



## FMLA and OFLA offer guidance on important issues

The Federal Family and Medical Leave Act and the Oregon Family Leave Act provide employees with certain job entitlements and protections during absences related to a birth, adoption, or placement of a foster child or serious health conditions. It is likely that at some point in a career, every employee will use FMLA/OFLA leave. But FMLA/OFLA can be complicated, and the guidance they provide is frequently misunderstood. Human Resources begins a series of articles in this issue addressing the many facets of FMLA/OFLA.

### Part 1: Leave entitlements and eligibility requirements

#### Leave entitlements

FMLA provides a maximum of 12 workweeks (480 hours) of unpaid leave in a revolving 12-month period. OFLA provides this same entitlement, as well as up to an additional 12 weeks (480 hours), for pregnancy-related medical conditions and up to another 12 weeks (480 hours) to care for sick children with non-serious health conditions. Certain criteria must be met which will be explained in Basis for leave, below.

#### Eligibility requirements

To be eligible for FMLA leave, an employee must have been employed for at least 12 months prior to the leave and worked a minimum of 1250 hours in the 12 months preceding the leave. The 12 months do not need to be consecutive months.

The definition of a “revolving 12 month period” is often misunderstood when using family leave entitlements. It is important to understand how leave balance is calculated so you can be clear on how much leave time you are entitled to before your leave begins. Contact your HR representative to learn more about this formula.

To be eligible for OFLA leave, an employee must have been employed for at least 180 days prior to the date leave begins and worked an average of 25 hours or more per week during this period. (Employees taking leave to care for a newborn, adopted, or newly placed foster child need only meet the 180 day requirement, regardless of the average number of hours worked.)

Under both FMLA and OFLA, “hours worked” is defined as the hours you were actually performing work (regular hours, overtime, etc.), and does not include paid leave (vacation, sick, holiday, etc.). Under family leave applications, the State of Oregon is considered one employer, so time worked

with another agency can count towards qualifying time.

### Part 2: Qualifying Family Member and Basis for Leave

#### Qualifying family member

Employees may also use family leave to care for an immediate family member. Under FMLA definitions, an immediate family member is a spouse, child, parent or family member injured during active military duty. The OFLA definitions include these members as well as providing leave coverage to care for a sick child for non-serious health conditions, grandchildren or grandparents, parent-in-laws, or same sex domestic partners with a serious health condition.

#### Basis for leave

It is important to know the definition of a “serious health condition.” It includes:

- Inpatient care
- Critical illnesses or injuries diagnosed as terminal or which pose an imminent danger of death
- Conditions requiring constant or continuing care
- Permanent or long-term incapacity due to a condition for which treatment may not be effective
- Absence Plus Treatment (incapacity for more than three consecutive calendar days, which also involves (a) two or more treatments by a health care provider or (b) one treatment followed by a regimen of continuing treatment
- Absences for pregnancy related disability or prenatal care
- Chronic conditions (defined as a condition that requires periodic visits over time for a single condition that may cause episodes of incapacity rather than a continuing period. Treatments and periods of incapacity for conditions such as asthma, epilepsy, or diabetes are conditions that usually qualify as chronic).
- Multiple treatments for conditions that if not treated would likely result in incapacity of more than three days

A serious health condition means the employee is unable to perform at least one essential function of the job. Essential functions are designated in your position description. To learn more, review the Bureau of Labor and Industries Web site at [www.oregon.gov/BOLI/TA/T\\_FAQ\\_Tafaq.shtml](http://www.oregon.gov/BOLI/TA/T_FAQ_Tafaq.shtml); contact your HR representative; or visit the HR manual online at <http://intranet.odot.state.or.us/hr/>.

*Upcoming articles in Inside ODOT will discuss leave request and designation, reinstatement rights, and what happens when leave is exhausted but you still need it.*

## Knowing our wetlands helps manage for success

Here at ODOT, we throw around the term “wetlands mitigation” on a regular basis.

A further look into what this term means, and understanding the complexity of restoring wetland values and functions, is helping us understand the importance of this natural, vital resource. At ODOT, wetland mitigation sites are a concern to a variety of ODOT business lines, including Maintenance, Right of Way, Planning, and Project Development, as well as for external parties such as regulatory agencies, natural resource agencies, and concerned citizens.

Mitigation is defined as “reducing the effect of an action.” In the transportation arena, that means taking steps to reduce the negative effects of a proposed development or project. When a permit application is submitted to fill a wetland, ODOT is required to ensure wetland mitigation occurs. Wetlands built to offset wetland impacts caused by highway projects are known as “Wetland Mitigation Sites.” Construction and engineering costs range from \$50,000 – \$300,000 per site to build, depending on size, amount of earthwork involved, planting plans and other factors. Sites range in size from tiny pieces of an acre to several acres.

The Geo-Environmental Section’s Natural Resource Unit in ODOT’s Technical Services Branch manages the Wetlands Program to ensure that:

- wetland resources are accurately



181st to Troutdale wetland mitigation site, Columbia County, 2002.

identified during project development;

- appropriate measures are taken to avoid and minimize impacts whenever feasible;
- adequate mitigation is provided when impacts cannot be avoided; and
- commitments are met between ODOT and regulatory agencies that permit our actions.

Because mitigation site successes and failures serve as a significant aspect of our track record with regulatory agencies, it is particularly important to manage the program effectively. (A lack of overall success could undermine ODOT efforts in related program areas that involve the same regulatory partners, such as permit streamlining and mitigation banking.) Wetland mitigation sites are monitored, generally each year for the first five years after construction, to assess the condition of each site and to program site maintenance, such as replanting, weeding, and watering necessary to ensure that the mitigation sites is successful. On actively monitored sites, ODOT collects data to answer permit-related questions that vary by

project, and then we submit a monitoring report to the permitting authority.

ODOT is developing a Wetland Mitigation Field Data Collection Manual similar to that being developed for culverts, pavement and other assets, to standardize agency information needs and improve program management. A Field Data Collection Manual will promote the consistent collection of pertinent data to evaluate trends and analyze site conditions that lead to successes or failures in order to improve the mitigation planning process.

Mapping is complete for most ‘legacy’ sites, where ODOT has determined site success and permit obligations are complete. Mitigation sites were digitized from site plans in permit files. The next step includes visits to each site to confirm resource boundaries and conduct a brief condition assessment. The information from the legacy sites along with the actively monitored sites will be used to further refine the Manual.

*For more information, contact Patti Caswell, Wetlands Program Coordinator at (503) 986-4335.*