

OSBA Model Sample Administrative Regulation

Code: GCBDA/GDBDA-AR(1)
Revised/Reviewed:

Family Leave * (Version 2)

{This administrative regulation (AR) is intended for districts with 25 or more and fewer than 50 employees . If the district does not have 25 or more and fewer than 50 employees, the district should not use this AR. This AR accompanies Version 2 of Board policy GCBDA/GDBDA - Family Leave.}

Employee Eligibility

~~FMLA benefits are available to employees who have been employed by the district for at least 12 months, have worked at least 1,250 hours during the past 12-month period and work at a worksite that employs 50 district employees within 75 miles of the worksite.¹~~

Generally, in order for an employee to be eligible for the benefits under OFLA, the employee must work an average of 25 hours or more per week during the 180 calendar days² immediately prior to the first day of the start of the requested leave.^[3] In determining if an employee has been employed for the preceding 180 calendar days under OFLA, the district must consider days, paid or unpaid, an employee is maintained on payroll.

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

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

1. An employee who has worked for the district 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 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 is eligible to take leave for purposes of OFLA if the employee:~~

~~3. Separates from employment with the district, irrespective of any reason:~~

- ~~a. Is eligible to take OFLA leave at the time the employee separates; and~~
- ~~b. Is reemployed by the district within 180 days of separation from employment; or~~
- ~~c. At the beginning of a temporary cessation of scheduled hours of 180 days or less; and~~

¹ ~~While the district is subject to FMLA, the district does not have any eligible employees.~~

² ~~Thirty days during a declared public health emergency.~~

³ [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.]

~~4. — Is eligible to take OFLA leave:~~

~~a. — Returns to work at the end of the temporary cessation of scheduled hours of 180 days or less.~~

An employee of the district who has separated and is reemployed within 180 days, or experiences a temporary cessation of schedule hours may be eligible for OFLA in accordance with ORS 659A.156.

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 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 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.

When an employee requests OFLA leave, or when the district acquires knowledge that an employee's leave may be for a purpose that constitutes OFLA leave, the district will notify the employee of the employee's eligibility to take OFLA leave within five business days, absent extenuating circumstances. Whether an employee is an "eligible employee" as defined in OAR 839-009-0210 is determined, a notice must be provided, at the commencement of the first instance of each purpose for leave listed in OAR 839-009-0240 during the OFLA leave year. If an employee is an "eligible employee" as defined in OAR 839-009-0210 for the purpose listed in OAR 839-009-0240, the employee's eligibility for that purpose does not change during the applicable 12-month period.

In addition:

1. An employee taking, in any order, some or all of 12 weeks of OFLA pregnancy disability leave and some or all of 12 weeks of OFLA leave for any other purpose, need not requalify each time the employee takes OFLA leave within the same leave year;
- ~~2. — An employee who has taken 2 weeks of OFLA child placement leave need not requalify for up to an additional 12 weeks of leave within the same leave year when used for the purposes of OFLA sick child leave;~~
- ~~3.2.~~ An employee unable to work because of a disabling compensable injury⁴ need not requalify under OAR 839-009-0210 in order to use OFLA leave following a period the employee is off work due to the compensable injury.

~~In determining if an employee has been employed for the preceding 180 calendar days under OFLA, the district must consider days, paid or unpaid, an employee is maintained on payroll.~~

Leave under the Oregon Military Family Leave Act (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 average workweek, the employer must count the actual hours worked using the Fair Labor Standards Act (FLSA) guidelines.~~

⁴ As defined in ORS 656.005.

Qualifying Reason

Eligible employees may access OFLA leave entitlements for the following reasons:

1. Pregnancy disability leave: leave taken by an employee for their own disability related to pregnancy, including pregnancy termination or childbirth, whether the disability occurs before, during or after the birth of the child or for prenatal care, including fertility or infertility treatment.
2. Sick child leave: leave taken to care for an employee's child who is suffering from an illness, injury, or condition that requires home care. ~~Under OFLA, sick child leave includes;~~ or leave taken to care for an employee's child whose school or child care provider has been closed⁵ in conjunction with a statewide public health emergency declared by a public health official.⁶
3. Bereavement leave: leave taken to deal with the death of a covered family member and includes leave taken to attend the funeral or alternative to a funeral of the family member, to make arrangements necessitated by the death of the family member, or to grieve the death of the family member.⁷ [When such leave is used for a family member who is related by affinity, the district requires an attestation form signed and submitted by the employee.]
- ~~4. [Child placement leave: leave taken under OFLA before January 1, 2025, to effectuate the legal process required for placement of a foster child or the adoption of a child.]~~
- ~~5. [Leave previously protected by OFLA⁸: 1) leave to which an eligible employee was entitled under ORS 659A.150—ORS 659A.186 on June 30, 2024; and 2) leave to which an eligible employee would not be entitled under ORS 659A.150—ORS 659A.186 on July 1, 2024 and may now be entitled leave under Paid Family Medical Leave (ORS 657B).]~~

Eligible employees may access OMFLA for the purpose of spending time with a spouse or 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.

Definitions

1. Family member:

⁵ "Closure" (OAR 839-009-0210(5)) 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 as defined in OAR 839-009-0210(4).

⁶ The district may request verification of the need for sick child leave under OFLA due to a closure during a statewide public health 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;
3. A statement from the employee that no other family member of the child is willing and able to care for the child; and
4. 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.

⁷ Bereavement leave under OFLA must be completed within 60 days of the date the employee received notice of the death. The notice of the death of a family member may be by any means and from any source.

~~⁸ OAR 839-009-0215. OFLA: Leave Previously Protected by OFLA.~~

For the purposes of OFLA, “family member” means an eligible employee’s:

- a. Spouse or domestic partner;
- b. Child or the child’s spouse or domestic partner;
- c. Parent or the parent’s spouse or domestic partner;
- d. Sibling or stepsibling, or the sibling’s or stepsibling’s spouse or domestic partner;
- e. Grandparent or the grandparent’s spouse or domestic partner;
- f. Grandchild or the grandchild’s spouse or domestic partner; or
- g. Any individual related by blood or affinity⁹ whose close association with an eligible employee is the equivalent of a family relationship.

2. Child:

- a. For the purposes of OFLA, “child” means the eligible employee’s biological or adopted child, a child the employee is fostering, a stepchild, the child of the employee’s spouse or domestic partner, or a child with whom the employee is or was in a relationship of “in loco parentis.”
- b. For the purposes of ~~child placement leave and~~ sick child leave only under OFLA, the child must be under the age of 18 or ~~an adult dependent child~~ substantially limited by a physical or mental impairment as described in ORS 659A.104.

3. In loco parentis:

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. 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 for OFLA, the district uses a period of 52 consecutive weeks beginning on the Sunday immediately preceding the date on which family leave

⁹ “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:

1. Shared personal financial responsibility, including shared leases, common ownership of real or personal property, joint liability for bills or beneficiary designations;
2. 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;
3. The expectation to provide care because of the relationship or the prior provision of care;
4. Cohabitation and its duration and purpose;
5. Geographic proximity; and
6. Any other factor that demonstrates the existence of a family-like relationship.

commences. ~~The same method for calculating the leave period for OFLA leave entitlement shall be used for all employees.~~

Leave Duration

For the purposes of OFLA, an eligible employee is generally entitled to a total of 12 weeks of OFLA leave, for sick child leave and bereavement leave, during the designated leave period. An eligible employee is entitled to a total of two weeks of bereavement leave upon the death of each family member of the employee within an leave year, except that the eligible employee may not take more than four weeks of bereavement leave within an leave year.

An employee may also be entitled to take a total of 12 weeks of OFLA pregnancy disability leave within the same leave year.

Under OFLA, ~~the~~ the employee may use all or part of the 12 weeks of family leave and all or part of the 12 weeks of pregnancy disability leave in any order.

~~[In addition to the 24 weeks of possible OFLA leave identified above, an eligible employee is entitled to a total of two weeks of child placement leave within an OFLA leave year until January 1, 2025. The adoption or foster placement of multiple children at one time entitles the employee to take only one two-week period of child placement leave.]~~

OFLA does not combine the leave entitlement when two or more family members work for the district. Under OFLA, family members who work for the district may be restricted from taking concurrent OFLA qualified leave.¹⁰

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 designated leave period.

Qualified leave under OFLA may run concurrently with available leave taken under ORS 653.601 - 653.661, but does not run concurrent with leave taken under Paid Family and Medical Leave Insurance (PFMLI).

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 hours the eligible employee normally works per week by 12¹¹. If an employee's schedule varies from week-to-week, a weekly average of the hours worked over the 12 months worked prior to the beginning of the leave period shall be used for calculating the employee's normal workweek¹². If an employee takes

¹⁰ Exceptions to the ability to require family members to take OFLA qualified leave at different times are when one employee needs to care for a child for a purpose described in ORS 659A.159 (1)(a) while another employee is taking pregnancy disability leave or, one or more of the employees is taking bereavement leave.

¹¹ 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.

¹² 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 OFLA leave, e.g., sick child leave and bereavement leave. An eligible employee working an average 25 hours per week may be

intermittent or reduced work schedule leave, only the actual number of hours of leave taken may be counted toward ~~OFLA~~ the 12 weeks of leave to which the employee is entitled.

Under OFLA, days in which the district is not in operation, are not counted toward intermittent or reduced work schedule OFLA leave.

Intermittent Leave

An eligible employee is permitted under 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 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 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 part-day absence.

An employee's 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.

Alternate Work Assignment

The district may transfer an employee on intermittent OFLA leave or a reduced work schedule into an alternate position with the same or different duties to accommodate leave, provided:

1. The employee accepts the 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 agreement, as well as with state and federal law;
4. 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
5. The transfer is not used to discourage the employee from taking leave or to create a hardship for the employee.

An employee transferred to an alternate position for the purpose of a reduced work schedule must be returned to the employee's former position when the employee notifies the employer that the employee is ready to return to the former position at the end of the alternate duty leave.

entitled to additional OFLA pregnancy disability leave calculated as 12 times 25 hours, or a total of 300 hours of pregnancy disability leave in the same leave year.

The district may transfer an eligible employee to an alternate position that accommodates OFLA pregnancy disability leave provided:

1. The employee accepts the transfer 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 agreements, as well as with state and federal law;
4. The transfer is not used to discourage the employee from taking leave or to create a hardship for the employee.

If an eligible employee is transferred to an alternative position and as a result the employee works fewer hours than the employee worked in the original position, the employee's OFLA leave time is determined by calculating the difference between the number of hours the employee worked in the original position and the number of hours the employee actually works in the alternate position.

An employee is not on OFLA leave if the employee has been transferred – as provided for in OAR 839-009-0245 (5) – to an alternate position for the purpose of alternate work duties that the employee is able to perform within the limitations of the employee's pregnancy disability, but not requiring a reduced workweek. An employee working in an alternate position retains the right to return to the employee's original position at any time during the employee's OFLA leave. This does not impair the right of an employee to a reasonable accommodation or the application of any other state or federal law.

Special Rules for School Employees

For the purposes of OFLA leave, if an employee¹³ begins a period of bereavement leave during the three-week period before the end of the term and the duration of the leave is greater than five working days, the district may require the employee continue on family leave until the end of the term.

Paid/Unpaid Leave

OFLA does not require the district to pay an eligible employee who is on a qualified leave. Paid Family and Medical Leave Insurance (PFMLI) leave taken via Paid Leave Oregon or an equivalent plan will not run concurrently with OFLA but may run concurrently with leave available under ORS 653.601 - 653.661 when taken for the same purpose. An employee may elect to use any available accrued paid leave including personal, sick or vacation leave during the leave period [{¹⁴} to the extent that the total combined amount of accrued paid leave and benefits received from PFMLI does not exceed an amount equal to the employee's full wage replacement during the period of leave]. ~~[The total combined amount received by using accrued leave and PFMLI may exceed the employee's full wage replacement during the period of leave.]~~ The district will notify the eligible employee when the requested leave has been designated as OFLA leave and ask the employee about the use of available accrued paid leave.

¹³ Applies only to an employee who is employed principally in an instructional capacity by the district.

¹⁴ {Select one of the two bracketed options based on district practice, i.e., keep the ending to this sentence OR delete this ending and keep the following bracketed sentence. See ORS 657B.030(2) for additional guidance.}

Eligible employees who request OMFLA leave are entitled to use available accrued paid time off during the OMFLA leave period.

Benefits and Insurance

When an eligible employee returns to work following OFLA- or OMFLA-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 policy provide otherwise.¹⁵ 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 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 OMFLA, the eligible employee is entitled to a continuation of benefits.

Application

An eligible employee shall provide at least ~~{¹⁶30}~~ days' written notice of the need for foreseeable leave before starting family leave. An employee may commence family leave without prior notice in the event of: an unexpected illness, injury or condition of a child of the employee that requires home care; the death of a family member; the closure of the school or child care provider of the employee's child due to a public health emergency unless the declaration of the emergency was issued by the Governor at least 30 days before commencement of the leave; or an illness, injury or condition related to the employee's own pregnancy or childbirth that disables the employee from performing any available job duties offered by the district. If an employee commences leave without prior notice as allowed above, the employee must give oral notice¹⁷ to the employer within 24 hours of the commencement of the leave and must provide the written notice within three days after returning to work. Failure of an employee to provide the required notice for leave 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.

¹⁵ See also ORS 342.934(4)(d) in reduction force situations.

¹⁶ {This number of days should align with the days provided in the leave request form.}

¹⁷ Oral notice may be given by any other person on behalf of the employee taking the leave.

The district may request additional information¹⁸ to determine that the requested leave qualifies as OFLA leave as provided by law. The district may designate the employee as provisionally on 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 such leave must follow the district's known, reasonable and customary procedures for requesting any kind of leave.

If an eligible employee is taking leave in an unforeseeable situation, an employee must give oral or written notice¹⁹ within 24 hours before or after commencement of the leave.

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

For purposes of OMFLA, an employee must provide the district with notice of the intention to take leave within five business days of receiving official notice of an impending call or order to active duty or of a leave from deployment.

Verification

The district may require an eligible employee to provide medical verification, when appropriate²⁰, to support the stated reason for qualifying OFLA leave. The district will provide written notification to an employee of this requirement and state the consequences for failure to provide the requested medical verification. If the employee gives advance written notice of foreseeable leave, the district may require the employee to provide medical verification for OFLA leave before the leave starts. If the employee begins unforeseeable OFLA leave without prior notice, the employee is required to submit such medical verification within 15 calendar days after receipt of the district's request for medical verification. The employee may be subject to disciplinary action for not providing the requested medical verification.

For the purposes of OFLA qualified leave, any costs associated with obtaining the medical verification shall be borne by the district, or be paid as otherwise allowed by law. The district will not delay the use of qualifying OFLA leave when medical verification is not received before the commencement of unforeseeable leave. The district may not require an employee to obtain a second opinion.

Under OFLA, the district may request verification for the need for leave to care for a child who requires home care due to the closure of the child's school or child care provider as a result of a public health emergency. A request for verification may include a request for:

1. The name of the child requiring home care;
2. The name of the school or child care provider that is subject to the closure;

¹⁸ See OAR 839-009-0260. ~~Except in cases to verify bereavement leave unless the district requires the use of an attestation form for purposes of determining affinity.~~

¹⁹ Notice may be given by any other person on behalf of the employee taking the leave.

²⁰ Medical verification is not allowed in every situation. Review current laws and guidance for more information. (OAR 839-009-0260)

3. A statement from the employee that no other family member of the child is willing and able to care for the child; and
4. A statement that special circumstances exist that require the employee to provide home care for the child during the day, if the child is older than 14 years of age.

Posted Notice

The district will post the Bureau of Labor and Industries Family Leave notice in each building or worksite in an area that is accessible to and regularly frequented by employees.^{21} The district will also post a notice explaining the provisions of FMLA and providing information concerning the procedures for filing complaints.²²

Record Keeping

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.

Federal vs. State Law

Both federal and state law contain provisions for family and medical leave. Federal regulations state an employer must comply with all leave laws; that the federal law does not supersede any provision of state law that provides greater family or medical leave rights than those established pursuant to federal law; and if leave qualifies for FMLA and OFLA leave, the leave used counts against the employee's entitlement under both laws. State law requires that FMLA and ~~OFLA or other~~ state leave entitlements run concurrently when for the same purpose.

²¹ {Electronic posting **is not** sufficient to satisfy this requirement, but may be used to supplement the physical posting.}

²² <https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/fmlaen.pdf> {29 CFR § 825.300(a)(1) requires "every employer covered by the FMLA" to meet this requirement and 29 CFR § 825.600(b) specifies that educational entities are covered by FMLA. However, employees are not eligible for FMLA unless there are fifty or more employees within 75 miles. 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.}