

## Family and Medical Leave Act (FMLA), and Oregon Family Medical Leave (OFLA) Informational Sheet

### FMLA

The Family and Medical Leave Act entitles eligible employees of covered employers to take unpaid, job-protected leave for specified family and medical reasons and allows for continuation of health benefits during the protected leave.

**Eligibility:** All full and part-time employees employed for 12 months (need not be consecutive) and who have worked a minimum of 1250 hours in the 12 months preceding the leave.

#### Qualifying Purposes for FMLA:

- Birth of a child, and to care for a newborn child.
- Placement with employee of a child for adoption or foster care.
- Care for the employee's spouse/registered same gender domestic partner, parent or child with a serious health condition.
- Employee's own serious health condition.
- Qualifying Military Exigency Leave arising out of the fact that the employee's spouse, parent or child is on active military duty in the National Guard or Reserve in a "contingency" military operation.
- Service Member Care Leave (SMCL) for a covered service member with a serious injury or illness, if the employee is the spouse, parent or child, or the next of kin of the service member.

**Length of FMLA Leave Entitlement:** The maximum leave is 12 weeks of unpaid leave in a 12-month period. (SMCL provides for up to 26 weeks) The 12-month period is calculated on a 'rolling' 12-month period measured backward from the date the employee uses any FMLA leave. Federal and State leave entitlements run concurrently. The FMLA leave of absence of a temporary employee terminates upon expiration of that employee's temporary appointment.

#### Covered Family Members:

- Child: A biological, adopted, foster or step-child, legal ward, or child to whom the employee stands in loco parentis, normally under the age of 18, unless the child is incapable of self-care because of a mental or physical disability as defined under the Americans with Disabilities Act.
- Parent: Employee's parent or parent in loco parentis, but not a parent-in-law.
- Spouse or legally recognized domestic partner.
- Next of Kin (SMCL only): Service members nearest blood relative who has been granted legal custody of the service member by court decree; or brothers, sisters, grandparents, aunts, uncles and first cousins.

**When is notice required:** Employees are required to provide notice to the employer 30 days in advance of the leave unless it is impracticable to do so, or if the leave is taken for an emergency.

#### Health Care Provider:

- Doctors of medicine or osteopathy, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, nurse practitioners, physician assistants, and nurse-midwives, who are licensed to practice under state law and must be performing within the scope of their practice.
- Christian Science Practitioners who are listed with First Church of Christ in Boston, MA.
- Chiropractors only if treatment consists of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray.

**Medical Certification:** The employer's determination of FMLA eligibility may require medical certification that the leave is needed due to an FMLA qualifying condition of the employee or that of a spouse, parent or child or next of kin (SMCL).

#### FMLA Leave Taken on an Intermittent or Reduced Work Schedule

**Basis:** For intermittent or reduced schedule FMLA leave, there must be a medical requirement for the leave and such medical need must best be accommodated through an intermittent or reduced work schedule. Employees needing intermittent FMLA or reduced schedule must try to schedule the leave to avoid disrupting the campus' operations. Leave for the birth of placement of a child may not be taken on an intermittent or reduced work schedule.

With a reduced work schedule, only the amount of leave actually taken may be counted against the maximum leave entitlement on a pro-rated basis.

#### Intermittent or Reduced Work Schedule for Exempt Employees:

There is a special exception to FLSA rules for FMLA as it applies to exempt employees. An exempt employee may use intermittent or reduced work schedule leave and use accrued leave during FMLA leave when the campus is required by law to grant the FMLA leave.

**Employee Reporting Requirements:** The campus may request an employee to report periodically on his/her status and intention to return to work.

**Continuation of Benefits during FMLA:** While on paid FMLA (via use of sick or vacation time) benefit premiums, including medical, dental, vision, and group life continue to be paid by SOU without a lapse in coverage. During periods of unpaid FMLA (exhausted sick or vacation time) only medical, dental and vision premiums will continue to be paid by SOU. The employee will need to submit payment for their portion of the core benefits as well as payment for the continuation of elected non-core benefits.

**Rights to Reemployment:** An employee on FMLA leave is entitled to return to the same position or another position with equivalent benefits, pay, and conditions of employment. The employee on leave has no different rights than if s/he were actively at work; therefore, the campus may be able to deny reinstatement if the job were eliminated due to layoff.

**Use of Accruals/Paid Leave on FMLA leave**

**SEIU Local 503, OPEU:**

- Employees may use leave accruals as outlined in the SEIU Collective Bargaining Agreement (sick leave, vacation, compensatory time off, personal).
- Employees may apply for Hardship Leave Donations after exhausting all personal accruals.
- If off work for own medical condition AND have enrolled in short-term disability (STD) or long-term disability (LTD), a claim may be initiated through The Standard. If on protected leave under FMLA and receiving STD or LTD benefits, employee is not required to use sick leave accruals while receiving these benefits. The employee may use vacation leave accrual for any partial wage loss not covered by STD or LTD.
- Employees who exhaust sick leave under FMLA/OFLA and elect to use accrued vacation may do so. Employees may also request in writing that up to forty (40) hours of vacation leave be retained for the employee's use after returning from the leave. This request must be included in the written request for leave without pay. In the case of an unanticipated leave, an employee may request to retain up to forty (40) hours of vacation by telephone or written notification to the employee's supervisor or Human Resource Services. Employees who retain such vacation leave will not be eligible for hardship leave under Article 40 – Sick Leave, Section 8.

**APSOU:**

- During FMLA leave the faculty member must use accrued paid sick leave. At the faculty member's written request 40 hours of sick leave may be retained before taking unpaid leave.

**Unclassified employees:**

- During FMLA leave the employee must use accrued sick leave. If an employee exhausts sick leave, the employee may use other forms of paid leave or apply for a sick leave advance. (See SOU Administrative Leave Policy FAD.011)

**OFLA**

**Eligibility:** All employees who have worked an average of 25 or more hours per week and have been employed for 180 days immediately preceding the leave are eligible for OFLA. (The 25-hour average requirement does not apply for parental leave)

**Qualifying Purposes for OFLA:**

- Parental leave to care for your newborn, newly adopted child or newly placed foster child.
- Care for the employee's spouse or same gender domestic partner, parent or child, grandparent, grandchild, parent-in-law, with a serious health condition.
- Employee's own serious health condition.
- Sick child leave to care for a child who has a non-serious health condition and requires home care.
- Bereavement leave: Up to two weeks per eligible family member, in a one-year time period taken within 60 days of notification of the death to attend the funeral or make arrangements necessitated by the death or to grieve.

**Length of OFLA Leave Entitlement:** The maximum leave is 12 weeks in a 12-month period. The 12-month period is calculated on a 'rolling' 12-month period measured backward from the date the employee uses any OFLA leave. Federal and State leave entitlements run concurrently.

**Extensions to the 12- week Entitlement:**

- A female employee may take a total of up to 12 weeks of additional leave within any one-year rolling period for an illness, injury or condition related to pregnancy or childbirth that disables the employee from performing any available job duties.
- An employee who takes 12 weeks of "parental leave" may take an additional 12 weeks to care for a child of the employee who is suffering from an illness, injury or condition that is not a serious health condition but that requires home care.

**For additional information, please contact:**

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