



DEPARTMENT OF CORRECTIONS
Human Resources



Title:	Family and Medical Leave	DOC Policy: 20.8.4
Supersedes:	DOC Policy 20.8.4, Family and Medical Leave, dated 01/01/01	
Applicability:	All employees determined eligible in accordance with provisions of federal and state leave laws covered by this policy except where collective bargaining agreements language conflicts.	
Directives Cross-Reference:	Federal Family and Medical Leave Act 29 USC §§ 2601-2654 and Federal regulations Part 825; ORS 659.479-659.494; Americans with Disabilities Act 42 USC §12101 et seq.; Fair Labor Standards Act 29 USC§ 216(b); State Policies 40.045.01(e), 60.000.01 (1) (a), 60.000.05(2), DOC Policies 8.10, 8.20, 4.80; BOLI Regulations	

I. PURPOSE

To describe standards and guidelines for the proper administration of family and medical leave for employees of the Department of Corrections.

II. POLICY

It is the policy of the Department of Corrections to administer family and medical leave in accordance with the appropriate Federal and/or State leave laws:

A. Federal Family and Medical Leave Act (FMLA) for:

1. Birth of a child (including maternity and paternity leave).
2. Placement of a child under 18 with the employee for adoption or foster care.
3. To care for a spouse, son, or daughter, or parent who has a serious health condition.
4. Employee's serious health condition that makes the employee unable to perform essential job duties.

B. Oregon family Leave Act (OFLA) for:

1. Birth of a child.
2. To care for newly adopted or newly placed foster child under 18.

3. To care for spouse, child (including biological, adopted, foster or stepchild), parent (including biological, adoptive, foster or stepparent), parent-in-law, or same-sex domestic partner who has a serious health condition.
 4. Employee's own serious health condition which makes employee unable to perform the duties of employee's regular position, including pregnancy-related disability or absence for prenatal care.
 5. To care for an employee's child who is suffering from an illness or injury, which requires home care, but is not a serious health condition.
- C. The use of accrued leave shall be required while on approved FMLA or OFLA. An employee must exhaust all accrued leave prior to being placed on leave without pay. In all cases, including the exceptions below, represented employees shall be required to use accrued leave consistent with applicable collective bargaining agreements.

Exceptions:

1. An employee not represented by a collective bargaining agreement may be placed on leave without pay and maintain a balance of no more than 40 hours of sick leave while receiving short term disability insurance benefits provided through Public Employees' Benefit Board.
 2. An employee may choose to use accrued compensatory time while on FMLA or OFLA leave; however, an employee may not be required to use accrued compensatory time while on FMLA or OFLA leave. The use of compensatory time off may not be counted against the employee's FMLA or OFLA 12-week entitlement as stated in the federal regulations and Oregon Administrative Rules (29 CFR 825.207(i); OAR 839-0090220).
- D. An employee's FMLA/OFLA 12-week leave entitlement shall run concurrently with any employee absence resulting from a workers' compensation claim.
- E. FMLA law controls unless state law or applicable collective bargaining agreements provide more generous provisions for the employee. In this case, the employee shall be given the benefit of the more generous provision.

Where leave is authorized under the FMLA and either or both state law or collective bargaining agreement, the leave shall be designated as FMLA qualifying and shall simultaneously exhaust both the FMLA and either or both the state or contractual leave entitlement.

- F. For the purposes of determining an employee's remaining FMLA and OFLA leave benefit, a "rolling-backward" period shall be used.
- G. An employee shall provide no less than 15 calendar days notice for planned absence under the provisions of the policy. In the event of a medical emergency or other unforeseeable event, the supervisor shall be contacted as soon as practicable, but no more than three days from date of occurrence.
- H. The following processes shall be followed for requesting and recording leave under this policy:
 - 1. Employees shall complete the Leave Request form marking the appropriate reason in the box concerning FMLA/OFLA and submit to their supervisor in accordance with this policy.
 - 2. Supervisors shall immediately forward the request to their Human Resources Consultant for determination of eligibility.
 - 3. Supervisors taking a call-in from an employee that potentially qualifies for any of the aforementioned leaves, shall advise the employee that they are indicating the absence as FMLA/OFLA and that the employee must submit a leave request as described in this policy within 3 calendar days.
 - 4. Upon determination of eligibility, the Human Resources Consultant shall provide the employee with a written notice of eligibility, which includes:
 - a. A designation of the FMLA, state statutory leave, and/or labor contract benefits as applicable to the request.
 - b. Applicable medical certification requirements and the consequences for not providing such information as requested. The department must pay the cost of the medical verification not covered by insurance or other benefit plan.
 - c. Notification if use of accrued leave is required based on the employee's individual circumstance in accordance with this policy.
 - d. Notification that employer health care contributions shall continue if the leave has been designated as FMLA. In this case, the employee shall be advised of the liability to reimburse the state for health plan premiums if the employee fails to return from leave, provided that such reimbursement conforms to the provisions of the FMLA.

- e. An explanation of the employee's returns rights in accordance with provisions contained in the designated leave law.
- 5. Records shall be maintained that detail compliance with the provisions of FMLA, OFLA and for tracking amount and type of leave used by employees.
 - a. Leave qualifying under FMLA and/or OFLA shall be documented as such on timesheets by Payroll.
 - b. Medical Certification shall be maintained in employee's confidential medical file in the Personnel Records Section.

III. POLICY CLARIFICATION

- A. A comparison must be made between the various laws to determine which leave provision is the most generous.
- B. Application of the provisions of the various leave laws may vary based on individual circumstances and those are considered on a case-by-case basis. For example, the care of a parent-in-law with a serious health condition as well as the care for an employee's child suffering an illness or injury which requires home care but is not a serious health condition are both qualifying events under OFLA but not under FMLA.
- C. Mandatory and voluntary use of accrued leave is set by policy rather than by law.
- D. An employee may elect the type of accrued leave to be used during family or medical leave. However, all accrued leave must be exhausted prior to going on approved leave without pay in accordance with this policy.
- E. "Rolling-backward" is a rolling 12-month period measured backward from the date an employee proposes to use leave under FMLA and OFLA.
- F. An employee's request for intermittent or reduced schedule leave qualifying under FMLA for birth or placement of a child for adoption or foster care may be granted at the supervisor's discretion. However, an employee may take intermittent or reduced-schedule leave qualifying under FMLA whenever medically necessary to care for a family member or for the employee's serious health condition. The employee may be required to provide certification from the employee's health care provider as to the expected duration and schedule of such leave.
- G. An employee on intermittent OFLA leave or a reduced work schedule may be transferred to an alternate position with the same or different

duties at equivalent pay and benefits during the time necessary to accommodate the leave at the supervisor's discretion. The transfer must be voluntary on the part of the employee; it must be consistent with applicable collective bargaining agreements.

- H. An employee is entitled to continued employer health care contributions when the leave is designated as FMLA. When the leave is qualifying only under OFLA, health care contributions continue if the employee used accrued paid leave. If an employee qualifying only under OFLA goes on leave without pay, employer contributions terminate and coverage may be continued under COBRA.
- I. See DOC Policy 20.2.1, Merit Pay System for affect of qualifying leave on employee's salary eligibility date (SED) and Policy 20.8.2, Vacation Leave for affect on recognized service date.
- J. Supervisors may use form-attached form CD1380, Supervisor's FMLA/OFLA Checklist, when an employee calls in due to their own or a family member's illness.

IV. IMPLEMENTATION

This policy will be adopted immediately without further modification.

**DEPARTMENT OF CORRECTIONS
SUPERVISOR'S FMLA/OFLA CHECKLIST**

When receiving a call-in from an employee due to illness, you need to ask the following questions. Advise the employee that you need to ask the following **three (3) questions** for Family Medical Leave purposes and all you need is yes or no answers - you do not want any specific information.

EMPLOYEE NAME:	YES	NO
<p>1. Is absence due to your: own, spouse's, same sex domestic partner, parent's, parent-in-law's, or child's illness?</p> <p><i>If response is YES - ask the following questions.</i></p>		
<p>2. Please listen to the following list of reasons that may qualify under FMLA/OFLA. REMIND EMPLOYEE THAT YOU DO NOT WANT SPECIFIC INFORMATION ABOUT CONDITION AND TO WAIT TO RESPOND UNTIL YOU HAVE FINISHED READING THE LIST.</p> <p>Your own/spouse's/same-sex domestic partner's/parent's/parent-in-law's/child's:</p> <ul style="list-style-type: none"> • Condition requiring inpatient care (i.e., hospitalization). • Condition resulting in incapacitation for three or more consecutive days. • Condition resulting in treatment by a health care provider. • Pregnancy or prenatal care. • Illness, disease or condition that poses imminent danger of death, is terminal, or requires constant care. • Chronic serious health condition such as asthma, diabetes, epilepsy. • Permanent or long-term incapacity due to a condition for which treatment is not effective (e.g., severe stroke, Alzheimer's, terminal stages of a disease). • To receive multiple treatments from a health care provider (e.g., chemotherapy or radiation for cancer, therapy for arthritis, dialysis for kidney disease). <p>After reading the full list above, ask the employee if his/her absence is due to any of these reasons? Answer "yes" or "no."</p>		
<p>3. Is absence to care for your child's illness, injury or condition that is not a serious health condition, but requires home care?</p>		
<p><i>A YES answer to either question 2 or 3 indicates that the absence is <u>potentially</u> FMLA/OFLA qualifying and your Human Resources Consultant needs to be advised. Advise the employee that you will be notifying your HR Consultant of potential FMLA/OFLA qualifying leave and they will contact the employee if the leave qualifies or if additional information is necessary. Also, instruct employee to complete leave request with appropriate FMLA/OFLA information within three days of occurrence.</i></p> <p><i>If response is NO - absence is most likely not FMLA/OFLA qualifying.</i></p>		

Signature of person taking information
Attachment to DOC Policy 20.8.4

Date

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