

# An Employer's Guide to Family Leave



**Cascade Employers Association**

Building better workplaces through  
compliance, culture, connection

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# What is Family Leave?

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Generally, family leave allows eligible employees to take up to 12 weeks of time off for certain health or family reasons.

Employees cannot be affected in any negative way for taking the time, and employees generally have a right to be reinstated to the job they had prior to leave. While that sounds simple, the details of family leave can be quite complicated.

There are two family leave laws that affect Oregon employers. The Oregon Family Leave Act (OFLA) and the federal Family Medical Leave Act (FMLA). In this guide, you'll learn how these laws interact and the best practices for complying with both of them.



**Compliance**

# Family Leave Process

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## 1) A Request Is Made or Need is Known

Employee requests family leave or employer learns enough information to have reason to believe a potential family leave situation exists.

## 2) Initial Notices

Within 5 days of the request or knowledge of need, the employer provides the employee with an eligibility and rights and responsibilities notice, as well as a medical certification if applicable.

## 3) Certification

The employee must return the medical certification either prior to taking leave or within 15 days, whichever is later.

## 4) Designation

After receiving appropriate medical certification, the employer must provide a designation notice to the employee within 5 days.

## 5) Tracking

Once the employee begins leave, the employer must track leave. (This means that you know how much leave has been used and how much time is still available to the employee on any given day.)

## 6) Reinstatement

When leave is concluded, the employer must generally reinstate the employee to their former position, or an equivalent position.



# Is your company covered by family leave?

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Family leave only applies to certain employers.

If your company isn't covered, it isn't legally required to provide family leave. If it is covered by OFLA only, it is not required to also comply with FMLA rules. If it is covered by both laws, what is known as dual coverage, it must comply with both sets of rules.

Use the following flow chart to determine the type of coverage for your company.

**Remember: If you are not a covered employer, you do not need to provide protected family leave to your employees.**

## OFLA Coverage

Do we have 25 or more employees in the state of Oregon for 20 or more weeks in the current or previous calendar year?



We are not a covered employer for the Oregon Family Leave Act (OFLA) or the Family Medical Leave Act (FMLA)

We are a covered employer for the Oregon Family Leave Act (OFLA)

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Do we have 50 or more employees for 20 or more weeks in the current or previous calendar year?

## FMLA Coverage



We are not a covered employer for the Family Medical Leave Act (FMLA)

We are a covered employer for the Family Medical Leave Act (FMLA)

# Is your employee eligible for family leave?

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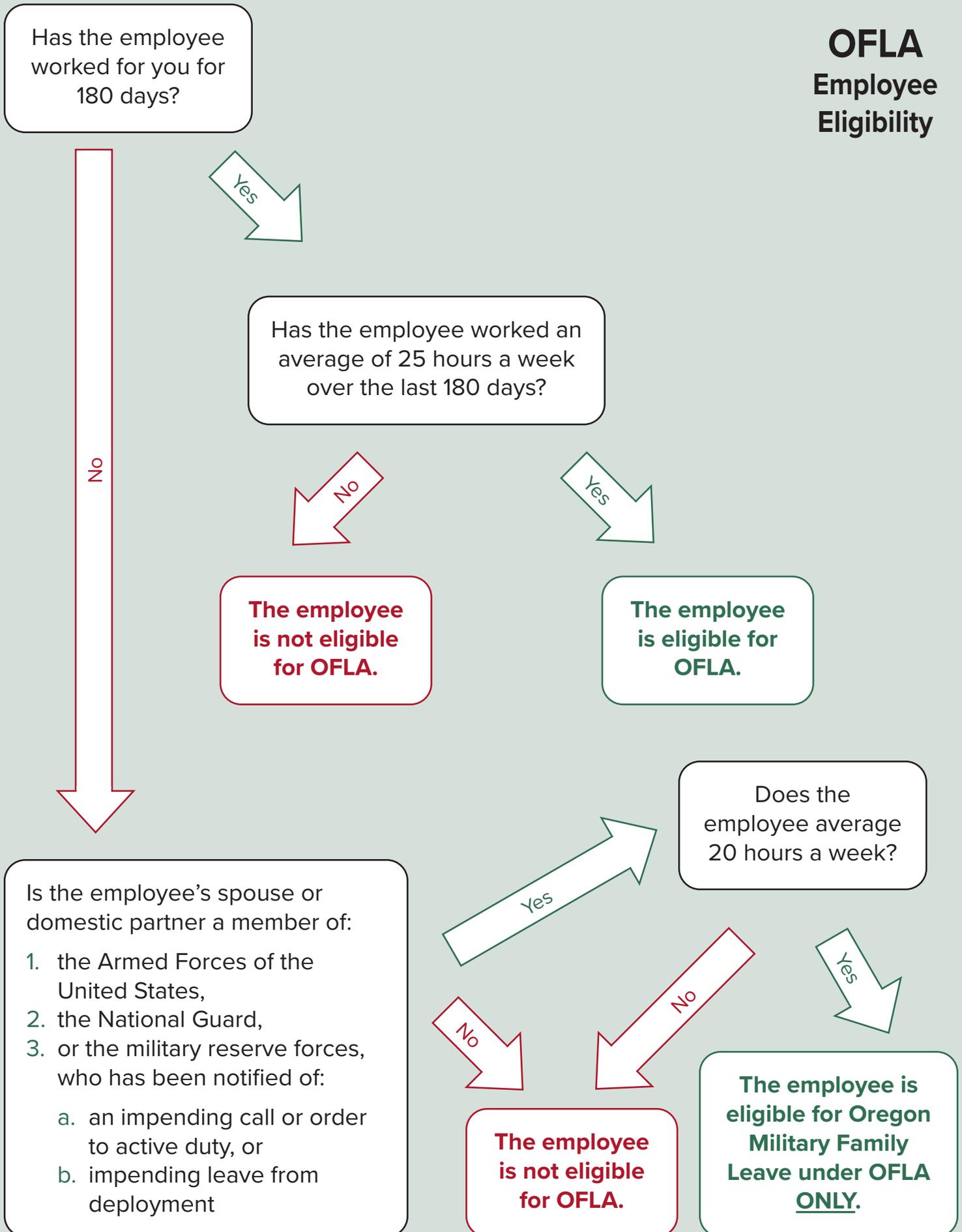
Even if you're a covered employer, you are only required to provide leave to eligible employees.

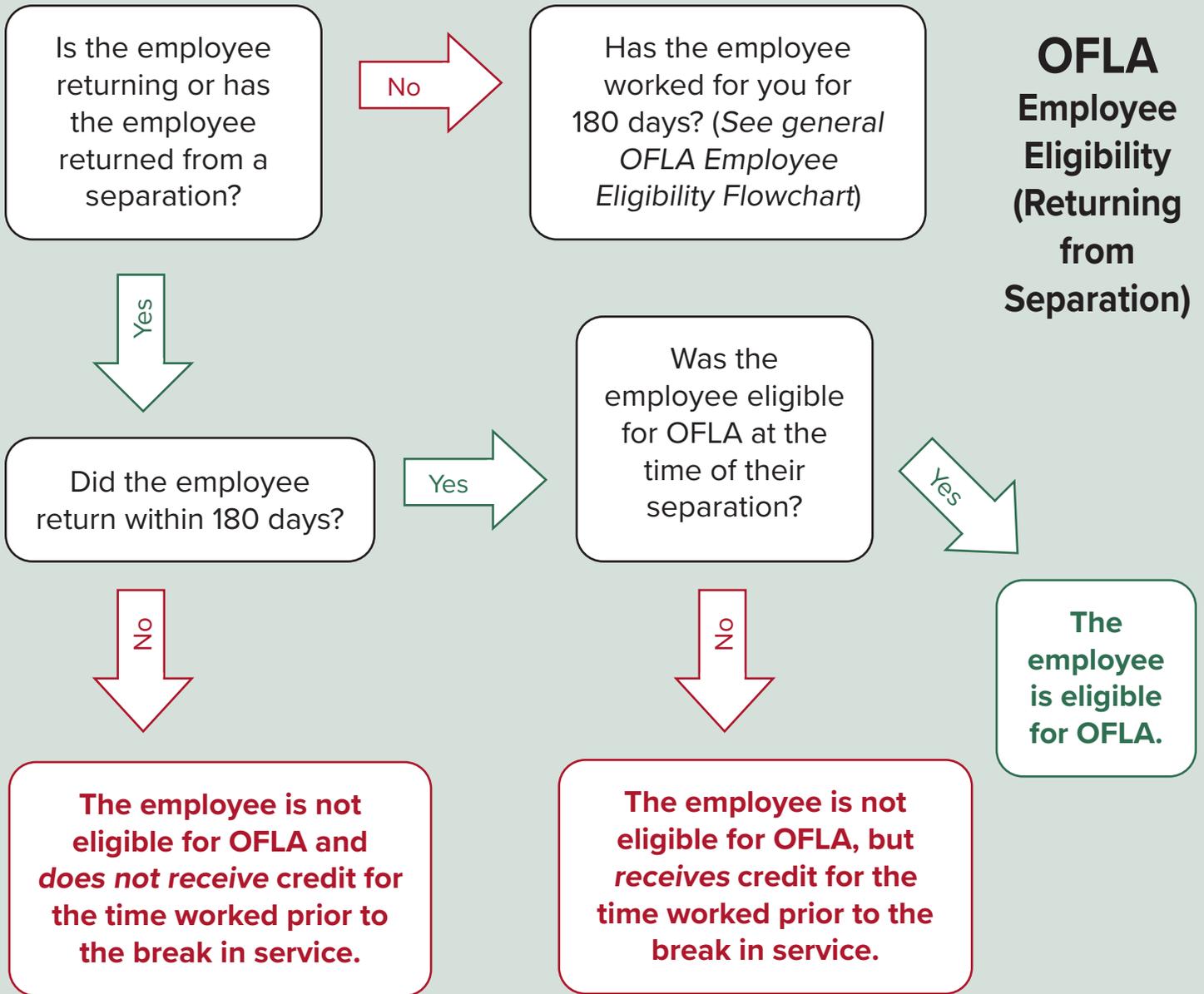
Use the flow charts on pages 9-10 to determine if your employee is eligible for OFLA.

If you are also covered by FMLA, use the flow chart on page 11 to determine if the employee is also eligible under FMLA.

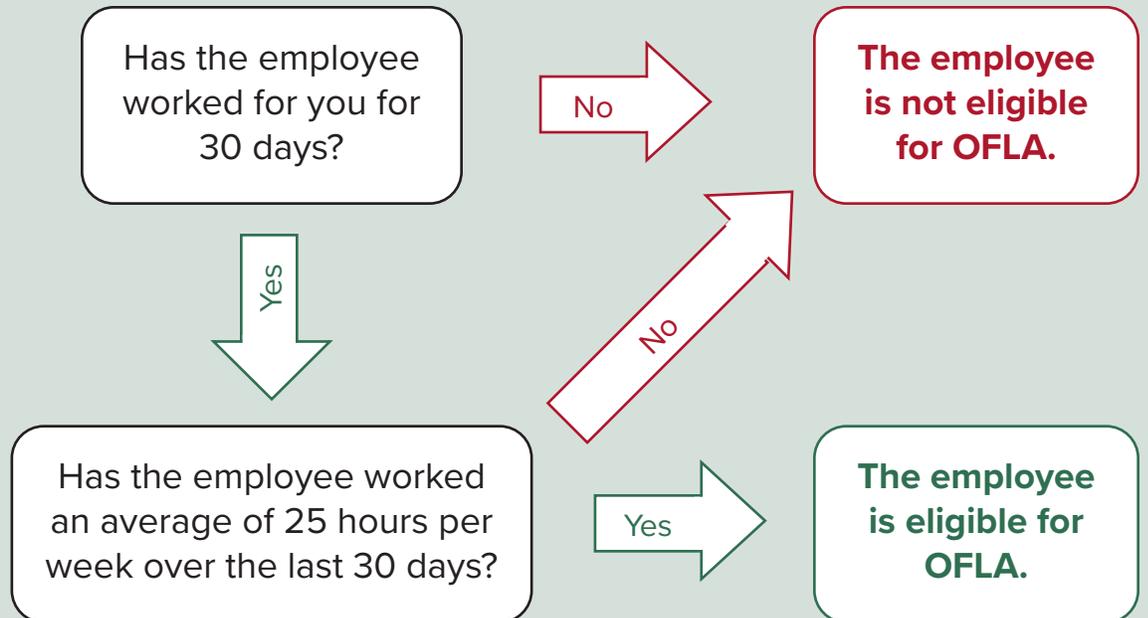


# OFLA Employee Eligibility





## OFLA Employee Eligibility (Public Health Emergency)



# FMLA Employee Eligibility

Does the employee work at a jobsite with 50 or more employees?



Does the employee report to, or is their work directed by someone at a worksite with 50 or more employees within a 75 mile radius?



Has the employee completed 12 months of service in the past 7 years? (Does not have to be continuous)



**The employee is not eligible for FMLA.**



**The employee is not eligible for FMLA.**



Has the employee worked at least 1,250 hours in the last 12 months?



**The employee is not eligible for FMLA.**



**The employee is eligible for FMLA.**

# Eligible Reasons for Family Leave

Now that you've determined you're a covered employer, and the employee is eligible for family leave, you need to determine if the employee's reason for the leave is covered. Employees may take family leave for the following qualifying reasons:

OFLA	FMLA
Sick child, non-serious and serious health conditions (including closure of a child's school or place of care during a public health emergency)	Employee's own serious health condition
	Covered family member's serious health condition
Pregnancy Disability	Parental bonding
Bereavement	Military - Qualifying Exigency
Military Family	
<i>Effective until 12/31/2024:</i> To effectuate the legal process required for the placement of a foster child or the adoption of a child	Military Caregiver for Current Service Member

#1

**Q: What happens if I have someone take leave for a qualifying reason under OFLA, but that reason isn't qualifying under FMLA?**

**A:** *It's helpful to think of FMLA and OFLA as two separate buckets of time. When an employee is eligible under both laws and takes leave for a reason that qualifies under both laws, we drain the buckets at the same time.*

*But if someone takes leave for a reason that qualifies under OFLA and not FMLA, you would drain only the OFLA bucket (and vice versa). These situations can lead to an employee receiving more than 12 weeks of leave in a year.*



# How do we know if a medical condition is serious enough to qualify as FMLA leave?

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The following situations are considered serious health conditions that qualify an eligible employee for family leave:

- Inpatient care
- Chronic conditions
- Pregnancy
- A period of incapacity for more than three consecutive days and includes:
  - » Two or more treatments from a medical provider within 30 days of absence OR
  - » One treatment from a medical provider within 7 days of absence and a regimen of continuing care
- Permanent or long-term conditions for which treatment may not be effective



# Helpful Definitions

## FAMILY MEMBER

### *Under OFLA –*

Spouse, child or the child's spouse or domestic partner, 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, or any individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship.

### *Under FMLA –*

Spouse, child, parent, child of a person standing in loco parentis, and an individual who stood in loco parentis to the employee when the employee was a child.

## PREGNANCY DISABILITY

A type of serious health condition that includes routine medical visits related to pregnancy. Under OFLA, women may take up to 12 weeks of pregnancy disability and still have 12 weeks available for any other purpose.

## PARENTAL BONDING (FMLA ONLY)

Leave taken to bond with a newly born child or newly adopted or newly placed foster child. Must be completed within 12 months of the birth or placement.

## SICK CHILD (OFLA ONLY)

Leave to care for an ill child including non-serious and serious health conditions. Sick child leave also includes leave to care for an employee's child whose school or child care provider has been closed in conjunction with a statewide public health emergency declared by a public health official.

## BEREAVEMENT (OFLA ONLY)

Leave to deal with the death of a family member, including attending the funeral or alternative, making necessary arrangements, or grieving. Limited to 2 weeks per death up to 4 weeks total in a leave year.

Must be completed within 60 days of the employee receiving notice of the death of the covered family member.

## MILITARY FAMILY (OFLA ONLY)

Leave when an employee's spouse or same-gender domestic partner is notified of an impending call to duty or is on leave from deployment. Limited to 14 working days per event.

## MILITARY - QUALIFYING EXIGENCY (FMLA ONLY)

Employee's spouse, child, or parent who is on covered duty may take leave for:

- short-notice deployment
- military events and related activities
- childcare and school activities
- financial and legal arrangements
- counseling
- rest and recuperation (up to 15 days in a single 12 month period)
- post deployment activities
- care for the service member's parent, when that parent is incapable of self-care
- other activities as agreed to by employer and employee

## **MILITARY CAREGIVER FOR CURRENT SERVICEMEMBER (FMLA ONLY)**

Employee who is a spouse, child, parent, or next of kin may take up to 26 weeks of leave to care for a member of the armed forces or an eligible veteran who is undergoing medical treatment, recuperation, or therapy for a serious injury or illness.

## **PROVIDING CARE**

When the family member is unable to care for their own medical, safety or other needs, because of the serious health condition or needs help in being transported to the doctor or to provide psychological comfort and reassurance to the family member with a serious health condition.

\*Typically requires close proximity

## **HEALTH CARE PROVIDER**

- A physician
  - A podiatrist
  - A dentist
  - A psychologist
  - An optometrist
  - A naturopath
  - A registered nurse
  - A nurse practitioner
  - A direct entry midwife
  - A nurse midwife nurse practitioner
  - A regulated social worker
  - A chiropractic physician, but only to the extent the chiropractic physician provides treatment consisting of manual manipulation of the spine to correct a subluxation demonstrated to exist by X-rays
  - A physician's assistant
  - A person who is primarily responsible for the treatment of an eligible employee or a family member of an eligible employee solely through spiritual means, including but not limited to a Christian Science practitioner.
- Any health care provider from whom an employer or the employer's group health plan's benefits manager will accept certification of the existence of a serious health condition to substantiate a claim for benefits.
  - A health care provider listed above who practices in a country other than the United States, who is authorized to practice in accordance with the law of that country, and who is performing within the scope of their practice as defined under such law.

# How much time are employees allowed to take?

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Generally, eligible employees have 480 hours (12 weeks) of protected, unpaid time off in a 12 month period, or “designation period,” with some exceptions\*.

In some situations, an employee may be entitled to more or less than 480 hours based on the number of hours they are regularly scheduled to work. For example, an employee that normally works 35 hours a week is entitled to 420 (35 hours X 12 workweeks) hours.

\*OFLA provides additional leave time in certain scenarios:

- » Pregnancy related disability – An employee may take up to 12 weeks of leave for pregnancy related disabilities (both before and after the birth), and may still take up to 12 weeks of leave for any OFLA purpose in the same leave year.
- » Foster or adoption legal process – An employee may take up to 2 weeks of leave for the foster or adoption legal process and still have 12 weeks available for any other purpose. (July 1, 2024 - December 31, 2024).

\*FMLA allows an eligible employee to take up to 26 workweeks of unpaid leave during a “single 12-month period” for Military Caregiver Leave.

#2

**Q: If an employee uses 12 weeks of leave for a pregnancy related disability, can they still use another 12 weeks of OFLA leave?**

**A:** *Yes, an employee can use 12 weeks of pregnancy disability leave and have 12 weeks of OFLA left to use for any other OFLA-qualifying reason.*



# Leave Requests and Employer Notices

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Now for the fun part. How does it work when you actually receive a request for family leave or learn of a situation that may qualify for family leave?

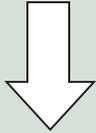
The following pages explain the specific steps that you need to follow.



Employee notifies Supervisor/HR of the need for leave or that a serious health condition may exist.

OR

Supervisor/HR has sufficient reason to believe employee has the need for leave.



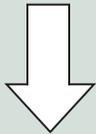
Supervisor/Manager directs employee to notify HR (or whomever is the administrator for leave) of their need for leave, and also notifies HR themselves.



**Make sure to keep a copy of everything you provide to the employee or to save a record so you can prove what was provided and when it was provided.**

**If it is determined that employee is not eligible.**

Within 5 days of notification, HR sends the **Notice of Eligibility** stating that the employee is not eligible.

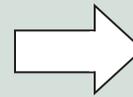


**Employee is eligible.**

Within 5 business days of notification, HR/Administrator provides employee the initial FMLA/OFLA packet, which includes a **Notice of Eligibility, Rights and Responsibilities** as well as any medical certification paperwork needed to approve the leave. HR must complete their portion of the paperwork prior to giving the employee the packet. A copy of the job description should be sent along with medical certification paperwork, when applicable.

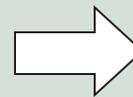
Medical certification must be returned within 15 calendar days or prior to starting leave, whichever is later.

A provisional letter of approval can be given in cases where the employee needs to start leave prior to returning certification. The employee still needs to return certification in a timely manner.



**Certification Requested** 

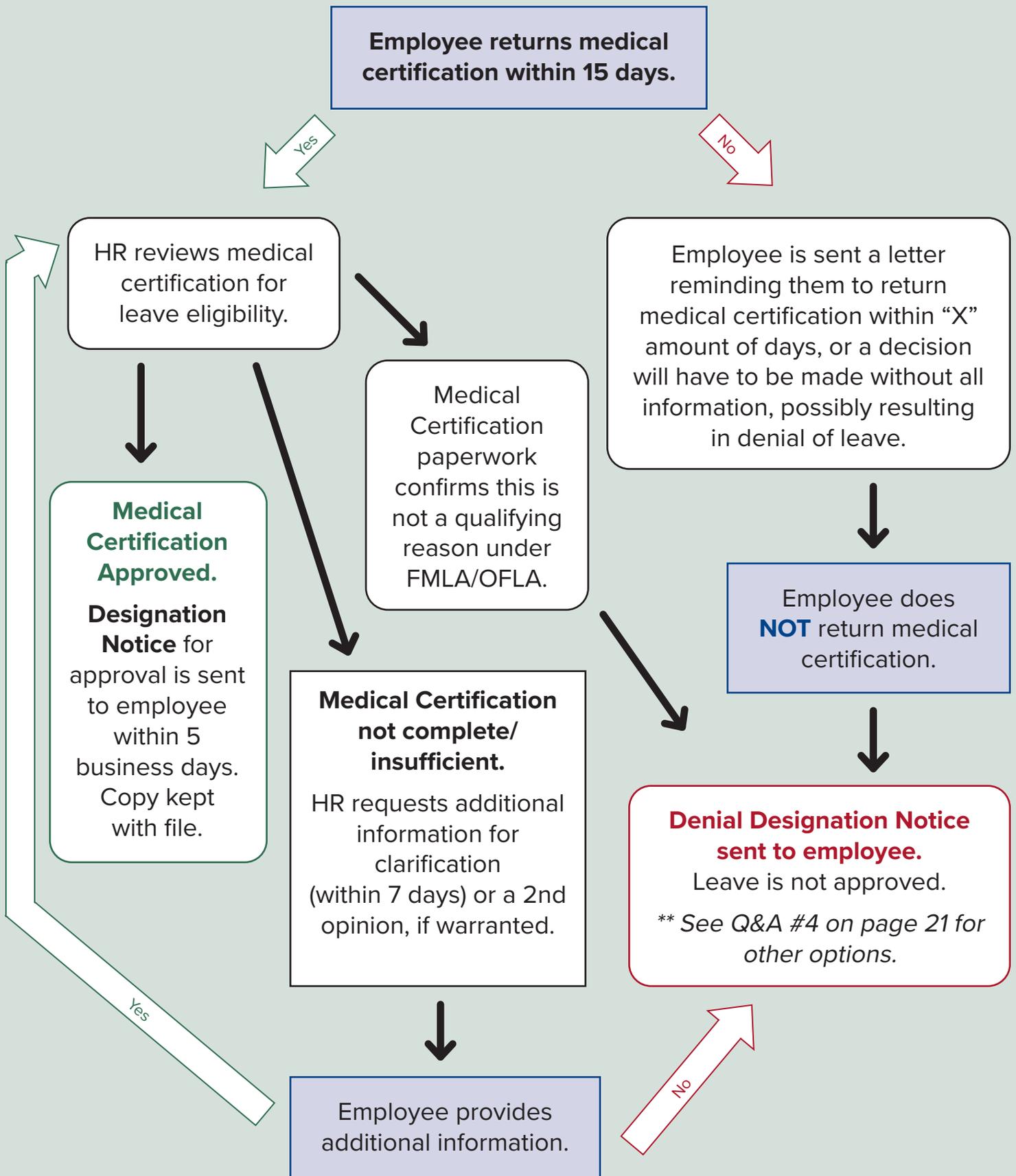
Employee must return their certification within 15 business days.



**Certification NOT requested**

You must notify your employee whether or not their leave has been designated within 5 business days.

# ★ If Certification Is Requested:



#3

**Q:** Does an employee need to use the term FMLA or OFLA for us to start the process?

**A:** No. The law states that an employee does not need to use the terms FMLA or OFLA when requesting leave in order for them to assert their rights under the laws. The employee needs to provide only sufficient information to make the employer aware of the need for FMLA/OFLA.

However, if an employee has been approved for FMLA/OFLA leave, they must reference the qualifying reason for leave or the need for leave when seeking time off for the previously approved condition.

This is why employers must train both their HR professionals as well as their supervisory and management staff to recognize a potential FMLA/OFLA claim when it comes up.



# Once Leave is Approved...

HR tracks leave hours during approved leave.

When approved leave is close to ending, HR sends a letter to the employee notifying them that their leave is nearing its end and requesting the employee to contact them immediately if they will need additional leave.

Employee must follow call-in policy for employees on a leave of absence.

If approved leave is exhausted, the employee is responsible for requesting additional time off, and providing updated medical certification, if needed.

#4

**Q: Can I designate leave if an employee refuses to return the requested medical certification?**

**A:** *If the employer has sufficient information to designate the leave as FMLA/OFLA leave immediately after receiving notice of the employee's need for leave, the employer may provide the employee with the designation notice at that time.*

*However, if you do not have certification, you must be certain that the leave they are taking qualifies as FMLA/OFLA. If leave is designated erroneously, it could result in an interference claim.*

*We suggest obtaining legal counsel in situations where there may be reason for doubt.*

**Helpful hint:** Oregon's notice requirements are not as strict as the requirements under federal law. However, the federal rules provide a great paperwork trail so it is recommended to follow those requirements.



# Medical Certifications

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Medical certifications are an important tool in family leave administration. They are used to:

- » Verify that the employee's need for medical leave qualifies as family leave
- » Ascertain the amount and frequency of leave
- » Curb abuse by checking to make sure the need for leave is authentic
- » Ensure an employee is capable of returning to work
- » Identify any restrictions the employee may have

## When can I ask for a medical certification?

- » Include one with the **Notice of Eligibility and Rights and Responsibilities** anytime an employee requests leave for medical reasons (For OFLA – pregnancy disability; for FMLA – either self or family).
- » FMLA Only – Employers can ask for second or third opinions if they doubt the validity of the original medical certification.
- » If the amount or frequency of leave substantially changes, employers can ask for a new medical certification.
- » Employers can ask for a return to work release if the employee is out for their own medical condition, but it must be stated in writing when leave begins, typically in the designation notice.
- » If the leave is for a specific period of time, and the employee needs leave beyond that period of time, the employer can ask for a new medical certification.
- » FMLA Only – If the specific period of time is longer than 6 months, employers can always ask for a medical certification every 6 months.

**Remember: Employers must pay any out-of-pocket costs for a medical certification.**



#5

**Q: What if the medical certification is unclear, and I can't tell if the employee qualifies for leave?**

**A:** *If the certification is unclear, write a letter indicating what is unclear about it or what additional information is needed. Give it to the employee to take to their medical provider.*

*Give the employee 7 days to obtain this clarification. If the deadline passes, write another letter to the employee providing an extension of 7 days.*

*If the employee still cannot return a clear medical certification after these additional opportunities, you can consider denying family leave.*



# Designation of Leave

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**Designation is just a fancy name for letting the employee know that the absences qualify as family leave and you're treating them as protected.**

Typically, this is done by sending out a **Designation Notice** within 5 days of receiving the medical certification that verifies the need for leave. Or, if it is a situation like parental leave (FMLA Only) where you do not ask for medical certification, send the designation notice out immediately with the notice of eligibility and rights and responsibilities.

Sometimes you may also provisionally designate leave. Provisional designation means leave begins before you receive the medical certification back from the employee. In those cases, track the leave and treat it as though it is protected, contingent upon the medical certification.

If you do not receive the certification, or if the certification does not verify that the absence is for a qualifying reason, remove the provisional designation, and send a designation notice informing the employee that the leave is not designated as family leave. Treat the absences as you would any other absence under your attendance policy.



# Retroactive Designation of Leave

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## What can you do if you miss the deadline and fail to designate leave?

An employer can retroactively designate leave if the designation does not cause harm to the employee or if the employee agrees to the designation.

### Scenario 1

An employee has an unexpected need for leave, such as a serious heart attack and is hospitalized. In this situation, the employee is on leave before requesting it; however, the paperwork was not issued until a week later.

In this case, a retroactive designation is appropriate. The employer can easily designate all of this leave as FMLA, dating back to the first day of leave, even though the paperwork could take days or weeks to finalize.

### Scenario 2

An employee uses leave for elective knee surgery. Their employer fails to provide notice that the time will be considered as FMLA. A few months later the employee needs leave to care for their spouse who will be having surgery. The leave is denied by the employer because it says the employee has exhausted their leave from their own surgery.

In this case, the employee may be able to prove they were harmed by the lack of notice because they could have made different arrangements for their elective surgery had their leave been properly designated.



#6

**Q: If the employee qualifies for FMLA leave, can an employer make the employee use FMLA leave, even if the employee does not want to use it?**

**A:** *Yes. Once you have gathered enough information to determine if the leave being taken is an FMLA/OFLA qualifying reason, the employer can designate the leave and count it as FMLA/OFLA.*

*It is the employer's obligation to ensure they are appropriately designating the leave as FMLA/OFLA within 5 days of the receipt of such information. The employees do not have the right to refuse FMLA/OFLA designation.*

*Failing to designate an absence as FMLA/OFLA leave when it qualifies can allow employees to take advantage of your generosity. For example, if you fail to designate an employee's FMLA/OFLA eligible 8 week absence as protected leave, and instead allow them to utilize accrued sick leave from their sick bank or take the time as unpaid, you have effectively allowed the employee leave that they otherwise are not entitled to by law. This means they still have up to 12 weeks of FMLA/OFLA leave available to them (instead of 4 weeks) because you did not designate the 8 week absence as FMLA/OFLA leave.*



# An employee has or is about to exhaust their leave. Now what?

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If an employee's leave is set to expire it is recommended that employers notify the employee, in writing, that their leave is close to ending. In fact, if the employee still has leave time available, meaning they haven't exhausted all of their time, Oregon requires employers to request information from the employee on their ability to return to work.

If the employee's FMLA/OFLA leave has expired, but the employee still has time available, you can request an updated medical certification to extend the leave. For example, Taylor was out for 4 weeks to recover from childbirth. After the 4 weeks of approved FMLA/OFLA leave, Taylor's doctor still hasn't released them to work. If Taylor has not used any other FMLA/OFLA leave during their leave year, Taylor would still have 8 weeks of leave available under FMLA and OFLA pregnancy disability leave. Request an additional medical certification to prove the need for additional leave.

If an employee's FMLA/OFLA time has been exhausted and the employee still can't return to work, consider whether or not additional leave should be provided as a reasonable accommodation under the ADA.

## Did you know?

The Americans with Disabilities Act (ADA) isn't a leave law, but offering temporary leave to employees who aren't eligible for family leave or have exhausted family leave can be considered a reasonable accommodation.

In either of these situations, it is important to receive information from the employee's medical provider to obtain details about the need for leave.



# How does ADA come into play after protected leaves are exhausted?

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There is no specific amount of time that is considered a reasonable amount of continued leave. It is based solely on each particular case, and the information the employer has obtained.

Employers who review and document how an employee's leave of absence impacts business operations will be better equipped to decide when extended leave poses an undue hardship. If an ADA leave poses a hardship, the employer should be prepared to demonstrate why.

The following factors are used to determine whether it is reasonable (i.e. required) for an employer to provide leave:

- » The amount of leave required;
- » Whether the leave will be taken in a single block or intermittently;
- » If intermittent, the frequency and predictability of the leave;
- » Whether the employee's need for leave is flexible and can be taken in a way that minimizes any disruption to business operations;
- » The impact of granting leave on coworkers and the employer's business operations.

Courts have continually ruled that an indefinite period of leave is not considered reasonable under the ADA.

**Remember – when in doubt, be as generous as possible.**



# Return to Work and Job Reinstatement

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Under FMLA, employees must be returned to the same job they had or an equivalent job. However, under OFLA, an employee must be returned to the exact job they had at the time of leave – unless that position has been eliminated. Because the OFLA rule is more beneficial to the employee, it must be followed except in FMLA-only leave situations.

An equivalent position is a position that is as close as possible to the employee's previous position in terms of pay, benefits, and other terms and conditions of employment – like shift and location.

An employee is, however, subject to any actions that would have affected the employee had they been working, such as a layoff, reduction in hours, etc. Also, if an employee would have been bumped from their position under a collective bargaining agreement, the employer is not obligated to return the employee to their position.

If an employee is released to work, but with restrictions on their essential duties, an employer is not required to return the employee to work and provide light duty. Keep in mind that there may still be an obligation under the Americans with Disabilities Act (ADA) to consider a reasonable accommodation. Also consider situations in which light duty may be offered to similarly situated employees.

On the other hand, if an employee is released to a reduced schedule but with no restrictions, the employer must return the employee to work on a part-time schedule and continue tracking the missed time as family leave until the employee is released to work their normal schedule. Once leave is exhausted, if the employee is still restricted to a reduced work schedule, you can discuss reasonable accommodations under the ADA.

**Remember: For an employee's own serious health condition, the employer should always require a release to return to work, which must be stated in the designation notice.**



# Pay During Leave

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## Family leave is unpaid.

However, you can – and should – require your employees to use any available paid leave while taking family leave.

To do this, you are required to inform employees that they must use all paid leave before taking unpaid time off in three places:

1. Your family leave and paid leave policies.
2. The rights and responsibilities notice.
3. The designation notice.

If you are covered by OFLA only, you need only provide written notice to the employee of the requirement that all paid leave must be used prior to taking unpaid leave either prior to commencement of foreseeable leave or within 5 days of the commencement of unforeseeable leave.

#7

**Q: Why is it a best practice to require the use of paid leave while on family leave?**

**A:** *When leave is protected, it means we need to pretend like it didn't happen. Which means if an employee returned from leave and had PTO available, we couldn't deny a vacation request that we would grant for any other employee with PTO – even though the employee was just out on leave. Requiring that the employee use PTO while on leave decreases the chance that an employee will have PTO available after an extended leave. However, if an employee is taking leave under Paid Leave Oregon, then you cannot require the use of PTO or any other company-provided leave.*



# Benefits During Leave

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Group Health Insurance Benefits must be maintained through the duration of the FMLA/OFLA leave in the same way as if the employee had continued working during that time. Both the employer and the employee are responsible for making their payment or premium contributions for group health insurance.

If the employee is using any paid leave during the medical leave of absence, the employee contribution should be made using the regular method of payment, typically a pretax payroll deduction. Otherwise, payment arrangements should be made through the company benefits administrator prior to the employee going out on leave, or as soon as the leave begins.

Employers may also choose to pay the employee's portion of the group health insurance while they are on leave. In those cases, the employer may require the employee to repay those amounts when they return from leave. Up to 10% of the gross amount of each paycheck may be taken until those amounts are repaid.

In addition, the employer may require the employee to repay the employee's share of the premium payment if the employee fails to return to work following the FMLA/OFLA leave unless the employee does not return because of circumstances that are beyond the employee's control, including their own FMLA/OFLA-qualifying medical condition.

Upon return from leave, benefits must be reinstated immediately.

Benefits other than Group Health Insurance must be maintained the same way they would for employees out on other forms of leave.



# Can we cancel group health benefits while on leave if the employee does not pay their share?

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In some instances, employers are allowed to cancel group health benefits while an employee is out on leave.

When the employee does not make a payment as instructed, the employer must send a written notice to the employee advising them of the late payment, and inform the employee that benefits may be canceled if payment is not received within 30 days of the original due date. The employer must allow 15 calendar days to pass after sending the notice before canceling benefits. Sending the notice at 15 days past the due date is the most beneficial timing.

If that happened, benefits must be reinstated immediately upon the employee's return to work from leave. If they cannot be immediately reinstated on the employee's first day back at work, the employer must continue benefits and recoup the amounts paid on behalf of the employee when the employee returns to work.



# We offer paid time off to all of our employees, how does that interact with FMLA/OFLA?

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During an FMLA/OFLA unpaid leave of absence, employees generally do not accrue PTO/Sick Leave/Vacation time, unless the employer has a policy that allows the accruals to continue. Paid time off used while on leave runs concurrently with FMLA/OFLA.



## Holidays While On Leave:

When a holiday falls during a week in which an employee is taking the full week of FMLA/OFLA leave, the entire week is counted as FMLA/OFLA leave. However, when a holiday falls during a week when an employee is taking less than the full week of FMLA/OFLA leave, the holiday is not counted as FMLA/OFLA leave, unless the employee was scheduled and expected to work on the holiday and used FMLA/OFLA leave for that day.

Paid holidays should be treated the same as someone who is out in a similar circumstance. For example, if an employee is out on unpaid FMLA/OFLA leave, but they are substituting PTO for that unpaid time, they should be treated the same as another employee out on vacation and using PTO for those reasons.

If an employee out on vacation is paid for the holiday, then someone out on FMLA/OFLA leave and using PTO should be given holiday pay in lieu of using PTO for that day. If the employee is not substituting PTO for their paid leave, then you would treat that employee the same as any other employee out on unpaid leave.



# Intermittent Leave

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Employees may take leave in separate blocks of time, or on a reduced leave schedule for a single qualifying reason. This is called intermittent leave. When intermittent leave is needed for planned medical treatment, the employee must make a reasonable effort to schedule treatment so as not to unduly disrupt the employer's operation.

Under FMLA, leave to care for or bond with a newborn child or for a newly placed adopted or foster child may only be taken intermittently with the employer's approval and must be taken within the first 12 months following the birth or placement.



Under FMLA, companies can temporarily transfer an employee on intermittent leave, to minimize the effect of that person's absence on the overall operation. The temporary position doesn't need to be equivalent to the original job - but the pay and benefits must remain the same. And, of course, the employee must be given their old job - or its equivalent - when the intermittent leave period is over.

**However, under OFLA rules, the employer cannot force the employee to transfer to another position, they must have the employee's consent to do so.**

In this case, when the leave falls under both FMLA and OFLA, employers should get consent from the employee to make a transfer.

Intermittent leave can only be counted for days the employee would have regularly been scheduled to work.

# Designating a Leave Year

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The use of a Rolling Forward Leave Year is required for OFLA. For consistency, Cascade recommends using a Rolling Forward Leave Year for FMLA.

## Using Calendar Year for Rolling Forward Leave

Under OFLA, the “rolling forward” leave year is defined as a consecutive 52-week period, beginning on the Sunday immediately preceding the date on which family leave commences. Under FMLA, “rolling forward” is defined as a consecutive 12-month period measured forward from the first date an employee takes FMLA leave. The next 12-month period would begin the first time FMLA leave is taken after completion of the prior 12-month period. If an employee takes leave under both FMLA and OFLA, the leave years will not line up exactly.

## Rolling Forward - Using the First Day of Leave Calculation Option

For example, if the employee begins FMLA leave on April 1, 2024, then the next 12-week period would begin again on April 1, 2025. Under OFLA, the leave year would begin on March 31, 2024, and the next 12-week period would begin again on April 1, 2025.

Under this method, someone could use more than 12 weeks of continuous leave at one time. For example, an employee takes leave on April 1, 2024, for 4 weeks. The employee then requests leave again on January 1, 2025, this time for 8 weeks. On March 31, 2025, they become eligible for another 12 weeks of leave, potentially giving them 20 weeks of continuous, protected leave.



Employers wishing to change to an alternative FMLA leave year are required to give at least a 60-day notice to all employees

If an employer transitions to a new type of leave year, employees on FMLA must retain the full benefit of 12 weeks of leave under whichever method affords the greatest benefit to the employee.

Employers that fail to designate a specific FMLA leave calculating method must use whichever method is most beneficial to the employee at the time of their request. The employer may then select an option if they provide employees at least a 60-day notice of that option.

During those 60 days, anyone who requests FMLA leave will be given leave based on the most beneficial option to them; once the 60 days have passed, the employer can implement the new leave year.

#8

**Q: Do I have to tell the employee their time off is being designated as family leave?**

**A:** *Both OFLA and FMLA require employers to notify employees of their eligibility to take family leave, in writing, within 5 business days of a request for leave – or within 5 days from when they have enough information to determine leave may qualify under OFLA/FMLA. Remember that FMLA requires that employers send a Notice of Rights and Responsibilities along with the Notice of Eligibility.*

*You must notify the employee, in writing, whether or not their leave qualifies under OFLA/FMLA within 5 business days of receiving enough information to make the determination.*



# Workers' Compensation

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Employers often forget to start the family leave process when an employee is injured on the job, but this is an important step to take for an employer to maintain flexibility.

- » FMLA leave always runs concurrent with time off related to a workers' comp injury.
- » OFLA leave runs concurrent only if one of the following occur:
  - (1) the claim has not been accepted as a disabling compensable injury or
  - (2) the claim has been accepted but the employee has refused a suitable offer of modified or light-duty employment.

The deadlines for family leave notices happen much sooner than you will receive notice about whether an injury is accepted as a disabling compensable injury. For this reason, it is important to provisionally designate the injury as family leave under OFLA; if the claim is accepted, you will credit all the leave back to the employee, assuming they have not rejected a suitable offer of light-duty or modified work.



#9

**Q: Why should I run family leave while an employee is out for a workplace injury if the employee has reinstatement/reemployment rights under workers' comp laws?**

**A:** *While we often reinstate employees after a workers' comp injury, there are several important reasons why it is important to start the family leave process.*

*First, employees sometimes lose their reinstatement/reemployment rights. If we wanted to move on from the employee, and we had not yet started the family leave process, the employee would have a right to take family leave before any termination could occur.*

*Second, sometimes workers' comp claims are denied and caught up in appeals. We may want to move on from the relationship, but again, we can't do that if we haven't started the family leave process.*

*Finally, if an employee does return from a workers' comp injury and we have run family leave at the same time, the employee would not have as much family leave available to them upon return to work. The lack of protected leave provides the employer with more flexibility if the employee has another situation that necessitates leave.*

#10

**Q: What are the best ways to recognize potential family leave situations?**

**A:** *Failing to recognize family leave situations is one of the biggest areas of risk for an organization. This often comes down to a lack of supervisor training and informal time off request procedures.*

*It's important that supervisors, at the very least, know what types of absences could qualify for protected leave, so they can refer these situations to HR. It's also critical for supervisors to ask the reason why an employee is taking leave. We don't need to get into the nitty gritty details here, but it would be important to know if someone was ill, injured, hospitalized, etc.*



# What do we do when more than one family member works for the same employer?

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Eligible spouses who work for the same employer are limited to a combined total of 12 workweeks of leave in a 12-month period for the following FMLA-qualifying reasons:

- » the birth of a child and bonding with the newborn child,
- » the placement of a child with the employee for adoption or foster care and bonding with the newly-placed child, and
- » the care of a parent with a serious health condition.

Eligible spouses who work for the same employer are also limited to a combined total of 26 workweeks of leave in a single 12-month period to care for a covered service member with a serious injury or illness (commonly referred to as “military caregiver leave”) if each spouse is a parent, spouse, child, or next of kin of the service member. When spouses take military caregiver leave as well as other FMLA leave in the same leave year, each spouse is subject to the combined limitations for the reasons for leave listed above.

## **These rules do not apply to non-married couples.**

For example, Jane and Jack are married and work for the same company. If Jane uses 2 weeks of FMLA leave for a serious health condition, prior to giving birth, she has only 10 weeks of FMLA left to use for parental leave. If she uses all 10 weeks of her remaining FMLA leave, that leaves Jack with only 2 weeks of parental leave to use for the birth of their son. Jack then still has 10 weeks left to use for any other reason under FMLA.

If Jack and Jane are not married, they do not have those restrictions.



In regards to OFLA's "Sick Child Leave," the law states that family members working for the same employer may not take family leave at the same time unless one of the employees is on pregnancy disability or bereavement leave, or the employer allows the taking of concurrent leave for "Sick Child" under this law.





## **Cascade Employers Association**

Building better workplaces through  
compliance, culture, connection

### **You Are Not Alone.**

Cascade Employers Association is a membership-based resource for Northwest employers committed to developing a strong, vital workforce. We work with organizations who know a prosperous business is built on their people. If you're a good employer seeking resources to become a great employer, talk to us.

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