



ADMINISTRATIVE POLICIES

SECTION:	Human Resources	POLICY #:	305
TITLE:	Protected Leave	PROCEDURE #:	305-A
		ORDER #:	09-105
DEPT:	Business Services		
ADOPTED:	9/02	REVIEWED:	REVISED: 1/14

PURPOSE: The purpose of the Protected Leave Policy is to ensure that Marion County complies with all federal and state laws regarding protected leave including the Oregon Family Leave Act ORS 659a.150 - 659a.186 (OFLA), Oregon Military Family Leave Act 659a.090 – 659a.186 (OMFLA) and 29 CFR § 825.301 Family and Medical Leave Act of 1993 (FMLA), Oregon Victims of Certain Crimes Leave Act, ORS 659A.190 through 659A.198 (OVCCLA).

AUTHORITY: The Marion County Board of Commissioners may establish rules and regulations in reference to managing the interest and business of the county under ORS 203.010, 203.035 203.111 and 203.230.

The Marion County Board of Commissioners expresses the governing body’s formal, organizational position of fundamental issues or specific repetitive situations through formally adopted, written policy statements.

The Administrative Policies and Procedures Manual of the Board of Commissioners outlines the forms and process through which the board takes official action on administrative policy, and is the official record of county administrative policy.

APPLICABILITY: All county employees

GENERAL POLICY: Marion County provides protected leave for qualifying employees in the form of family, medical, domestic violence, and military leave in conformance with the Family Medical Leave Act (FMLA), Oregon Family Medical Leave Act (OFLA), Oregon Victims of Certain Crimes Leave Act (OVCCLA), and Oregon Military Family Leave Act (OMFLA).

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POLICY:

1. Responsibilities:

Marion County Business Services Department - Human Resources Program is responsible for implementing this policy. Implementation includes training, advice, and assistance to management staff on the county's obligations under the laws.

2. Federal and State Laws:

2.1. Family Medical Leave Act (FMLA): A federal law that provides unpaid protected leave (up to 12 weeks or 480 hours) for serious health conditions of employees and their family members, the birth, adoption or foster care placement of a child, and leave time for pregnant employees to seek prenatal and postnatal care.

2.2. Oregon Family Medical Leave Act (OFLA): A state law that provides unpaid protected leave for: serious health conditions of employees and their family members, the birth, adoption or foster care placement of a child, bereavement leave, and leave time for pregnant employees to seek prenatal and postnatal care. The Oregon law is more comprehensive, allowing more than 12 weeks or 480 hours per year under certain conditions.

2.3. Victims of Certain Crimes Leave Act (OVCCCLA): This act is an extension of the OFLA and provides leave for an employee who is the victim of domestic violence, sexual assault, or stalking; or is the parent or guardian of a minor child or dependent who is the victim of domestic violence, sexual assault, or stalking. Leave may be used to seek legal or law enforcement assistance, to seek remedies to ensure health and safety, to seek medical treatment for injuries or to recover from injuries, to obtain counseling, to seek other domestic violence services, to relocate or secure existing housing, or to attend criminal proceedings related to these circumstances.

2.4. Oregon Military Family Leave Act (OMFLA): This act is an extension of OFLA and provides up to 14 calendar days of leave per deployment for a spouse or same-sex domestic partner of a member of the Armed Forces of the United States, the National Guard, or the military reserve forces.

3. Definitions:

3.1. Bereavement Leave: Leave for the death of a family member in order to attend the funeral or alternative to a funeral of a family member; make arrangements necessitated by the death of a family member; or, for the process of grieving the loss of the family member.

3.2. Chronic Condition: A condition that requires periodic visits to a healthcare provider for treatment and occurs over an extended period of time. An employee may use intermittent leave to care for a chronic condition that is generally episodic.

3.3. Crime Victim: A person who has suffered financial, social, psychological, or physical harm as a result of a person felony as defined in Oregon law.

3.4. Exigency Leave (National Guard or Reserves):

3.4.1. For a short-notice deployment, meaning a call or order that is given no more than 7 calendar days before deployment (the employee can take up to 7 days beginning on the date of notification);

3.4.2. For military events and related activities, such as official military-sponsored

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- ceremonies and family support and assistance programs sponsored by the military and related to the family member's call to duty;
- 3.4.3. For urgent (as opposed to recurring and routine) child-care and school activities, such as arranging for child care;
 - 3.4.4. For financial and legal tasks, such as making or updating legal arrangements to deal with the family member's active duty;
 - 3.4.5. For counseling for the employee or his/her minor child that is not already covered by the FMLA;
 - 3.4.6. To spend time with the covered service member on rest and recuperation breaks during deployment, for up to 5 days per break;
 - 3.4.7. For post-deployment activities such as arrival ceremonies and reintegration briefings or to address issues from the service member's death while on active duty; or,
 - 3.4.8. For other purposes arising out of the call to duty, as agreed on by the employee and employer.
- 3.5. Family Member:
- 3.5.1. FMLA defines family members to include the employee's spouse, parent, son or daughter. "Spouse" means a husband or wife as recognized under state marriage laws where the employee resides. A "parent" is the biological or legal parent or one who is in loco parentis. Son and daughter are defined as a biological, adopted or foster child; a legal ward; or a child of a person standing in loco parentis, under the age of 18, or older if incapable of self-care because of mental or physical disability.
 - 3.5.2. OFLA defines family members to include parents, spouses, and children. OFLA includes parents-in-law, same-sex domestic partners, the parents of a same-sex domestic partner, grandparents, and grandchildren.
 - 3.5.3. OVCCLA defines immediate family members for purposes of attending a criminal proceeding as a crime victim's spouse, domestic partner, father, mother, sibling, child, stepchild, and grandparent.
- 3.6. Parental Leave: This OFLA leave provides for the birth, adoption, and placement of foster children and cannot be an intermittent or reduced schedule.
- 3.7. Pregnancy Disability: FMLA and OFLA cover a variety of absences related to pregnancy or childbirth incapacity, such as absences for serious morning sickness, period of bed rest ordered by a healthcare provider, pregnancy complications, and routine prenatal visits to healthcare providers.
- 3.8. Serious Health Condition: Absences for inpatient care, terminal illnesses, and illnesses that result in incapacity for more than three calendar days and require continuing treatment by a health care provider. A serious health condition can be intermittent or require a reduced schedule.
- 3.9. Serious Injury or Illness in the Line of Duty: FMLA defines serious injury or illness that must have occurred or been aggravated while in the military; and, the veteran must be undergoing medical treatment, recuperation, or therapy for the serious injury or illness that occurred any time during the five years preceding the date of treatment. Leave can be designated for spouse, parent, child, or next of kin of current military personnel or veteran.
- 3.10. Sick Child Leave: OFLA allows time off to any eligible employee whose child requires home care for an illness or injury that is not a serious health condition. Sick child leave is not for routine medical or dental appointments, or because school is not in session, or for other child care issues.

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- 3.11 Veterans: Leave to care for a veteran who experienced a serious injury or illness or the injury or illness was aggravated while in the military; and the veteran must be undergoing medical treatment, recuperation, or therapy for serious injury or illness that occurred any time during the five years preceding the date of treatment.
- 3.12. Week: For purposes of protected leave, a week is the employee's normal workweek schedule. Marion County will count family medical leave from the first day of absence under the qualifying purpose.
- 3.13. Year: For the purposes of protected leave, the 12-month period begins on the first day an employee begins protected leave. Marion County will count family medical leave from the first day of absence under the qualifying purpose.

4. Qualifying Purposes of Leave:

Marion County designates leave based on qualifying conditions, regardless of whether the employee has leave accruals to cover the absence or whether the employee requests family medical leave. Employees who qualify may be entitled to protected leave in the following situations:

- 4.1. When the employees' own serious health condition prevents them from performing the essential functions of the job.
- 4.2. The birth or adoption of a child under the age of 18 (including the legal placement of a foster child under the age of 18) within 12 months of the event.
- 4.3. To care for a spouse, parent, or child under the age of 18 who has a serious health condition, or a mentally/physically impaired child aged 18 or over (FMLA); a biological, adopted or foster child, grandparent, grandchild, parent-in-law, same-sex domestic partner, or child or parent of a same-sex domestic partner (OFLA).
- 4.4. To provide home care for a child under the age of 18 with a non-serious health condition, provided another family member is not willing and able to care for the child.
- 4.5. To care for a spouse, parent, child, or next of kin who is a covered service member or veteran. The covered service member or veteran must have a serious injury or illness incurred or aggravated while on active duty (leave must begin within five (5) years of the veteran leaving military service).
- 4.6. For an exigency leave related to a spouse, child, or parent of a covered service member who is on active duty, called to active duty, and during leave from deployment.
- 4.7. To seek legal assistance, medical treatment, counseling, or to relocate or secure an existing residence when the employee is a victim of domestic violence, sexual assault, or stalking; or the parent or guardian of a minor child or dependent who is the victim of domestic violence, sexual assault, or stalking.
- 4.8. To attend a criminal proceeding as a crime victim or family member of a crime victim.

5. Eligible Employees:

- 5.1. Eligible employees under Oregon protected leave laws are:
 - 5.1.1. Full-time or part-time employees who meet the qualifying purposes for leave and the following criteria:
 - 5.1.1.1. Have been employed by Marion County for at least 180 days (26 weeks) or more before the first day of the protected leave; and,

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- 5.1.1.2. Have worked an average of 25 or more hours per week for Marion County as of the day before the request for leave is made. This average will be calculated over the 180 days preceding the request for leave. However for the purpose of taking leave in the event of the birth or adoption of a child, or the legal placement of a foster child, an employee does not need to meet the hours requirement. For leave related to a spouse being called to active duty, the employee must have worked an average of 20 or more hours per week for Marion County.
 - 5.2. Employees who are victims of or at risk of domestic violence, sexual assault, or stalking, regardless of how long he or she has worked for Marion County and regardless of how many hours per week the employee works.
 - 5.3. Employees are also eligible for protected leave under FMLA if they have been employed by Marion County for a total of at least 12 months (does not need to be consecutive) and have worked at least 1,250 hours during the 12-month period immediately preceding the family medical leave.
6. Request for Protected Leave:
 - 6.1. Anticipated Situations:
 - 6.1.1. In situations where the need for protected leave is known, employees are expected to give 30 days advanced notice to take protected leave.
 - 6.1.2. If the anticipated leave is known less than 30 days in advance, employees must give notice as soon as practicable. Upon notice, the county will provide the employee with a Protected Leave Request Form. All employees are required to complete a Protected Leave Request Form and submit the completed certification prior to the commencement of protected leave.
 - 6.1.3. An employee who intends to take leave to attend a criminal proceeding must give reasonable notice to a supervisor of the impending leave once the employee has received official notice of the proceeding.
 - 6.1.4. An employee who intends to take domestic violence-related leave must give reasonable notice to a supervisor of the impending leave unless giving advance notice is not feasible (see Section 6.2).
 - 6.1.5. An employee who intends to take military-related leave must give notice to a supervisor within five business days of receiving official notice of an impending call or order to active duty, or of a leave from deployment.
 - 6.2. Unanticipated Situations:

In unanticipated or emergency situations in which there is no opportunity to give notice, employees must notify their supervisor verbally within two working days of the emergency situation. The required paperwork must be completed and returned as soon as is practicable. Notice may be provided by a family member or other individual when an employee is unable to provide notice.
7. Certification/Designation:
 - 7.1. Certification of Need:
 - 7.1.1. Certification of the need for family medical leave may be required. If certification is required in the event of an employee health condition or that of a family member, it must be provided by a medical professional on the applicable certification form within 15 days of the request for family medical leave. Failure to provide required medical certification may delay

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the start of family medical leave or may cause the denial of family medical leave. The employee may be required to furnish the county with periodic medical reports as frequently as every 30 days and to complete the full recertification process every six months.

- 7.1.2. In the event of a request for parental leave to care for a newly adopted child or a newly placed foster child, the employee may be required to provide verification from the agency representative regarding the adoption or placement of the child.
- 7.1.3. In the event of a request for domestic violence-related leave, the employee may be required to certify that he/she qualifies for leave and that the leave is to be taken for an authorized purpose.
- 7.1.4. In the event of a request for leave to attend criminal proceedings, the employee may be required to provide copies of the notice of the scheduled proceedings.
- 7.2. Intermittent or Reduced Schedule:
 - 7.2.1. When medically necessary family medical leave may be taken on an intermittent or reduced schedule. Details of the proposed schedule must be verified by the certifying medical professional on the applicable certification form.
 - 7.2.2. Employees who have received a designation of intermittent family medical leave must comply with the sick leave notification policy in effect in his or her division or department. Failure to do so may result in disciplinary action.
 - 7.2.3. Intermittent leave or a reduced schedule is not allowed upon the birth or adoption of a child, except to accommodate the required legal process leading to the adoption of a child or the placement of a foster child.
- 7.3. Employer Designations:

Marion County will designate leaves of absence as covered under FMLA and/or OFLA, even when not requested by the employee, if the reason for the absence is a qualifying purpose under one or both of the laws. Marion County Business Services, Human Resources Program will notify an employee of such designation.
- 7.4. Concurrent Designations:
 - 7.4.1. When the qualifying purpose of the leave is covered under both FMLA and OFLA, the leave will be designated concurrently toward the time allowed under both laws.
 - 7.4.2. Leaves potentially covered under workers' compensation will be provisionally designated under both FMLA and OFLA if the absence is for a qualifying purpose under the applicable laws. If a workers' compensation claim is found to be compensable, the designation will be withdrawn and the leave taken will not count toward the employee's available leave under FMLA and/or OFLA.

8. General Provisions:

- 8.1. Use of Accrued Leave:
 - 8.1.1. While on FMLA/OFLA leave for their own serious health condition, employees will use sick leave first, then vacation, and then must use other forms of leave prior to leave without pay.
 - 8.1.2. While on FMLA/OFLA leave for the serious health condition of a family member or for parental leave (not to be confused with pregnancy

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disability), employees may choose to use other forms of paid leave prior to using sick leave. All leave accruals must be exhausted prior to leave without pay.

8.1.3. Employees on FMLA/OFLA leave, for other than intermittent leave, may elect in writing at the onset of their leave to retain up to 40 hours of sick leave. Employees with leave accruals are not eligible for donated leave.

8.1.4. While on Domestic Violence Leave, employees may choose to use other forms of paid leave prior to using sick leave. All leave accruals must be exhausted prior to leave without pay.

8.1.5. While on Military Leave, employees may choose to use other forms of paid leave prior to using sick leave. All leave accruals must be exhausted prior to leave without pay.

8.2. Benefits During Leave:

8.2.1. FMLA: While the employee is on an absence covered by FMLA, Marion County will continue to pay its share of benefit premiums whether or not the employee is receiving wages while on leave. The employee will be required to pay the employee's regular contribution toward premiums.

8.2.2. OFLA: If the absence is only covered under OFLA, the employee will be responsible for the full premium payments in order to continue benefit coverage if the employee is on an unpaid status.

8.3. Medical Release: Employees returning from family medical leave taken for their own health condition are required to provide a Medical Release to Return to Work Form prior to or upon return indicating that they are able to return to work and whether they have any restrictions.

8.4. Reinstatement: Employees returning from family medical leave will be reinstated to the same or an equivalent position with equivalent benefits, pay, and other terms and conditions of employment; unless their former positions have been eliminated for business reasons.

8.5. All qualified protected leave must be reported on an employee's time sheet. Reporting qualified leave is required regardless of whether the leave is paid or unpaid. FMLA and OFLA are not voluntary; it is mandatory when the condition qualifies for protected leave. Exempt employees may not be required to utilize accrued leave for intermittent protected leave; however, they are required to record all hours taken as protected leave on their time sheet.

9. Violations:

Failure to complete and submit required documentation and/or submitting insufficient documentation may result in denial of Protected Leave status.

10. Periodic Review:

This policy will be reviewed every three years or as state and federal regulations are revised and necessitate a change in the policy.

Adopted: 9/02

Revised: 11/09

4/12

1/14