



<input checked="" type="checkbox"/>	Administrative Policy
<input type="checkbox"/>	Operational Policy

## Clackamas County Policy

Name of Policy	Protected Leave of Absence	Policy #	EPP 10
Policy Owner Name	Evelyn Minor-Lawrence	Effective Date	9/1/23
Policy Owner Position	Human Resources Director	Approved Date	8/24/23
Approved By	Gary Schmidt, County Administrator	Next Review Date	9/1/26

### PROTECTED LEAVE OF ABSENCE

#### I. PURPOSE AND SCOPE:

To inform employees about the requirements of Federal and State laws protecting employees taking leaves of absence in certain situations and to provide employees with the County's requirements along with employees' rights and responsibilities.

This policy applies to all County employees including probationary, regular status, seasonal and temporary employees.

#### II. AUTHORITY

This policy is established by the County Administrator's administrative rule-making authority pursuant to County Code 2.09.060.E.

#### III. POLICY

Clackamas County provides leave for family and medical reasons in compliance with the Family Medical Leave Act (FMLA), the Oregon Family Leave Act (OFLA), the Oregon Military Family Leave Act (OMFLA) and Oregon Paid Family and Medical Leave (PFML)

The policy consolidates provisions of State and Federal laws to allow employees the maximum advantage when both apply.

In the event of any conflict between this policy and the applicable law(s), employees will be afforded all rights required by law.

The County shall not retaliate against employees who request or take a leave of absence in accordance with this policy.

#### IV. DEFINITIONS

**Active duty:** 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 under Title 32 of the United States Code or Sections 12301 or 12302 of Title 10 of the United States Code.

**Contingency operation:** A military operation that is (A) designated by the Secretary of Defense as an operation in which members of the armed forces are or may become involved in military actions, operations, or hostilities against an enemy of the United States or against opposing military force; or (B) results in the call or order to, or retention on, active duty of members of the uniformed services under law during a war or during a national emergency declared by the President or Congress.

#### Covered family member:

- Under FMLA, it is defined as a spouse, son, daughter, or parent. "Son or daughter" means a biological, adopted, or foster child; a stepchild; a legal ward; or a child of a

person standing in loco parentis who is either under age 18 or age 18 or older and "incapable of self-care because of a mental or physical disability."

- Under OFLA and Oregon Paid Family and Medical Leave, family members include spouses and domestic partners, children, parents, siblings or stepsiblings, grandparents, grandchildren, and any individual related by blood or affinity whose relationship is equivalent to family.

#### **In Loco Parentis:**

- Defined under FMLA as a person with whom an employee has developed a parent/child relationship in the absence of a biological or adoptive parent.
- Defined under OFLA as a person having financial and day-to-day responsibility for the care of a child in the place of a parent. A legal or biological relationship is not required.

**Intermittent leave:** Leave taken in multiple blocks of time and/or requiring an altered or reduced work schedule

**Key employee:** A salaried FMLA eligible employee who is among the highest paid ten percent of all of the County's employees within 75 miles.

**Leave year:** A measure forward approach described in 29 CFR 825.200(b)(3) to determine how much leave time, if any, an employee may be eligible to take.

**Serious health condition:** An illness, injury, impairment or physical or mental condition as defined by the applicable law.

**Treatment:** Includes but is not limited to examinations to determine if a serious health condition exists, and evaluations of the condition. Treatment does not include routine physical examinations, eye examinations or dental examinations.

## **V. POLICY GUIDELINES**

- An employee shall not work for another employer while out on an approved leave of absence.
- When both parents work for the County take OFLA, only one parent at a time may take sick child leave.
- Leaves will run concurrently when more than one type of leave is approved for the same qualifying purpose.
- An employee's FMLA twelve (12) week entitlement shall run concurrently with any employee absence resulting from a workers' compensation claim.
- Parental leave must be taken over a consecutive period of time, unless Leave Administration and the employee's Department approve the leave to be taken intermittently, based on business needs.
- Leave for the birth or placement for adoption or foster care for an employee's child must be taken and concluded within one (1) year from the date of birth or placement of the child.

## **ELIGIBILITY, QUALIFYING PURPOSES and DURATION OF LEAVE**

The information outlined in the tables below are for general leave comparison and do not cover all possible scenarios. Each leave has different qualifications and factors that determine eligibility and entitlements.

<b>ELIGIBILITY REQUIREMENTS</b>	<b>FMLA</b>	<b>OFLA</b>	<b>PFML</b>	<b>OMFLA</b>
<b>Length of service</b>	12 months	180 days	No work time requirement for Paid Leave benefits, but must have worked 90 days to have job protection	None
<b>Hours worked</b>	1,250 hours in previous 12 months	Average 25 hours per week in past 180 days. <i>Does not apply to parental leave.</i>	None	20 hours per week
<b>Earnings</b>	None	None	Waived	None

<b>QUALIFYING PURPOSES</b>	<b>FMLA</b>	<b>OFLA</b>	<b>PFML</b>	<b>OMFLA</b>
<b>Family Leave</b>				
Birth, adoption or foster placement	Yes	Yes	Yes	No
Pregnancy disability/childbirth	Yes	Yes	Yes	No
Family member's serious health condition ( <i>family member definitions vary</i> )	Yes	Yes	Yes	No
<b>Medical Leave</b>				
Individual's own serious health condition	Yes	Yes	Yes	No
<b>Safe Leave</b>				
Domestic violence, sexual assault, harassment or stalking	No*	No**	Yes	No
<b>Other Leave Types</b>				
Extended leave for a pregnancy ( <i>in addition to leave for serious health condition</i> )	No	Yes	Yes	No
Sick child leave	No	Yes	No	No
Military exigency leave	Yes	No	No	No
Military family leave	Yes	No	No	Yes
Military caregiver leave	Yes	No*	No*	No
Care of Child(ren) due to school/childcare closure during public health emergency	No	Yes	No	No
Bereavement	No	Yes	No	No

\*Serious health condition may include leave.

\*\*Serious health condition and reasonable safety accommodations under ORS 659A may include leave.

<b>LEAVE DURATION AND BENEFIT PAYMENTS</b>	<b>FMLA</b>	<b>OFLA</b>	<b>PFML</b>	<b>OMFLA</b>
General amount per leave year	12 weeks	12 weeks	12 weeks***	14 work days
Maximum leave duration per leave year <i>(for certain combinations of leave types)</i>	26 weeks	36 weeks	14 weeks due to complications related to pregnancy or childbirth	14 work days
Payment	Unpaid leave	Unpaid leave	Paid leave	Unpaid leave
Benefit amount	None	None	Varies based on employee's average weekly wage.	None

\*\*\* Employees can take a combination of up to 16 weeks of paid and unpaid leave for which they may be eligible under OFLA in a leave year (or up to 18 weeks for women who experience complications due to pregnancy or childbirth).

#### Additional Leave under FMLA

FMLA provides for up to 26 weeks of leave in a 12-month period to care for an employee's spouse, son, daughter, parent, or next of kin who as member of the Armed Forces is seriously injured during active duty. This leave is combined with all other FMLA leaves in a 12-month period, resulting in a maximum total leave entitlement of 26 weeks.

#### Additional Leave under OFLA

- In addition to the 12 weeks of leave authorized by OFLA, an eligible employee may take a total of 12 weeks of leave within the same leave year for an illness, injury or condition related to pregnancy or childbirth that disables the employee from performing any available job duties offered by the County.
- An eligible employee taking the entire 12 weeks of OFLA leave for parental leave may take an additional 12 weeks of sick child leave within the same leave year. If the employee uses less than 12 weeks of parental leave, however, no additional sick child leave is available, except that the balance of 12 weeks of OFLA leave authorized by the statute may be used for sick child or for any OFLA leave purpose.
- An eligible employee may take up to 24 weeks of OFLA leave in one leave year under the following circumstances: (a) the employee takes 12 weeks of parental leave, followed by (b) up to 12 weeks of sick child leave.
- An eligible employee may take up to 36 weeks of OFLA leave in one leave year that includes up to 12 weeks of pregnancy disability leave, 12 weeks of parental leave, and up to 12 weeks of sick child leave.

## Intermittent/Reduced Schedule Leave

- Employees may take intermittent leave or work a reduced schedule when medically necessary for the employee's own serious health condition or to care for a family member with a serious health condition.
- An employee should make a reasonable effort to schedule treatment for serious health conditions in a manner that does not unduly disrupt County business.
- During a period of intermittent leave, an employee may be transferred to an alternate position (with the same pay) provided that the transfer is voluntary on the part of the employee, and the transfer is consistent with all applicable collective bargaining agreements.

## **CERTIFICATION/RECERTIFICATION OF SERIOUS HEALTH CONDITION**

The County requires certification from the primary treating health care provider(s) for leave to care for an employee's family member with a serious health condition or the employee's own serious health condition, including disability for pregnancy and following childbirth.

The County may request recertification no more frequently than every six months if the minimum duration of the condition is more than 30 days.

The County has the right to ask for a second opinion if it has reason to doubt the certification. The County will pay for the employee to get a certification from a second health care provider, which the County will select. If necessary, to resolve a conflict between the original certification and the second opinion, the County will require the opinion of a third health care provider. The County and the employee will mutually select the third provider, and the County will pay for the opinion. This third opinion will be considered final.

The employee will be provisionally entitled to leave and benefits under the FMLA and/or OFLA pending the second and/or third opinion. The County may deny FMLA and/or OFLA leave to an employee who refuses to participate or cooperate in the second or third opinion process.

Failure to provide complete and sufficient medical certification may result in denial of the rights and protections of FMLA and/or OFLA. In the event an employee fails to provide timely and/or complete medical certification, the appropriate timesheet adjustments will be made to reflect non-protected absence.

## **HEALTH BENEFIT CONTINUATION**

Employees taking approved leave under FMLA and/or OFLA will have their group health benefits continued for a maximum of 12 weeks in any 12-month period of time, or 26 weeks if the leave is to care for an employee's spouse, son, daughter, parent, or next of kin who as member of the Armed Forces is seriously injured during active duty.

If the employee remains on extended leave, medical insurance may be continued following the 12-week FMLA period if required by the Affordable Care Act. See EPP #33 – Employee Benefits for more information.

Benefits to be continued while on an approved leave include medical, prescription drug, vision coverage, dental coverage, services under the Employee Assistance Program (EAP) and group term life insurance. In addition, an employee will be able to continue contributions to their active health care flexible spending account or existing supplemental life insurance and other optional benefits plans. Contributions to a dependent care flexible spending account may be suspended during a continuous leave.

During the leave, if the employee is in an unpaid status they will be responsible for paying their share of any applicable benefits premiums, either during the leave or as a payroll deduction immediately upon return from leave. If the employee is in a paid status at the time premiums are normally collected, the employee's contribution will be deducted from their pay as usual.

## **FAILURE TO RETURN FROM LEAVE**

If an employee voluntarily terminates employment during an approved leave or fails to return to work to their regular work schedule for at least thirty (30) days at the end of the leave, the employee will be required to repay the County for the employer-paid portion of the health insurance premium during any unpaid FML period. The regular work schedule is considered to be the standard hours per pay period established for their position.

This provision will not apply if the employee is unable to return to their regular work schedule for reasons beyond the employee's control, such as severe deterioration of the health status of the employee or the family member, or the employee elects retirement. If failure to return is due to continuation, recurrence or onset of a serious health condition, medical certification will be required within fifteen (15) days from the date the County requests the information.

## **SERVICE ACCRUAL AND OTHER BENEFITS**

Unless otherwise specified in the applicable collective bargaining agreement, seniority continues to accrue during all authorized leaves, both paid and unpaid. Longevity, time towards salary increases, sick leave, and vacation will accrue during an approved FML according to the 11-day rule. The 11-day rule states that an employee must be working, half time or greater, or in a paid status for 11 working days in a calendar month in order to gain service accruals for that month. For employees who work a part-time or compressed work week (i.e., four 10-hour days), the 11-day rule will be pro-rated. This calculates to 9 working days for employees working a 4-day workweek.

The Oregon Public Employees' Retirement System (PERS) requires employees to be in a paid status for fifty (50) hours per month to receive creditable service for that month. Service credit is not granted for months in which an employee is on a leave without pay. Additionally, time spent on leave without pay is not included in the service time used to determine eligibility for unreduced early retirement benefits. (Refer to PERS handbook or contact PERS for more information.)

## **PAID TIME WHILE ON PROTECTED LEAVE**

In situations where the leave is to care for the employee's own illness including disability related to pregnancy or childbirth, or the illness of a family member, the employee is required to use all accrued sick time. Unless otherwise stated in the collective bargaining agreement, when all accrued sick time has been exhausted, an employee may use other paid time or may take leave without pay. When an employee uses accrued paid leave or compensatory time, such leave must be exhausted prior to the commencement of unpaid leave.

- For OMFLA, OFLA bereavement leave, and parental leave, the employee has the choice of using any or all accrued sick time and/or vacation hours.

Use of sick leave for family members must comply with the applicable collective bargaining contract or County policy.

Holidays will count as protected leave if the employee is on protected leave at the time the holiday occurs.

In the event of the death of the family member for which the employee is providing care while on protected leave, paid bereavement time may be taken for the applicable days following the family member's death. An approved FMLA and/or OFLA shall end as of the date of the death of the family member and OFLA bereavement leave may begin.

If an employee is unable to work because of non-job-related conditions, the employee may file a claim for disability benefits through the County's disability benefit vendor. Disability benefits provide a level of income replacement and may run concurrently with protected leave. See Leave Administration for details.

## **UNPAID PROTECTED LEAVE**

Leave without pay during a leave of absence is allowable. If an employee is using both paid time and leave without pay, leave without pay may not begin until all required or requested paid time is used. Any remaining paid time may not be used for the duration of the continuous leave once unpaid leave has begun. Seniority and longevity credit may be adjusted based on the duration of leave without pay.

## **RETURN TO WORK**

Employees who report for work at the conclusion of a family or medical leave of absence shall return to their former position. If their former position no longer exists, the employee shall be reinstated to an equivalent position for which they are qualified. If no suitable position is available, the employee will be subject to the layoff provisions of the County and/or any applicable collective bargaining agreement.

If an employee has been on leave due to their own serious health condition, the employee must provide the supervisor with a Release to Return to Work form completed by their treating health care provider prior to returning to work.

The County retains the right to deny restoration in the following situations:

- 1) Employee would have been laid off if they had not been on leave;
- 2) Employee is unable to perform an essential function of the position because of a physical or mental condition (although the employee may be entitled to an accommodation under the ADA);
- 3) Employee fraudulently obtains a family or medical leave;
- 4) Employee fails to provide a release to return to work upon return;
- 5) Employee violates County policy governing outside employment during the leave; or
- 6) The County may deny restoration to a "key employee" under certain circumstances. Allowable circumstances are defined further in the applicable federal or state law.

An employee taking approved protected leave may return to work sooner than originally anticipated and notify the employer of their request to return to work. The employee must request this return to work in writing. The employee must be returned to their position within two working days from the date that the return-to-work note is received and approved by Leave Administration, so long as the employee does not pose any safety risk to themselves or others by their return.

An employee who fails to return to work on the first workday after the completion of a leave of absence, will be considered to have resigned or may be eligible for a medical layoff, unless the employee, prior to the completion of the leave of absence, has requested and received an accommodation under the ADA prior to the end of the leave.

## **VI. PROCESS AND PROCEDURES**

### **REQUESTING LEAVE**

The employee may elect to use FMLA and/or OFLA; Leave Administration will notify the employee if the leave may qualify for FMLA and/or OFLA protected leave.

Requests for leave must be made to Leave Administration in writing at least thirty (30) days prior to the effective date of the leave for a planned absence.

In cases of sudden illness or injury, or unexpected birth or placement for adoption, an employee or their representative must orally report the absence to their supervisor and Leave Administration within 24 hours of taking the leave, and must provide a written request for leave within three (3) days of commencing the leave that includes the type of leave and whether the leave shall be continuous or intermittent.

In the event the employee is unable to request the leave themselves, the request may be made by the supervisor or a family member on behalf of the employee. The request can be made verbally or in writing.

To request OMFLA leave, the employee must notify their supervisor and Leave Administration of their 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.

### HEALTH CARE CERTIFICATION

The County requires a *Certification of Health Care Provider* form for leave because of an employee's own Serious Health Condition or to care for an employee's family member with a Serious Health Condition as defined in the policy. The employee may be asked to provide medical certification on the next occurrence after taking three consecutive or separate occurrences of sick child leave during a leave year.

The employee must submit a *Certification of Health Care Provider* form within fifteen (15) calendar days of their request for FML/OFLA.

The employee is responsible for resolving any deficiencies in the medical certification with their provider that have been identified by Leave Administration. Leave Administration may directly contact the employee's health care provider for verification or clarification purposes.

Eligible health care providers are defined under FMLA and/or OFLA.

### CONFIDENTIALITY

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

## **VII. ACCESS TO POLICY**

Access to this administrative policy shall be as follows:

- Filed in PowerDMS
- Posted to the County's internet.

## **VIII. ADDENDA**

Leave Administration: <https://www.clackamas.us/des/leave-administration>

OFLA : [https://oregon.public.law/statutes/ors\\_659a.150](https://oregon.public.law/statutes/ors_659a.150)

OMFLA: <https://www.oregonlaws.org/ors/659A.093>

FMLA: <https://www.ecfr.gov/current/title-29/subtitle-B/chapter-V/subchapter-C/part-825?toc=1>

EPP 33 – Employee Benefits: <https://dochub.clackamas.us/documents/drupal/453f8933-19fa->



[44e3-b441-12300fad8097](#)

EPP 46 – Leave Donation Program: <https://dochub.clackamas.us/documents/drupal/a00838e0-d6d0-4dea-a6ef-09dc1df20894>

## **APPENDIX A RESPONSIBILITIES**

### **EMPLOYEE RESPONSIBILITIES**

#### **When Requesting Leave:**

- Provide timely notification to and ongoing communication with their Supervisor and Leave Administration regarding the need for time away from work, including complying with any notification requirements outlined in applicable collective bargaining agreements and County policies.
- If an employee is delayed in requesting protected leave of absence, the County may count any absences during the delay as non-protected leave and apply our attendance policy to those absences. Since actual dates of leave often cannot be determined in advance, the employee should estimate the dates as closely as possible at the time of the request.
- Comply with all timelines outlined in this policy.
- Comply with all applicable instructions outlined in any communication from Leave Administration.
- Apply for disability benefits, if eligible.

#### **During And Returning From Leave:**

- Communicate to their Supervisor and Leave Administration any changes to leave status, including but not limited to changes in the beginning or end date of the leave or changes to restrictions upon or after returning from leave.
- Provide at least two business days advance notice of their intent to return to work to their Supervisor and Leave Administration.
- If returning from leave for the employee's own health condition, a release from the health care provider must be submitted and approved by Leave Administration prior to the employee returning to work. The process of reviewing and approving the release may take up to five business days.
- Make a reasonable effort to schedule any medical treatment(s) in a manner that does not unduly disrupt business operations.
- Report intermittent absences to the department and Leave Administration following department's normal call-out procedures.

#### **Additional Information:**

- If an employee secures a position of employment outside of the County or becomes self-employed while on a leave of absence, they must report this to HR Leave Administration. Upon notification the employee will be considered to have voluntarily resigned and the employer – employee relationship will be separated at that time.
- Any employee with a disability who requires an accommodation in order to perform the essential functions of the job effectively and safely should inform Leave Administration. Please see EPP 03 –Workplace Accommodations for more details. This information will be kept confidential and will be used solely for the purpose of evaluating the employee's qualifications, the existence, nature and extent of a disability and the selection of a reasonable and effective accommodation.

### **SUPERVISOR RESPONSIBILITIES**

- If leave is unforeseen or no advance notice is provided, the supervisor shall notify the employee verbally that the leave may be covered under protected leave, and advise the employee to notify Leave Administration.

In the event the employee is unable to request the leave themselves, the request may be made by the supervisor or a family member on behalf of the employee. Information related to a medical condition for either the employee or a family member cannot be retained in the department's personnel file. Any employee medical information received by the Supervisor, including return to work documentation, shall be submitted to Leave Administration for inclusion in the employee's protected leave file.

- The Supervisor must ensure the timesheet is coded as protected leave for hours taken as continuous or intermittent leave of absence. These codes will be entered by Leave Administration based on the information employee reported on the claim. **Pending formal approval of protected leave, any leave time used must be coded as protected.**

### **LEAVE ADMINISTRATION RESPONSIBILITIES**

- Upon request, Leave Administration will provide the necessary information to employees who may have a need for protected leave.
- Within 5 business days of receipt of a request for FML, Leave Administration will make an eligibility determination based on the eligibility requirements and a reason for leave. If eligible, the leave will be provisionally approved as FML, and the employee will be sent an initial notice with a request for any additional necessary documentation. Leave Administration will also send notification to the department outlining the provisionally approved dates for the leave, the type of leave, and other relevant information.
- Approval or denial of the leave request will be made when Leave Administration has sufficient information to make the determination and provide notification to the employee and the department.
  - If approved, this information will also include relevant benefits information.
  - If the request is denied, all necessary timesheet adjustments will be requested to reflect regular non-protected leave status.
- Leave Administration will provide notification to the employee and department as changes occur during the leave.
- At the end of the approved leave, Leave Administration will confirm return to work status with the Supervisor and the employee prior to closing the leave