLA and/or OFLA leave shall provide at least 30 days' notice prior to the leave date if the leave is foreseeable. The notice shall be written and include the anticipated start date, duration and reasons for the requested leave. When appropriate, the eligible employee must make a reasonable effort to schedule treatment, including intermittent leave and reduced leave, so as not to unduly disrupt the operation of the district.

The district may request additional information to determine that the requested leave qualifies as FMLA and/or OFLA leave. The district may designate the employee as provisionally on FMLA and/or OFLA leave until sufficient information is received to properly make a determination. An eligible employee able to give advance notice of the need to take FMLA and/or OFLA leave must follow the district's~~employer's~~ known, reasonable and customary procedures for requesting any kind of leave.

For the purposes of FMLA, if advance notice is not possible, an employee eligible for FMLA leave must provide notice as soon as practicable. "As soon as practicable," for the purpose of FMLA leave, means as soon as both possible and practical, taking into account all of the facts and circumstances in the individual case. In most situations, as soon as practicable will be within one business day of an employee becoming aware of the need.~~the employee must comply with the employer's normal call-in procedures except in limited and under unique circumstances.~~ Failure of an employee to provide the required notice for FMLA leave may result in the district delaying the employee's leave up to 30 days after the notice is ultimately given.

For the purposes of OFLA, an eligible employee is required to provide oral or written notice within 24 hours of commencement of the leave in unanticipated or emergency leave situations. The employee may designate a family member or friend to notify the district during that period of time. Failure of an employee to provide the required notice for leave covered by OFLA may result in the district deducting up to three weeks from the employee's unused OFLA leave in that one-year leave period. The employee may be subject to disciplinary action for not following the district's notice procedures. When an employee fails to give advance notice for both the FMLA and OFLA above, the district must choose the remedy that is most advantageous to the employee.[22]

In all cases, proper documentation must be submitted no later than three working days following the employee's return to work.

Medical Certification

The district may require an eligible employee to provide medical documentation, when appropriate[23], to support the stated reason for such leave~~, other than to care for a child who requires home care due to the~~

[22] See OAR 839-009-0250(4)(c).

[23] Medical documentation is not allowed in every situation. Review current laws and guidance for more information.

~~closure of the child's school or child care provider as a result of a public health emergency~~. The district will provide written notification to an employee of this requirement within five working days of the employee's request for leave. If the employee provides less than 30 days' notice, the employee is required to submit such medical certification no later than 15 calendar days after receipt of the district's notification that medical certification is required.

Any additional certifications, including second and third opinions, will be in accordance with applicable law.

Posted Notice

The district will post the Bureau of Labor and Industries Family Leave notice in each building or worksite that is accessible to and regularly frequented by employees.[24] The district will also post a notice explaining the provisions of FMLA and providing information concerning the procedures for filing complaints.[25]
~~The district may request re-certification of a condition when the minimum duration of a certification expires if continued leave is requested. If the certification does not indicate a duration or indicates that it is ongoing, the district may request re-certification at least every six months in connection with an absence.~~

~~Under federal law, a second medical opinion may be required whenever the district has reason to doubt the validity of the initial medical opinion. The health care provider may be selected by the district. The provider shall not be employed by the district on a regular basis. Should the first and second medical certifications differ, a third opinion may be required. The district and the employee will mutually agree on the selection of the health care provider for a third medical certification. The third opinion will be final. Second and third opinions and the actual travel expenses for an employee to obtain such opinions will be paid for by the district.~~

~~**Second and Third Opinions**~~

1. ~~For the purposes of FMLA, the district may designate a second health care provider, but that person cannot be utilized by the district on a regular basis except in rural areas where health care is extremely limited. If the opinions of the employee's and the district's designated health care provider(s) differ, the district may require a third opinion at the district's expense. The third health care provider must be designated or approved jointly by the employee and the district. This third opinion shall be final and binding.~~

2. ~~For the purposes of OFLA, and except for leave related to sick child leave under OFLA, the district may require the employee to obtain a second opinion from a health care provider designated by the district. If the first and second verifications conflict, the employer may require the two health care providers to jointly designate a third health care provider for the purpose of~~ providing ~~a verification. This third verification shall be final and binding.~~

~~**Notification**~~

[24] https://www.oregon.gov/boli/employers/Documents/BOLI_Printable_FamilyMedLv.pdf; electronic posting is not sufficient to satisfy this requirement, but may be used to supplement the physical posting.

[25] https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/fmlaen.pdf; electronic posting is sufficient as long as it is posted prominently where it can be readily seen by employees and applicants for employees. The poster and the text must be large enough to be easily read and contain fully legible text.

~~Any notice required by federal and state laws explaining employee rights and responsibilities will be posted in all staff rooms and the district office. Additional information may be obtained by contacting the superintendent.~~

Record Keeping/~~Posted Notice~~

The district will maintain all records as required by federal and state laws including dates leave is taken by employees, identified separately from other leave; hours/days of leave; copies of general and specific notices to employees, including Board policy(ies) and regulations; premium payments of employee health benefits while on leave and records of any disputes with employees regarding granting of leave.

Medical documentation will be maintained separately from personnel files as confidential medical records.

~~The district will post notice of FMLA[26] and OFLA[27] leave requirements.~~

Federal vs. State Law

Both federal and state law contain provisions regarding leave for family illness. Federal regulations state an employer must comply with both laws; that the federal law does not supersede any provision of state law that provides greater family leave rights than those established pursuant to federal law; and that OFLA and FMLA leave entitlements run concurrently. State law requires that FMLA and OFLA leave entitlements run concurrently when possible.

~~For example, due to differences in regulations, an eligible employee who takes OFLA leave after 180 days of employment, but before they are eligible for FMLA leave, is still eligible to take a full 12 workweeks of FMLA leave after meeting FMLA's eligibility requirements. Thereafter, any eligible leave period will run concurrently, when appropriate.~~WWW.WAGEHOUR.DOL.GOV

Corrected 11/07/23

[26] ~~Poster available at https://www.dol.gov/agencies/whd/fmla/posters.~~

[27] ~~Poster available at https://www.oregon.gov/boli/employers/pages/required-worksite-postings.aspx.~~