

Rule 2-60

FAMILY AND MEDICAL LEAVE

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§ 2-60-010 PURPOSE

The county provides leave to its employees so they can meet their family health and parental obligations, or for their own serious health conditions, or to allow them to prepare for a close family member's active duty service, to spend time with spouses who are on active duty, or to provide care to a close qualified service member, while maintaining their employment status.

§ 2-60-020 DEFINITIONS

ACTIVE DUTY: For purposes of military FMLA (29 U.S.C. §2601 *et seq.*, as amended by National Defense Authorization Act for Fiscal Year 2010), a federal call or order to active duty under a provision of law referred to in Section 101(a)(13)(B) of Title 10, United States Code. For purposes of OMFL, a period of military conflict meaning: a period of war; declared by the U.S. Congress, and declared by the executive order of the President of the U.S. or in which a reserve component of the Armed Forces of the U.S. is ordered to duty pursuant to Title 32 of the United States Code, or Sections 12301 or 12302 of Title 10 of the United States Code.

NEXT OF KIN: For purposes of military FMLA, the nearest blood relative of a covered service member (other than the spouse, son, daughter or parent), in the following priority order:

- (A) A blood relative designated in writing by the service member, as his or her nearest blood relative.
- (B) Blood relatives who have been granted legal custody of the service member, as his or her nearest blood relative.
- (C) Brothers and sisters.
- (D) Grandparents.
- (E) Aunts and uncles.
- (F) First cousins.

PARENT: For purposes of military FMLA, the biological or adoptive mother or father of an employee or an individual who stood *in loco parentis* (in place of a parent) when the employee was a child.

SON OR DAUGHTER: For purposes of military FMLA, the biological, adopted, foster or stepchild, a legal ward, or a child of an employee standing *in loco parentis*. There is no age limit under the definition of son or daughter for FMLA Qualifying Exigency leave.

SPOUSE: For purposes of military FMLA, the county considers the employee's husband, wife or domestic partner as spouse.

QUALIFYING EXIGENCY: For purposes of military FMLA, the following circumstances are considered qualifying exigencies (additional detail contained in 29 CFR 825.126):

(A) Short-notice deployment: Notice that a covered military member will be deployed within seven (7) days or less. An employee may take a maximum of seven days of FMLA Qualifying Exigency leave to address any issue arising from an impending call to duty (deployment) received by a covered military member. The employee must begin the leave within seven (7) days of the deployment notice received by the military member.

(B) Military events and activities related to deployment.

(C) Arranging for alternative childcare or schools or providing care on an urgent, immediate need basis because of the deployment.

(D) Attending meetings with the school or daycare staff when the meetings are necessary due to circumstances arising from the deployment.

(E) Making financial and legal arrangements related to the service member's deployment.

(F) Receiving counseling for the employee, the employee with the service member, or facilitating counseling for the son or daughter of the employee and service member.

(G) Rest and recuperation up to fifteen (15) days.

(H) Post-deployment activities sponsored by the military (limited to a period of ninety (90) days following the termination of the service member's active duty status).

(I) Activities relating to the death of the service member.

(J) Other deployment-related activities as agreed by the county and the employee.

(K) Parental care necessitated by the covered active duty of the military member for the military member's parent who is incapable of self-care.

§ 2-60-030 ELIGIBILITY UNDER STATE AND FEDERAL LAW

County employees are granted entitlements for family and medical leave, in accordance with the provisions of:

(A) The federal Family and Medical Leave Act (FMLA)(29 USC §§ 2601, *et seq.*) provides up to twelve (12) weeks of authorized absence annually for employees who have worked for the county for at least twelve (12) months (need not be consecutive) and have worked at least 1250 hours during the previous twelve (12) months of employment, for the following conditions:

(1) Birth of a child (including maternity and paternity leave);

(2) Placement of a child with the employee for adoption or foster care;

(3) To care for a spouse, son, daughter or parent who has a serious health condition (the county treats domestic partners the same as spouses under the FMLA);

(4) The employee's serious health condition, as defined by the Act, that renders the employee unable to perform the essential job duties of their position;

(5) Any qualifying exigency arising out of the employee's spouse, son, daughter, or parent in the regular Armed Forces, Reserves or National Guard serving on active duty or receiving notification of an impending call or order to active duty in a foreign country. The county may require an employee to provide a FMLA Qualifying Exigency certificate to verify the need for FMLA Qualifying Exigency leave. A copy of the Department of Labor's FMLA Qualifying Exigency Certificate is attached to this rule.

(6) Caregiving leave for employees who are the spouse, domestic partner, son, daughter, parent, or next of kin of a member of the Armed Forces or a covered veteran (discharged or released under conditions other than dishonorable) who is undergoing medical treatment, recuperation, or therapy for a serious injury or illness incurred or aggravated in the line of active duty, so long as the service member's qualified injury or illness precedes their treatment by no more than five (5) years. This leave is available for employees who have worked for the county for at least twelve (12) months (need not be consecutive) and have worked at least 1250 hours during the previous twelve (12) months of employment. Caregiver leave provides employees with fourteen (14) additional weeks of FMLA leave that is in addition to the employee's regular twelve (12) week entitlement under FMLA or OFLA.

(B) The Oregon Family Leave Act (OFLA)(ORS 659A.150 through 659A.186). provides up to twelve (12) weeks of authorized absence annually for employees who have worked for the county for an average of twenty-five (25) hours or more per week for at least 180 days (six (6) months) prior to the leave for the following conditions (the minimum work hours requirement is waived when the leave is for the care of a newborn, newly adopted or newly placed foster child):

(1) Birth of a child;

(2) To care for a newly adopted or newly placed foster child under age eighteen (18);

(3) To care for a spouse, child (including biological, adopted, foster, stepchild, the child of employee of same-gender domestic partner or a child with whom the employee is or was in a relationship of *in loco parentis*), parent (including custodial, non-custodial, biological, adoptive, foster parent), parent-in-law, parents of same-gender domestic partner, grandparent, grandchild or same-gender domestic partner who has a serious health condition (the county treats opposite sex domestic partners as spouses under OFLA) ;

(4) The employee's serious health condition, as defined by the Act, including pregnancy related disability or absence for prenatal care, which renders the employee unable to perform the duties of the employee's regular position;

(5) To care for the employee's child who has an illness or injury which requires home care but is not a serious health condition.

(6) To attend the funeral or alternative to a funeral of a family member; to make arrangements necessitated by the death of a family member, or to grieve the death of a family member ("OFLA Bereavement Leave"). Covered family members are listed in subsection (B)(3). Up to two (2) weeks may be taken in the sixty (60) day period following notice of death of a family member.

(C) Oregon Military Family Leave Act (OMFLA) provides up to fourteen (14) days of authorized unpaid leave for employees who work for the county for an average of at least twenty (20) hours per week if during a period of conflict, an employee's spouse or domestic partner is:

(1) A member of the armed forces of the United States, the national guard, or the military reserve forces of the United States; and

(2) Has been notified of an impending call or order to active duty or has actually been deployed.

§ 2-60-040 APPLICABILITY

FMLA controls unless OFLA, applicable collective bargaining agreements or the personnel rules provide more generous benefits for the employee. In that case, the employee will receive the benefit of the more generous provision.

§ 2-60-050 CALCULATION OF LEAVE

(A) When leave is authorized under FMLA as well as OFLA and/or a collective bargaining agreement, the leave will be designated as FMLA qualifying and will simultaneously exhaust the FMLA, OFLA, and contractual leave entitlement.

(B) An employee's FMLA twelve (12) week entitlement shall run concurrently with any employee absence resulting from a workers' compensation claim.

(C) The county uses a calendar year basis for purposes of determining an employee's FMLA or OFLA leave entitlement. Eligible employees may receive up to twelve (12) weeks of FMLA/OFLA per calendar year (except as otherwise noted below).

(D) Under both FMLA and OFLA, county employees are eligible for twelve (12) weeks of leave. Part-time employees receive a pro-rated amount of leave, based on percentage of time worked. Part-time employees' leave is calculated by multiplying the assigned or average number of hours in a workweek by twelve (12).

(E) A female employee giving birth to a child may take up to thirty-six (36) weeks leave when applying all the provisions of family leave: twelve (12) weeks of pregnancy disability (OFLA and FMLA); plus twelve (12) weeks for serious health condition of self or family member, sick child or

parental leave (OFLA); and, if the full twelve (12) weeks of parental leave have been exhausted, an additional twelve (12) weeks of sick child leave (OFLA).

(F) Under OFLA, a spouse or domestic partner may take up to twenty-four (24) weeks when applying all the provisions of family leave: twelve (12) weeks for serious health condition of self or family members, sick child or parental leave, and twelve (12) weeks of additional sick child leave if the full twelve (12) weeks of parental leave have been used.

(G) Employees who take FMLA military caregiver leave under on behalf of an injured or ill service member or qualified veteran are entitled to up to twenty-six (26) weeks of protected leave during a single twelve (12) -month period. The calculation of the FMLA year is different for FMLA military caregiver leave. When an eligible employee takes military caregiver leave under FMLA, the leave begins on the first day the employee takes Military Caregiver leave to care for an ill or wounded eligible service member and ends twelve (12) months after the date of first use.

(H) When approved by the department HR unit, the length of intermittent leave is calculated by multiplying the average number of hours in a workweek by twelve (12).

(I) If the employee takes intermittent or a reduced work schedule, only the actual number of hours of leave taken may be counted toward the total hours of leave allowed under the law. Intermittent leave may be taken in increments of one-quarter of an hour, and the employee must try to schedule the time to not unduly disrupt the county's operations.

(J) Leave authorized under OMFLA is included in (not in addition to) the leave authorized by OFLA, and eligible employees are entitled to fourteen (14) days of unpaid leave per deployment.

§ 2-60-060 USE OF ACCRUED LEAVE

(A) County employees are required to charge FMLA/OFLA leave to accrued sick, vacation leave, and compensatory time balances unless otherwise provided by a collective bargaining agreement. Employees will determine the order in which paid leave is used. Once sick and vacation leave, and other forms of paid leave including compensatory time and personal and saved holidays have been exhausted, the employee will be placed on unpaid FMLA/OFLA leave or may, if eligible, use catastrophic leave donations in accordance with MCPR 2-55 in order to continue on paid leave.

(B) The use of compensatory time off while on FMLA or OFLA leave will be counted against the employee's FMLA or OFLA twelve (12)-week entitlement as stated in federal or state law or regulations.

(C) An employee using leave authorized by OMFLA may elect to substitute any accrued leave, rather than taking unpaid leave, for any leave authorized by the act.

(D) County-paid Bereavement Leave (described in MCPR 4-30) will be applied to OFLA Bereavement Leave first, unless arrangements are made under an existing collective bargaining agreement to use part of an employee's county-paid bereavement leave non-consecutively, outside of the OFLA sixty (60) day time period.

§ 2-60-070 NOTIFICATION TO EMPLOYER AND REQUIRED MEDICAL CERTIFICATION

(A) An employee will provide no less than thirty (30) calendar days notice for a planned absence under the provisions of FMLA/OFLA. In the event of a medical emergency or other unforeseeable event, the employee will contact the supervisor as soon as practicable.

(B) Employees requesting FMLA/OFLA leave under these rules must provide medical certification of the need for leave, whether due to their own serious health condition, or to care for a family member. Employees may be asked to provide medical certification on the next occurrence after taking three consecutive or separate days of sick child leave during a leave year. Employees may be required to provide periodic medical recertification and/or return to work certification upon request. Health care providers are instructed not to provide genetic information as part of medical certification, except as specifically allowed by law. Employees requesting military FMLA leave for qualifying exigency may be required to provide certification of the qualifying exigency. (A copy of the Department of Labor's FMLA Qualifying Exigency Certificate is attached to this rule.)

(C) An employee requesting leave under OMFLA must provide notice to his or her supervisor within five (5) business days of receiving official notice of an impending call or order to active duty or of a leave for deployment.

§ 2-60-075 INTERMITTENT LEAVE USE

(A) Employees are eligible to take intermittent leave if there is a medical need for leave. Employees needing intermittent leave must attempt to schedule their leave so as not to disrupt the operations of their work unit.

(B) Use of intermittent leave following the birth or placement of a child for adoption or foster care is contingent upon the approval of the supervisor and the department HR unit.

§ 2-60-080 HEALTH INSURANCE

(A) The county will maintain the same level of health insurance coverage for an employee on FMLA leave as when the coverage was provided before the leave was taken.

(B) Employees who have selected to opt out from health insurance coverage will not be eligible to receive the opt-out payment during the time they are on unpaid leave.

(C) The county does not provide health insurance coverage for employees who have been on unpaid OFLA leave for over thirty (30) days. At this time, employees will be provided the option of continuing health insurance coverage on a self-pay basis under COBRA.

(D) In some instances, the county may recover, as allowed by law, premiums paid to maintain health coverage for an employee who fails to return to work from FMLA leave.

§ 2-60-090 REINSTATEMENT

(A) When an employee returns from family leave, the employee must request reinstatement promptly upon the expiration of leave. If an employee makes a timely request for reinstatement and complies with other requirements under state and federal regulations, the employee will be reinstated to their former position. If the employee cannot be reinstated to the former position because that position no longer exists, the employee will be reinstated to an available equivalent position in accordance with applicable laws, rules, and/or collective bargaining agreement. If no suitable position is available, the employee will be subject to the layoff provisions of these rules and/or any applicable collective bargaining agreement.

(B) If the employee fails to report to work within five (5) calendar days after the end of leave, the employee will be considered to have resigned unless the employee has requested and obtained a leave extension prior to the end of the leave.

(C) The county may deny reinstatement if:

(1) The employee fails to provide a medical release to return to work or a fitness-for-duty certificate following leave for the employee's own serious health condition, when the county asked for one at the time leave commenced;

(2) The employee tells the county he/she is not returning to work; or

(3) The employee fraudulently obtained the leave.

§ 2-60-100 CONFIDENTIALITY

The circumstances involving the need for an employee to be granted FMLA/OFLA leave will be kept confidential. Documents provided to the county regarding the leave will be maintained in the employee's medical file which is kept separately from the employee's personnel file, in accordance with state and federal laws.

§ 2-60-110 NOTIFICATION TO EMPLOYEE AND DEPARTMENT RESPONSIBILITIES

(A) Each department will develop and administer internal procedures for employees to request and receive, if eligible, FMLA, OFLA, and OMFLA leaves. Procedures will include a process to ensure that supervisors promptly notify their HR departments of requests for medical leave, and that such requests are immediately submitted to the department HR unit for final review and approval/denial. Only department HR units have authority for final approval or denial of medical leave requests, and must consult with Central HR prior to denying any request for medical leave under these rules.

(B) Each department HR unit will, upon receipt of an employee's request for leave, provide the employee with a notice of eligibility to include:

(1) A designation of the benefits under FMLA, OFLA, OMFLA, labor contract and/or personnel rules as applicable to the request for leave, and a statement that leave taken will count against the applicable leave entitlements; and

(2) 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; and

(3) Notification of the employee's leave balances, and the requirements for the employee to use accrued leave during the absence; and

(4) Notification that employer health care contributions will continue if the leave has been designated as FMLA. In this case, the employee will be advised of the requirement to reimburse the county for health plan premiums if the employee fails to return from leave, provided that such reimbursement conforms with the provisions of FMLA; and

(5) An explanation of the employee's reinstatement rights in accordance with these rules.

(C) Each department will ensure employees are informed of their rights under family and medical leave laws and rules by, at a minimum, posting official notices in accordance with federal and state requirements of the various leave laws.