

839-009-0210

Definitions: OFLA

- (1) "Alternate duty" means work assigned to an employee that may consist of:
 - (a) The employee's same duties worked on a different schedule; or
 - (b) Different duties worked on the same or different schedule.
- (2) "Child," for the purpose[s] of parental leave only (not for the purposes of serious health condition leave, sick child leave or leave for the death of a family member under ORS 659A.159(1)(e)), means a biological, adopted, foster or stepchild, the child of an employee's same-gender domestic partner or a child with whom the employee is or was in a relationship of in loco parentis. The child must be:
 - (a) Under the age of 18; or
 - (b) An adult dependent child substantially limited by a physical or mental impairment as defined by ORS 659A.104(1)(a), (3), and (4).
- (3) "Covered employer" means any employer employing 25 or more persons in the state of Oregon for each working day during each of 20 or more calendar work weeks in the year in which the leave is to be taken or in the year immediately preceding the year in which the leave is to be taken.
- (4) "Domestic partner" means an individual joined in a domestic partnership.
- (5) "Domestic partnership" for the purposes of ORS chapter 659A means two individuals of the same sex who have received a Certificate of Registered Domestic Partnership from the State of Oregon in compliance with ORS 432.173 and rules adopted by the State Registrar of the Center for Health Statistics.
- (6) "Eligible employee" means an employee employed in the state of Oregon on the date OFLA leave begins. For eligibility of employees reemployed following a period of uniformed service, see subsections (c) and (d) of this section.
 - (a) For the purpose of taking parental leave, an employee must be employed by a covered employer for at least 180 calendar days immediately preceding the date on which OFLA leave begins.
 - (b) For purposes of taking all other types of OFLA leave, including pregnancy disability leave, an employee must have worked for a covered employer for an average of at least 25 hours per week during the 180 calendar days immediately preceding the date OFLA leave begins.
 - (A) In determining that an employee has been employed for the preceding 180 calendar days, the employer must count the number of days an employee is maintained on the payroll, including all time paid or unpaid. If an employee continues to be employed by a successor in interest to the original employer, the number of days worked are counted as continuous employment by a single employer.
 - (B) In determining 25 hours average per week, the employer must count actual hours worked using guidelines set out pursuant to the federal Fair Labor Standards Act. (See 29 CFR §785).
 - (c) The federal Uniformed Services Employment and Reemployment Act, 38 USC §43 (USERRA) provides that an employee reemployed following a period of uniformed service is entitled to the seniority and seniority-based rights and benefits that the employee had on the date the uniformed service began, plus any seniority and seniority-based rights and benefits that the employee would have attained if the employee had remained continuously employed. U.S. Department of Labor regulation

20 CFR §1002.210 provides that in determining entitlement to seniority and seniority-based rights and benefits, the period of absence from employment due to or necessitated by uniformed service is not considered a break in employment. The rights and benefits protected by USERRA upon reemployment include those provided by the employer and those required by statute. Under USERRA, a reemployed service member would be eligible for leave under OFLA if the number of days and the number of hours of work for which the service member was employed by the civilian employer, together with the number of days and number of hours of work for which the service member would have been employed by the civilian employer during the period of uniformed service, meet OFLA's eligibility requirements. In the event that a service member is denied OFLA leave for failing to satisfy the OFLA days and hours of work requirement due to absence from employment necessitated by uniformed service, the service member may have a cause of action under USERRA but not under OFLA.

[NOTE]:USERRA also applies to leave under the federal Family and Medical Leave Act of 1993, 29 USC §2601-2654 (FMLA).

(d) ORS 659A.082–659A.088 provides that an employee reemployed following a period of uniformed service is entitled to the seniority and seniority-based rights and benefits that the employee had on the date the uniformed service began, plus any seniority and seniority-based rights and benefits that the employee would have attained if the employee had remained continuously employed. In determining entitlement to seniority and seniority-based rights and benefits, the period of absence from employment due to or necessitated by uniformed service is not considered a break in employment. If a reemployed service member was eligible for leave under OFLA prior to the date uniformed service began, OFLA's eligibility requirements are considered met.

(e) For the purpose of qualifying as an eligible employee, the employee need not work solely in the state of Oregon.

(7) "Family member" for purposes of serious health condition leave, sick child leave or leave for the death of a family member means the spouse, same-gender domestic partner, custodial parent, non-custodial parent, adoptive parent, foster parent, biological parent, step parent, parent-in-law, parent of same-gender domestic partner, grandparent or grandchild of the employee, or a person with whom the employee is or was in a relationship of in loco parentis. It also includes the biological, adopted, foster or stepchild of an employee or the child of an employee's same-gender domestic partner. For the purposes of OFLA, an employee's child in any of these categories may be either a minor or an adult at the time serious health condition leave, sick child leave, or leave under ORS 659.159(1)(e) is taken.

(8) "FMLA" is the federal Family and Medical Leave Act, 29 USC §2601.

(9) "Foreseeable leave" means leave taken for a purpose set out in ORS 659A.159 that is not "unforeseeable leave" as defined in OAR 839-009-0210(22).

(10) "Foster child" means a child, not adopted, but being reared as a result of legal process, by a person other than the child's biological parent.

(11) "Gender" means an individual's assigned sex at birth, gender identity, or gender expression.

(12) "Gender expression" means the manner in which an individual's gender identity is expressed, including, but not limited to, through dress, appearance, manner, speech, or

lifestyle, whether or not that expression is different from that traditionally associated with the individual's assigned sex at birth.

(13) "Gender identity" means an individual's gender-related identity, whether or not that identity is different from that traditionally associated with the individual's assigned sex at birth, including, but not limited to, a gender identity that is transgender or androgynous.

(14) "Health care provider" means:

(a) A person who is primarily responsible for providing health care to an eligible employee or a family member of an eligible employee, who is performing within the scope of the person's professional license or certificate and who is:

(A) A physician licensed to practice medicine under ORS 677.110, including a doctor of osteopathy;

(B) A podiatrist licensed under ORS 677.825;

(C) A dentist licensed under ORS 679.090;

(D) A psychologist licensed under ORS 675.030;

(E) An optometrist licensed under ORS 683.070;

(F) A naturopath licensed under ORS 685.080;

(G) A registered nurse licensed under ORS 678.050;

(H) A nurse practitioner certified under ORS 678.375;

(I) A direct entry midwife licensed under ORS 687.420;

(J) A licensed registered nurse who is certified by the Oregon State Board of Nursing as a nurse midwife nurse practitioner;

(K) A regulated social worker authorized to practice regulated social work under ORS 675.510 to 675.600;

(L) A chiropractic physician licensed under ORS 684.054, but only to the extent the chiropractic physician provides treatment consisting of manual manipulation of the spine to correct a subluxation demonstrated to exist by X-rays;

(M) A physician's assistant licensed under ORS 677.512.

(b) A person who is primarily responsible for the treatment of an eligible employee or a family member of an eligible employee solely through spiritual means, including but not limited to a Christian Science practitioner.

(15) "In loco parentis" means in the place of a parent, having financial or day-to-day responsibility for the care of a child. A legal or biological relationship is not required.

(16) "Intermittent leave" means leave taken in multiple blocks of time and/or requiring an altered or reduced work schedule.

(17) "OFLA" is the Oregon Family Leave Act, ORS 659A.150 to 659A.186.

(18) "OFLA leave" means a leave of absence for purposes described in ORS 659A.159 and OAR 839-009-0230(1) through (5). Except that "OFLA leave" does not include leave taken by an eligible employee who is unable to work because of a disabling compensable injury, as defined in ORS 656.005, unless the employee has refused a suitable offer of light duty or modified employment under ORS 659A.043(3)(a)(D) or 659A.046(3)(d). See ORS 659A.162, OAR 839-006-0131(2) and 839-006-0136(4).

(19) "OFLA leave year," for calculating the OFLA leave year entitlement, means a calendar year (January to December), a fixed 12-month period such as a fiscal year, a 12-month period measured forward from the date of the employee's first OFLA leave, or a 12-month period measured backward from the date the employee uses any OFLA leave. The option selected must be applied to all employees. In the absence of an

employer policy or collective bargaining agreement defining how an OFLA leave year will be measured, a calendar year will be used.

(20) "Serious health condition" means an illness, injury, impairment or physical or mental condition of an employee or family member:

(a) That requires inpatient care in a medical care facility such as a hospital, hospice or residential facility such as a nursing home. When a family member resides in a long-term residential care facility, leave applies only to:

(A) Transition periods spent moving the family member from one home or facility to another, including time to make arrangements for such transitions;

(B) Transportation or other assistance required for a family member to obtain care from a physician; or

(C) Serious health conditions as described in (b) through (h) of section (20) of this rule.

(b) That the treating health care provider judges to pose an imminent danger of death, or that is terminal in prognosis with a reasonable possibility of death in the near future;

(c) That requires constant or continuing care such as home care administered by a health care professional;

(d) That involves a period of incapacity. Incapacity is the inability to perform at least one essential job function, or to attend school or perform regular daily activities for more than three consecutive calendar days and any subsequent required treatment or recovery period relating to the same condition. This incapacity must involve:

(A) Two or more treatments by a health care provider; or

(B) One treatment plus a regimen of continuing care.

(e) That results in a period of incapacity or treatment for a chronic serious health condition that requires periodic visits for treatment by a health care provider, continues over an extended period of time, and may cause episodic rather than a continuing period of incapacity, such as asthma, diabetes or epilepsy;

(f) That involves permanent or long-term incapacity due to a condition for which treatment may not be effective, such as Alzheimer's disease, a severe stroke or terminal stages of a disease. The employee or family member must be under the continuing care of a health care provider, but need not be receiving active treatment;

(g) That involves multiple treatments for restorative surgery or for a condition such as chemotherapy for cancer, physical therapy for arthritis, or dialysis for kidney disease that if not treated would likely result in incapacity of more than three days; or

(h) That involves any period of disability of a female due to pregnancy or childbirth or period of absence for prenatal care.

(21) "Spouse" includes:

(a) Individuals in a marriage recognized under state law in the state in which the marriage was entered into;

(b) Individuals in a common law marriage that was entered into in a state that recognizes such marriages;

(c) Individuals who have lawfully established a civil union, domestic partnership or similar relationship under the laws of any state. Individuals described in this subsection are not required to obtain a marriage license, establish a record of marriage or solemnize their relationship.

(22) "Unforeseeable leave" means leave taken as a result of:

- (a) An unexpected serious health condition of an employee or family member of an employee; or
- (b) An unexpected illness, injury or condition of a child of the employee that requires home care;
- (c) A premature birth or a placement for adoption or foster care the exact date of which cannot be previously determined with certainty; or
- (d) The death of a family member.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 659A.150–659A.186, 659A.043, 659A.046

839-009-0340

Definitions: Leave under ORS 659A.270–659A.285

- (1) "Covered employer" means an employer who employs 6 or more individuals in the state of Oregon for each working day during each of 20 or more calendar workweeks in the year in which an eligible employee takes leave under ORS 659A.270 to 659A.285 for victims of domestic violence, harassment, sexual assault or stalking or in the year immediately preceding the year in which an eligible employee takes the leave.
- (2) "Eligible employee" means an employee who is employed in the state of Oregon on the date leave begins under ORS 659A.270 to 659A.285 for victims of domestic violence, harassment, sexual assault or stalking and is a victim of domestic violence, harassment, sexual assault or stalking or is the parent or guardian of a minor child or dependent who is the victim of domestic violence, harassment, sexual assault or stalking.
- (3) "Dependent" includes an adult dependent child substantially limited by a physical or mental impairment as defined by ORS 659A.104(1)(a), (3), and (4) or any adult of whom the employee has guardianship.
- (4) "Health care professional" means a physician or other health care practitioner who is licensed, certified or otherwise authorized by law to provide health care services.
- (5) "Immediate family" means spouse, domestic partner, custodial parent, non-custodial parent, adoptive parent, foster parent, biological parent, step parent, parent-in-law, parent of domestic partner, sibling, child, stepchild, grandparent, grandchild, or a person with whom the victim of domestic violence, harassment, sexual assault or stalking is or was in a relationship of in loco parentis or any person who had the same primary residence as the victim at the time of the domestic violence, harassment, sexual assault or stalking.
- (6) "In loco parentis" means in the place of a parent, having financial or day-to-day responsibility for the care of a child. A legal or biological relationship is not required.
- (7) "Intermittent leave" means leave taken in multiple blocks of time and/or requiring an altered or reduced work schedule.
- (8) "Law enforcement officer" means all police, corrections, and parole and probation officers who are included in the Public Safety Standards and Training Act as described in ORS 181.610 and 181.651.
- (9) "Minor child" has the same meaning as "child" as defined in OAR 839-009-0210(2) and (2)(a).
- (10) "Parent or guardian" means a custodial parent, non-custodial parent, step parent, adoptive parent, foster parent, biological parent, child of an employee's same-gender

domestic partner or an employee who is or was in relationship of in loco parentis with a minor child or a dependent.

(12) "Protective order" means an order authorized by ORS 30.866, 107.095(1)(c), 107.700 to 107.735, 124.005 to 124.040 or 163.730 to 163.750 or any other order that restrains an individual from contact with an eligible employee or the employee's minor child or dependent.

(13) "Public employer" for purposes of and these rules means the State of Oregon.

(14) "Reasonable leave" means any amount of leave that does not cause an undue hardship on a covered employer's business.

(15) "Spouse" has the meaning given in OAR 839-009-0210 (21).

(16) "Victim of domestic violence" means:

(a) An individual who has been threatened with abuse or who is a victim of abuse, as defined in ORS 107.705; or

(b) Any other person who has suffered financial, social, psychological or physical harm as a result of domestic violence committed against the victim as defined in (a), including a member of the victim's immediate family.

(c) In no event will the alleged perpetrator of the domestic violence be considered a victim for the purposes of these rules.

(17) "Victim of harassment" means:

(a) An individual against whom harassment has been committed as described in Oregon's criminal code at ORS 166.065; or

(b) Any other person who has suffered financial, social, psychological or physical harm as a result of harassment committed against the victim as defined in subsection (a), including a member of the victim's immediate family.

(c) In no event will the alleged perpetrator of the harassment be considered a victim for the purposes of these rules.

(18) "Victim services provider" means a prosecutor-based victim assistance program or a nonprofit program offering safety planning, counseling, support or advocacy related to domestic violence, harassment, sexual assault or stalking.

(19) "Victim of sexual assault" means:

(a) An individual against whom a sexual offense has been threatened or committed as described in ORS 163.305 to 163.467 or 163.525; or

(b) Any other person who has suffered financial, social, psychological or physical harm as a result of a sexual assault committed against the victim as defined in (a), including a member of the victim's immediate family.

(c) In no event will the alleged perpetrator of the sexual offense be considered a victim for the purposes of these rules.

(20) "Victim of stalking" means:

(a) An individual against whom stalking has been threatened or committed as described in ORS 163.732; or

(b) Any other person who has suffered financial, social, psychological or physical harm as a result of a stalking committed against the victim as defined in (a), including a member of the victim's immediate family; or

(c) An individual who has obtained a court's stalking protective order or a temporary court's stalking protective order under ORS 30.866.

(d) In no event will the alleged perpetrator of the stalking be considered a victim for the purposes of these rules.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 659A.270 - 659A.285