



ADMINISTRATIVE POLICIES

SECTION: Human Resources		POLICY #: 305
TITLE: Protected Leave		PROCEDURE #: 305-A
		ORDER #: 21-029
DEPT: Human Resources		PROGRAM: Benefits
ADOPTED: 09/02	REVIEWED:	REVISED: 8/23

PURPOSE:

The purpose of this policy is to define the provisions and processes for eligible employees to take protected leave for qualifying medical and family circumstances. This policy is intended to comply with the federal and state laws regulating the leaves of absence.

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 official, organizational position on fundamental issues or specific repetitive situations through formally adopted, written policy statements. Policy statements serve to provide rules for public officials on the conduct of county business.

Marion County Administrative Policies and Procedures outline the methods through which the Board of Commissioners takes formal action on administrative policy. They are 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 following programs: Family and Medical Leave Act (FMLA), Oregon Family Leave Act (OFLA), Oregon Victims of Certain Crimes Leave Act (OVCCCLA), Oregon Military Family Leave Act (OMFLA), Paid Leave Oregon (PLO) and The Uniformed Services Employment and Reemployment Rights Act of 1994

SUBJECT: PROTECTED LEAVE

DEFINITIONS:

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.

Crime Victim: A person who has suffered financial, social, psychological, or physical harm as a result of a crime covered by OVCLA as defined in OAR 839-009-0340(4).

Exigency Leave (National Guard or Reserves):

1. For a short-notice deployment, meaning a call or order that is given no more than seven calendar days before deployment (the employee can take up to seven days beginning on the date of notification);
2. For military events and related activities, such as official military-sponsored ceremonies and family support and assistance programs sponsored by the military and related to the family member's call to duty;
3. For urgent (as opposed to recurring and routine) child-care and school activities, such as arranging for child care;
4. For financial and legal tasks, such as making or updating legal arrangements to deal with the family member's active duty;
5. For counseling for the employee or his/her minor child that is not already covered by the FMLA;
6. To spend time with the covered service member on rest and recuperation breaks during deployment, for up to five days per break;
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,
8. For other purposes arising out of the call to duty, as agreed on by the employee and employer.

Family Member:

1. FMLA defines family members to include the employee's:
 - Spouse: The husband or wife of the employee. As defined in 29 CFR § 825.102, husband or wife refers to the other person with whom an individual entered into marriage as defined or recognized under state law for purposes of marriage in the State in which the marriage was entered into or, in the case of a marriage entered into outside of any State, if the marriage is valid in the place where entered into and could have been entered into in at least one State. This definition includes an individual in a same-sex or common law marriage that either: (1) was entered into in a State that recognizes such marriages; or (2) if entered into outside of any State, is valid in the place where entered into and could have entered into in at least one State.
 - Parent: A biological, adoptive, step or foster father or mother, or any other individual who stood in loco parentis to the employee when the employee was a minor.
 - Child: 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.
2. OFLA defines family members in ORS 659A.150(4) to include the employee's:

SUBJECT: PROTECTED LEAVE

- Spouse;
- Child or the child's spouse or domestic partner;
- Parent of the parent's spouse or domestic partner;
- Sibling or stepsibling or the sibling's or stepsibling's spouse or domestic partner;
- Grandparent or the grandparent's spouse or domestic partner;
- Grandchild or the grandchild's spouse or domestic partner;
- Domestic partner; or
- Any individual related by blood or affinity whose close association with an employee is the equivalent of a family relationship.

Parental Leave: OFLA provides leave during the year following the birth, of a child, adoption, foster placement of a child under 18 or a child 18 or older if incapable of self-care due to a mental or physical disability. Parental leave may be taken in a continuous block, or intermittently.

Pregnancy Disability: FMLA and OFLA cover a variety of absences related to pregnancy or childbirth incapacity and routine prenatal visits to healthcare providers.

Public Health Emergency: A "public health emergency" means (i) a public health emergency declared under ORS 433.441 or (ii) an emergency declared under ORS 401.165 if related to a public health emergency as defined in ORS 433.442.

Serious Health Condition: Illness, injury, impairment or other physical or mental condition that requires inpatient care, hospice, continuous treatment by a health care provider involving a period of incapacity, regular absence of more than 3 consecutive calendar days or a chronic, long term condition; absence to receive treatments including recovery period. A serious health condition leave can be continuous, intermittent or require a reduced schedule.

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.

1. Service in the Uniformed Services: The performance of duty on a voluntary or involuntary basis in a uniformed service.
2. Uniformed Services: Consists of Army, Navy, Marine Corps, Air Force, Coast Guard, Army Reserve, Naval Reserve, Marine Corps Reserve, Air Force Reserve, Coast Guard Reserve, Army National Guard, Air National Guard, Commissioned Corps of the Public Health Service; and any other category of persons designated by the President in time of war or emergency.

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 due to lack of childcare or school closure unless due to a declared public health emergency.

Week: For purposes of protected leave, a week is the employee's normal workweek schedule.

SUBJECT: PROTECTED LEAVE

Marion County will count family medical leave from the first day of absence under the qualifying purpose.

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.

POLICY GUIDELINES:

1. RESPONSIBILITIES

1.1. Federal and State Laws:

- 1.1.1. 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.
- 1.1.2. 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.
- 1.1.3. 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, harassment, 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.
- 1.1.4. 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.
- 1.1.5. Paid Leave Oregon (PLO) is a paid leave program, administered by Oregon Employment Department, allowing up to 12 weeks of paid leave per benefit year (up to 14 weeks for pregnancy related medical leave). In accordance with ORS 657B.150, all employers and eligible employees shall contribute to the Paid Family and Medical Leave Insurance Fund established by ORS 657B.430.
 - 1.1.5.1. The total rate may not exceed the amount set by the laws governing PLO.
 - 1.1.5.2. Employer contributions shall be paid in an amount that is equal to 40 percent of the total rate determined by the Oregon Employment Department Director.

SUBJECT: PROTECTED LEAVE

- 1.1.5.3. An employer shall deduct employee contributions from the wages of each employee in an amount that is equal to 60 percent of the total rate determined by the Oregon Employment Department Director.
 - 1.1.6. The Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA) protects civilian job rights and benefits for veterans and members of reserve components.
- 1.2. Qualifying Purposes for Leave:
 - 1.2.1. Marion County designates leave based on qualifying conditions. Employees who qualify may be designated for protected leave in the following situations:
 - 1.2.1.1. When the employees' own serious health condition prevents them from performing the essential functions of their job.
 - 1.2.1.2. The birth of a child or adoption of a child under the age of 18 (including the legal placement of a foster child under the age of 18).
 - 1.2.1.3. Parental leave within 12 months of the event.
 - 1.2.1.4. To care for a family member with a serious health condition as defined by OFLA or FMLA.
 - 1.2.1.5. To provide home care for a child under the age of 18 with a non-serious health condition (OFLA Sick Child Leave).
 - 1.2.1.6. Bereavement Leave (OFLA Only)
 - 1.2.1.7. 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).
 - 1.2.1.8. 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.
 - 1.2.1.9. To seek legal assistance, medical treatment, counseling, or to relocate or secure an existing residence when the employee is a victim of a crime covered by OVCCCLA; or the parent or guardian of a minor child or dependent who is the victim of a crime covered by OVCCCLA.
 - 1.2.1.10. To attend a criminal proceeding as a victim of a crime covered by OVCCCLA; or the parent or guardian of a minor child or dependent who is the victim of a crime covered by OVCCCLA.
 - 1.2.1.11. In accordance with USERRA, leave for uniformed service.
 - 1.2.1.12. Marion County does not designate PLO claims, for more information about PLO claims contact the Oregon Employment Department.
- 1.3. Eligible Employees:
 - 1.3.1. Eligible employees under the Oregon Family Leave Act (OFLA) are:
 - 1.3.1.1. Full-time or part-time employees who meet the qualifying purposes for leave and the following criteria:
 - 1.3.1.1.1. Have been employed by Marion County for at least 180 days (26 weeks) or more before the first day of the protected leave; and, have worked an average of 25 or

SUBJECT: PROTECTED LEAVE

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.

1.3.1.1.1.1 Employees who separate from employment with Marion County and are reemployed by Marion County within 180 days of separation are immediately eligible to take OFLA leave if they were eligible for OFLA leave at the time of their separation. Any family leave taken by the employee within any one-year period continues to count against the length of time of family leave the employee is entitled under ORS 659A.162.

1.3.1.1.1.2 Employees who separate from employment with Marion County and are reemployed by Marion County within 180 days of separation and were not eligible for OFLA leave at the time of their separation will receive credit for the time worked prior to their break in service for the purpose of establishing eligibility.

1.3.1.1.2. 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.

1.3.1.1.3. 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.

1.3.1.1.4. 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.

1.3.1.2. During a public health emergency, employees who have completed 30 days of employment and have worked an average of at least 25 hours a week for the 30 days immediately before the date on which the family leave would commence are eligible to apply for leave for any of the qualifying reasons specified in ORS 659A.159(1)(a) to (e).

1.3.2. Eligible Employees under FMLA 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.

1.3.3. As described in ORS 657B.060(7), Employees who qualify for PLO through the Oregon Employment Department must be employed with Marion County for 90 days preceding their leave in order for the leave to be protected leave.

1.4. Request for Protected Leave:

1.4.1. Request and notifications for leave should be made in accordance with Protected

SUBJECT: PROTECTED LEAVE

Leave Procedures 305-A.

1.4.2. Anticipated situations:

1.4.2.1. In situations where the need for protected leave is known, employees are expected to give 30 days' advanced notice to take protected leave.

1.4.2.2. If the anticipated leave is known less than 30 days in advance, employees must give notice as soon as practicable.

1.4.2.3. 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.

1.4.2.4. An employee who intends to take leave to attend a criminal proceeding must give reasonable notice of the impending leave once the employee has received official notice of the proceeding.

1.4.2.5. An employee who intends to take domestic violence-related leave must give reasonable notice of the impending leave unless giving advance notice is not feasible (see Section 1.4.3).

1.4.2.6. Unless giving notice is impossible or precluded by military necessity, an employee who intends to take military-related leave must give notice within five business days of receiving official notice of an impending call or order to active duty, or of a leave from deployment.

1.4.2.7. PLO requires employees to give 30 days' notice for anticipated situations.

1.4.2.7.1 Employees who do not provide 30 days' notice may have their first weekly PLO benefit reduced by the Employment Department.

1.4.3. Unanticipated Situations:

1.4.3.1. In an unanticipated or emergency situation 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.

1.4.3.2. PLO requires employees to give verbal notice to their employer within 24 hours of starting unanticipated leave, and to provide written notice within three days.

1.4.3.2.1. Employees who do not provide verbal notice within 24 hours of starting unanticipated leave, and fail to provide written notice within three days may have their first weekly PLO benefit reduced by the Employment Department.

1.5. Certification/Designation:

1.5.1. Certification of Need: A certification of the need for protected leave may be required. This requirement is specific to leaves under county-administered protected leave programs. For information on PLO certification requirements, please contact Oregon Employment Department for guidance.

1.5.1.1. In the event of a serious health condition of an employee or that of a family member, certification must be provided by a medical professional on the applicable certification form within 15 calendar days of the request for family medical leave. Failure to provide

SUBJECT: PROTECTED LEAVE

required medical certification may delay 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 recertification as frequently as every 30 days.

- 1.5.1.2. 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.
- 1.5.1.3. 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.
- 1.5.1.4. 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.

1.6. Intermittent or Reduced Schedule:

- 1.6.1. When medically necessary, protected 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.
- 1.6.2. Employees who have received a designation of intermittent protected 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.
- 1.6.3. 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.

1.7. Employer Designations:

- 1.7.1. Marion County will designate leaves of absence as covered under FMLA and OFLA, even when not requested by the employee, if the employee is eligible and the reason for the absence is a qualifying purpose under one or both of the laws.
- 1.7.2. Marion County does not approve claims for paid leave via PLO. Oregon Employment Department handles all PLO claim reviews.

1.8. Concurrent Designations:

- 1.8.1. When the qualifying purpose of the leave is covered under FMLA, OFLA and PLO the leave will be designated concurrently toward the time allowed under each applicable law.
- 1.8.2. 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 or OFLA.

1.9. General Provisions:

1.9.1. Use of Accrued Leave:

- 1.9.1.1. While on FMLA/OFLA leave for a personal serious health condition, employees must use sick leave first, then vacation, and then may use other forms of leave prior to leave without pay.
- 1.9.1.2. While on FMLA/OFLA leave for the serious health condition of a family member or for parental leave (not to be confused with pregnancy disability), employees may choose to use other forms of paid leave prior to using sick leave. All leave accruals must be

SUBJECT: PROTECTED LEAVE

exhausted prior to leave without pay.

- 1.9.1.3. 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.
- 1.9.1.4. 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.
- 1.9.1.5. While on USERRA leave, employees may choose to use sick or vacation accruals prior to leave without pay.
- 1.9.1.6. For OFLA designations made during a public health emergency, if an employee has less than six months of service, they may not have access to accruals other than sick leave and should refer to Marion County Personnel Rules or their Collective Bargaining Agreement for more information.
- 1.9.1.7. If an employee has a designation under FMLA or OFLA, along with an approved claim through either Paid Leave Oregon or Marion County's voluntary short term disability benefit, they may elect to supplement their claim benefit with their personal accruals to bring them up to 100% of their net wage.. Net wage is based on the employee's step within the Marion County Pay Plan and the employee's Full-Time Equivalent (FTE), minus statutorily required and elective deductions. Statutorily required and elective deductions includes but are not limited to taxes, insurance premiums, retirement deferrals, union dues, and other payroll deductions.
 - 1.9.1.7.1. If an employee elects to augment while receiving Paid Leave Oregon benefits, they must provide the HR Leave Administrator with a copy of the approval letter they receive from Paid Leave Oregon, or the Oregon Employment Department, which shows their benefit amount.
 - 1.9.1.7.2. Employees with less than six-months of service will only be able to augment their Paid Leave Oregon or short term disability benefit with sick leave accruals, and personal holidays, in accordance with Marion County Personnel Rules.
 - 1.9.1.7.3. Employees utilizing Marion County's voluntary short term disability benefit cannot supplement with sick leave accruals, in accordance with the disability benefit contract.

1.9.2. Health Care Benefits During Leave:

- 1.9.2.1. The employee is required to pay their regular contribution toward premiums.
- 1.9.2.2. While the employee is on an absence covered by FMLA,

SUBJECT: PROTECTED LEAVE

OFLA or PLO Marion County will continue health care coverage at the same rate as an active employee.

- 1.9.2.3. USERRA: For USERRA leave lasting 31 days or longer, if an employee is in a Stability Period under the Affordable Care Act, health coverage will continue through the end of the Stability Period.

1.10. Medical Release:

- 1.10.1. Prior to or upon returning from family medical leave taken for a personal health condition, the employee is required to provide a medical release to return to work, indicating that they are able to return to work and if there are any restrictions.

1.11. Reinstatement:

- 1.11.1. Employees returning from protected 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.

- 1.11.2. Employees who have worked for Marion County for at least 90 consecutive calendar days prior to an approved leave under PLO are entitled to the same restoration rights listed in 1.11.1.

- 1.12. All qualified protected leave must be reported on an employee's time sheet regardless if the leave is paid or unpaid.

- 1.13. FMLA and OFLA are not voluntary; it is mandatory when the employee and condition qualifies for protected leave.

- 1.14. PLO is voluntary and employees must contact the Oregon Employment Department to file a claim for paid leave, or to get help with their claim.

- 1.15. Employees applying for PLO must also contact the Marion County HR Leave Administrator to file for FMLA and OFLA, as they are separate programs.

- 1.16. Exempt employees may be required to utilize accrued leave for intermittent protected leave, dependent on the type of leave designated; and they are required to record all hours taken as protected leave on their time sheet.

- 1.17. Failure to complete and submit required documentation or submitting insufficient documentation may result in denial of protected leave status.

- 1.18. Employees are responsible for the accuracy of the information they provide. Misrepresentation of the information provided could be subject to disciplinary action in accordance with Marion County Personnel Rules or Collective Bargaining Agreements.

2. EXCEPTIONS

There are no exceptions to this policy.

3. IMPLEMENTATION

Marion County Human Resources is responsible for implementing this policy.

Implementation includes training, advice, and assistance to management staff on the county's obligations under state and federal laws.

SUBJECT: PROTECTED LEAVE

4. PERIODIC REVIEW

The Human Resources Department shall review this policy at least every three years, or more often if needed, and updated as necessary.

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REVISED 11/09

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