

**Linn Benton Lincoln
Education Service District**

Code: **GDBDA/GCBDA -AR(1)**
Reviewed: 8/8/2017

Federal Family and Medical Leave/State Family Medical Leave

Coverage

The federal Family and Medical Leave Act (FMLA) applies to ESDs with 50 or more employees within 75 miles of the employee's work site, based on employment during each working day during any of the 20 or more workweeks in the calendar year in which the leave is to be taken, or in the calendar year preceding the year in which the leave is to be taken. The 50 employee test does not apply to educational institutions for determining employee eligibility.

The Oregon Family Leave Act (OFLA) and the Oregon Military Family Leave Act (OMFLA) applies to ESDs that employ 25 or more part-time or full-time employees in Oregon, based on employment during each working day during any of the 20 or more workweeks in the calendar year in which the leave is to be taken, or in the calendar year immediately preceding the year in which the leave is to be taken.

Employee Eligibility

FMLA applies to employees who have worked for the ESD for at least 12 months (not necessarily consecutive) and worked for at least 1,250 hours during the 12-month period immediately preceding the start of the leave.

An employee who has previously qualified for and has taken some portion of FMLA leave may request additional FMLA leave within the same leave year. In such instances, the employee need not requalify as an eligible employee, if the additional leave applied for is in the same leave year and for the same condition.

OFLA applies to employees who work an average of 25 hours or more per week during the 180 calendar days or more immediately prior to the first day of the start of the requested leave.¹ For parental leave purposes, an employee becomes eligible upon completing at least 180 days immediately preceding the date on which the parental leave begins. There is no minimum average number of hours worked per week when determining employee eligibility for parental leave.

An employee who has previously qualified for and has taken some portion of OFLA leave, may request additional OFLA leave within the same leave year. In such instances, the employee must requalify as an eligible employee for each additional leave requested unless one of the following exceptions apply:

¹The requirements of OFLA do not apply to any employer offering eligible employees a nondiscriminatory cafeteria plan, as defined by section 125 of the Internal Revenue Code of 1986, which provides as one of its options employee leave at least as generous as the leave required by OFLA.

1. A female employee who has taken 12 weeks of pregnancy disability leave need not requalify leave in the same leave year for any other purpose;
2. An employee who has taken 12 weeks of parental leave need not requalify to take an additional 12 weeks in the same leave year for sick child leave; and
3. An employee granted leave for a serious health condition for the employee or a family member need not requalify if additional leave is taken in this leave year for the same reason.

OMFLA applies to employees who work an average of at least 20 hours per week. There is no minimum number of days worked when determining employee eligibility for OMFLA.

In determining if an employee has been employed for the preceding 180 calendar days, when applicable, the employer must consider days, e.g. paid or unpaid, an employee is maintained on payroll for any part of a work week. Full-time public school teachers who have been maintained on payroll by an ESD for 180 consecutive calendar days are thereafter deemed to have been employed for an average of at least 25 hours per week during the 180 days immediately preceding the start date of the OFLA leave. This provision is eligible for rebuttal if for example, the employee was on a nonpaid sabbatical.

In determining average workweek, the employer must count the actual hours worked using the Fair Labor Standards Act (FLSA) guidelines.

Qualifying Reason

Eligible employees may access FMLA leave for the following reasons:

1. Serious health condition of the employee or the employee's covered family member:
 - a. Inpatient care;
 - b. Continuing treatment;
 - c. Chronic conditions;
 - d. Permanent, long-term or terminal conditions;
 - e. Multiple treatments;
 - f. Pregnancy and prenatal care.
2. Parental leave² (separate from eligible leave as a result of a child's serious health condition):
 - a. Bonding with and the care for the employee's newborn (within 12 months following birth);
 - b. Bonding with and the care for a newly adopted or newly placed foster child under the age of 18 (within 12 months of placement);
 - c. Care for a newly adopted or newly placed foster child over 18 years of age who is incapable of self-care because of a physical or mental impairment (within 12 months of placement);
 - d. Time to effectuate the legal process required for placement of a foster child or the adoption of a child.
3. Military Caregiver Leave: leave for the care for spouse, son, daughter or next-of-kin who is a covered servicemember/veteran with a serious injury or illness;

²Parental leave must be taken in one continuous block of time within 12 months of the triggering event.

4. Qualifying Exigency Leave: leave arising out of the foreign deployment of the employee's spouse, son, daughter or parent.

Eligible employees may access OFLA for the following reasons:

1. Serious health condition of the employee or the employee's covered family member:
 - a. Inpatient care;
 - b. Continuing treatment;
 - c. Chronic conditions;
 - d. Permanent, long-term or terminal conditions;
 - e. Multiple treatments;
 - f. Pregnancy and prenatal care.
2. Parental leave (separate from eligible leave as a result of the child's serious health condition):
 - a. Bonding with and the care for the employee's newborn (within 12 months following birth);
 - b. Bonding with and the care for a newly adopted or newly placed foster child under the age of 18 (within 12 months of placement);
 - c. Care for a newly adopted or newly placed foster child over 18 years of age who is incapable of self-care because of a physical or mental impairment (within 12 months of placement);
 - d. Time to effectuate the legal process required for placement of a foster child or the adoption of a child.
3. Sick Child Leave: leave for non-serious health conditions of the employee's child.
4. Bereavement Leave: leave related to the death of a covered family member.³

Eligible employees may access OMFLA for the purpose of spending time with a spouse or same-gender domestic partner who is in the military and has been notified of an impending call or order to active duty, or who has been deployed during a period of military conflict.

The eligibility of an employee who takes multiple leaves for different qualified reasons during the same ESD designated leave period may reconfirm at the start of each qualified leave requested.

Definitions

1. Family member:
 - a. For the purposes of FMLA, "family member" means:
 - (1) Spouse⁴;
 - (2) Parent;
 - (3) Child; or
 - (4) Persons who are "in loco parentis".

³Bereavement leave under OFLA must be completed within 60 days of when the employee received notice of the death.

⁴"Spouse" means individuals in a marriage, including "common law" marriage and same-sex marriage.

For OFLA, spouse also includes same-sex individuals with a Certificate of Registered Domestic Partnership.

For the purposes of OFLA, “family member” means:

- (5) Spouse;
- (6) Registered, same-gender domestic partner;
- (7) Parent;
- (8) Parent-in-law;
- (9) Parent of employee’s registered, same-gender domestic partner;
- (10) Child;
- (11) Child of employee’s registered, same-gender domestic partner;
- (12) Grandchild;
- (13) Grandparent; or
- (14) Persons who are "in loco parentis".

2. Child:

- a. For the purposes of FMLA, “child” means a biological, adopted or foster child, a stepchild, a legal ward or a child of a person standing “in loco parentis”, who is either under the age of 18, or who is 18 years of age or older and who is incapable of self-care because of a physical or mental impairment.
- b. For the purposes of Military Caregiver Leave and Qualifying Exigency Leave under FMLA, “child” means the employee’s son or daughter on covered active duty regardless of that child’s age.
- c. For the purposes of OFLA, “child” means a biological, adopted, foster child or stepchild of the employee, the child of the employee’s same-gender domestic partner, or a child with whom the employee is or was in a relationship of “in loco parentis”.
- d. For the purposes of parental and sick child leave under OFLA, the child must be under the age of 18 or an adult dependent child substantially limited by a physical or mental impairment.

3. In loco parentis:

- a. For the purposes of FMLA, “in loco parentis” means persons with day-to-day responsibility to care for and financially support a child, or, in the case of an employee, who had such responsibility for the employee when the employee was a child. A biological or legal relationship is not necessary.
- b. For the purposes of OFLA, “in loco parentis” means person in the place of the parent having financial or day-to-day responsibility for the care of a child. A legal or biological relationship is not required.

4. Next of kin:

For the purposes of FMLA and Military Caregiver Leave under FMLA, “next of kin” means the nearest blood relative other than the servicemember’s spouse, parent, son or daughter in the following order of priority (unless otherwise designated in writing by the servicemember):

- a. Blood relatives who have been granted legal custody of the servicemember by court decree or statutory provisions;
- b. Brothers or sisters;
- c. Grandparents;
- d. Aunts and uncles; and
- e. First cousins.

5. Covered servicemembers:

For the purposes of Military Caregiver Leave under FMLA, “covered servicemember” means a current member of the Armed Forces, including a member of the National Guard or Reserves, who is receiving medical treatment, recuperation or therapy, or is in outpatient status, or is on the temporary disability retire list for a serious injury or illness.

6. Covered veteran:

For the purposes of Military Caregiver Leave under FMLA, “covered veteran” means a veteran who is undergoing medical treatment, recuperation or therapy for a serious injury or illness provided he or she was:

- a. A member of the Armed Forces (including a member of the National Guard or Reserves);
- b. Discharged or released under conditions other than dishonorable; and
- c. Discharged within the five-year period before the eligible employee first takes FMLA, Military Caregiver Leave.

Leave Period

For the purposes of calculating an employee’s leave period, the ESD will use a “rolling” 12-month period measured backward from the date the employee uses any family and medical leave. The same method for calculating the 12-month period for FMLA and OFLA leave entitlement shall be used for all employees. However, in all instances, the leave period for the purposes of OMFLA and Military Caregiver Leave under FMLA shall be dependent on the start of any such leave regardless of the ESD’s designated 12-month leave period described above.

Leave Duration

For the purposes of FMLA, an eligible employee is generally entitled to a total of 12 weeks of qualified leave during the ESD’s designated leave period⁵. Spouses who work for the ESD may be limited to a combined 12 weeks of FMLA leave during the ESD’s designated leave period when the purpose of the leave is for the birth of a child or to care for a child after birth, placement of an adopted or foster child or the care for an adopted or foster child after placement, or to care for the employee’s parent’s serious medical condition. Except in specific and unique instances, all qualified leave under FMLA counts toward an employee’s leave entitlement within the ESD’s designated leave period.

For the purposes of OFLA, an eligible employee is generally entitled to a total of 12 weeks of qualified leave during the ESD’s designated leave period. However, a woman is entitled to an additional full 12 weeks of parental leave during the ESD’s designated leave period following the birth of a child regardless of how much OFLA qualified leave she has taken prior to the birth of such child during the ESD’s designated leave period. Likewise, an employee who uses the full 12 weeks of parental leave during the ESD designated leave period, will be entitled to an additional 12 weeks of sick child leave under OFLA

⁵An eligible employee taking Military Caregiver Leave under FMLA is entitled to up to 26 weeks of leave in the 12-month period beginning with the first day of such leave and regardless of any FMLA leave taken previously during the ESD’s leave period. However, once the 12-month period begins for the purposes of Military Caregiver Leave under FMLA, any subsequent FMLA qualified leave, regardless of reason for such leave, will count toward the employee’s 26-week entitlement under Military Caregiver Leave under FMLA.

during the ESD's designated leave period for the purpose of caring for a child(ren) with a non-serious health condition requiring home care.⁶ Unlike FMLA, OFLA does not combine the leave entitlement for spouses working for the ESD. However, under OFLA, family members who work for the ESD may be restricted from taking concurrent OFLA qualified leave.⁷

For the purposes of OMFLA, an eligible employee is entitled to 14 days of leave per call or order to active duty or notification of a leave from deployment. When an employee also meets the eligibility requirements of OFLA, the duration of the OMFLA leave counts toward that employee's leave entitlement during the ESD's designated leave period.

Except as otherwise noted above, qualified leave under FMLA and OFLA for an eligible employee will run concurrently during the ESD's designated leave period.

For the purpose of tracking the number of leave hours an eligible employee is entitled and/or has used during each week of the employee's leave, leave entitlement is calculated by multiplying the number of hours the eligible employee normally works per week by 12⁸. If an employee's schedule varies from week-to-week, a weekly average of the hours worked over the 12 weeks worked prior to the beginning of the leave period shall be used for calculating the employee's normal workweek⁹. If an employee takes intermittent or reduced work schedule leave, only the actual number of hours of leave taken may be counted toward the 12 weeks of leave to which the employee is entitled.

Intermittent Leave

With the exception of parental leave which must be taken in one continuous block of time, an eligible employee is permitted under FMLA and OFLA to take intermittent leave for any qualifying reason.

Intermittent leave is taken in multiple blocks of time (i.e., hours, days, weeks, etc.) rather than in one continuous block of time and/or requires a modified or reduced work schedule.

When an employee is eligible for OFLA leave, but not FMLA leave, the employer:

1. May allow an exempt employee, as defined by state and federal law, with accrued paid time off to take OFLA leave in blocks of less than a full day, but;
2. May not reduce the salary of an employee who is taking intermittent leave when they do not have accrued paid leave available. To do so would result in the loss of exemption under state law.

⁶Sick child leave under OFLA need not be provided if another family member, including a noncustodial biological parent, is willing and able to care for the child.

⁷Exceptions to the ability to require family members from taking OFLA qualified leave at different times are when 1) employee is caring for the other employee who has a serious medical condition; 2) one employee is caring for a child with a serious medical condition when the other employee is suffering a serious medical condition; 3) each family member is suffering a serious medical condition; 4) each family member wants to take bereavement leave under OFLA; and 5) the employer allows the family members to take concurrent leave.

⁸For example, an employee normally employed to work 30 hours per week is entitled to 12 times 30 hours, or a total of 360 hours of leave.

⁹For example, an employee working an average of 25 hours per week is entitled to 12 times 25 hours, or a total of 300 hours of leave.

An employee's FMLA and/or OFLA intermittent leave time is determined by calculating the difference between the employee's normal work schedule and the number of hours the employee actually works during the leave period. The result of such calculation is credited against the eligible employee's leave entitlement.

Holidays or days in which the ESD is not in operation, are not counted against the eligible employee's intermittent OFLA leave period unless the employee was scheduled and expected to work on any such day.

Alternate Work Assignment

The ESD may transfer an employee recovering from a serious health condition to an alternate position which accommodates the serious health condition provided:

1. The employee accepts the position voluntarily and without coercion;
2. The transfer is temporary, lasts no longer than necessary and has equivalent pay and benefits;
3. The transfer is compliant with any applicable collective bargaining agreement;
4. The transfer is compliant with state and federal law, including but not limited to the protections provided for in FMLA and/or OFLA; and
5. The transfer is not used to discourage the employee from taking FMLA and/or OFLA leave for a serious health condition or to create a hardship for the employee.

The ESD may transfer an eligible employee who is on a foreseeable intermittent FMLA and/or OFLA leave to another position with the same or different duties to accommodate the leave, provided:

1. The employee accepts the transfer position voluntarily and without coercion;
2. The transfer is temporary, lasts no longer than necessary and has equivalent pay and benefits;
3. The transfer is compliant with any applicable collective bargaining agreements;
4. The transfer is compliant with state and federal law, including but not limited to the protections provided for in FMLA and/or OFLA;
5. The transfer to an alternate position is used only when there is no other reasonable option available that would allow the employee to use intermittent leave or reduced work schedule; and
6. The transfer is not used to discourage the employee from taking intermittent or reduced work schedule leave, or to create a hardship for the employee.

If an eligible employee is transferred to an alternative position, and as a result the employee works fewer hours than the employee was working in the original position, the employee's FMLA and/or OFLA leave time is determined by calculating the difference between the employee's normal work schedule and the number of hours the employee actually works during the leave period. The result of such calculation is credited against the eligible employee's leave entitlement.

When an employee is transferred to alternate position as described above but such transfer does not result in a reduced schedule, time worked in any such alternate position shall not be considered for the purpose of FMLA and/or OFLA leave. An employee working in an alternate position retains the right to return to the employee's original position unless all FMLA and/or OFLA leave taken in that leave year plus the period of time worked in the alternate position exceeds 12 weeks.

Special Rules for School Employees

For the purposes of FMLA, "school employee" means those whose principal function is to teach and instruct students in a class, a small group or an individual settlement. Athletic coaches, driving instructors and special education assistants, such as interpreters for the hearing impaired, are included in this definition. This definition does not apply to teacher assistants or aides, counselors, psychologist, curriculum specialists, cafeteria workers, maintenance workers or bus drivers.

For the purposes of OFLA, "school employee" means employees employed principally as instructors in public kindergartens, elementary schools, secondary schools or education service districts.

FMLA and/or OFLA leave that is taken for a period that ends with the school year and begins with the next semester is considered consecutive rather than intermittent. In any such situation, the eligible school employee will receive any benefits during the break period that employees would normally receive if they had been working at the end of the school year.

1. Foreseeable Intermittent Leave Exceeding 20 Percent of Working Days

When the qualified leave is foreseeable, will encompass more than 20 percent of the eligible school employee's regular work schedule during the leave period, and the purpose of such leave is to care for a family member with a serious medical condition, for a servicemember with a serious medical condition or because of the employee's own serious medical condition, the ESD may require the eligible school employee to:

- a. Take leave for a period or periods of a particular duration, not greater than the duration of the planned treatment; or
- b. Temporarily transfer the eligible school employee to an alternate position for which the employee is qualified, which has equivalent pay and benefits and which better accommodates recurring periods of leave than the employee's original position.

2. Limitation on Leave Near the End of the School Year

When an eligible school employee requests leave near the end of the school year, the ESD may require the following:

- a. When the qualified leave begins more than five weeks before the end of the school year:
 - (1) For the purposes of FMLA leave, the eligible school employee may be required to continue taking leave until the end of the school year provided:
 - (a) The leave will last at least three weeks; and
 - (b) The employee would return to work during the three week period before the end of the term.
 - (2) For the purposes of OFLA leave, if the reason for the leave is because of the eligible school employee's own serious health condition, the eligible school employee may be required to remain in leave until the end of the school year, provided:
 - (a) The leave will last at least three weeks; and
 - (b) The employee's return to work would occur within three weeks of the end of the school year.
- b. For the purposes of FMLA and/or OFLA leave, when the qualified leave begins within five weeks of the end of the school year and the purpose of such leave is parental leave, for the serious health condition of a family member or for the serious health condition of a servicemember, the eligible school employee may be required to remain on leave until the end of the school year provided:
 - (1) The leave will last more than two weeks; and
 - (2) The employee would return to work during the two-week period before the end of the school year.
- c. For the purposes of FMLA and/or OFLA leave, when the qualified leave begins within three weeks of the end of the school year and the purpose of such leave is parental leave, for the serious health condition of a family member or for the serious health condition of a servicemember, the eligible school employee may be required to remain on leave until the end of the school year provided the length of the leave will last more than five working days. If the ESD requires an eligible school employee to remain on leave until the end of the school year as described above, additional leave required by the employer until the end of the school year shall not count against the eligible school employee's leave entitlement.

Paid/Unpaid Leave

FMLA and OFLA do not require the ESD to pay an eligible employee who is on a qualified leave. Subject to any related provisions in any applicable collective bargaining agreement, the ESD requires the eligible employee to use any available accrued sick leave, vacation or personal leave days (or other available paid time established by Board policy(ies) and/or collective bargaining agreement) in the order specified by the ESD and before taking FMLA and/or OFLA leave without pay during the leave period. The order specified by the ESD is sick, personal, then vacation leave.

The ESD will notify the eligible employee that the requested leave has been designated as FMLA and/or OFLA leave and, if required by the ESD, that available accrued paid leave shall be used during the leave period. In the event the ESD is aware of an OFLA or FMLA qualifying exigency, the ESD shall notify the eligible employee of its intent to designate the leave as such regardless of whether a request has been made by the eligible employee. Such notification will be given to the eligible employee prior to the commencement of the leave or within two working days of the employee's notice of an unanticipated or emergency leave, whichever is sooner.

When the ESD does not have sufficient information to make a determination of whether the leave qualifies as FMLA or OFLA leave, the ESD will provide the required notice promptly when the information is available but no later than two working days after the ESD has received the information. Oral notices will be confirmed in writing no later than the following payday. If the payday is less than one week after the oral notice is given, written notice will be provided no later than the subsequent payday.

Eligible employees who request OMFLA leave shall not be required to use any available accrued paid time off during the OMFLA leave period.

Benefits and Insurance

When an eligible employee returns to work following a FMLA or OFLA qualified leave, the employee must be reinstated to the same position the employee held when the leave commenced, or to an equivalent position with equivalent benefits, pay and other terms and conditions of employment.

During an OFLA qualified leave an eligible employee does not accrue seniority or other benefits that would have accrued while the employee was working. The eligible employee is also subject to layoff to the same extent similarly situated employees not taking OFLA leave are subject unless the terms of an applicable collective bargaining agreement, other agreement or the ESD's policies provide otherwise.

For the purposes of FMLA and OFLA, the ESD will continue to pay the employer portion of the eligible employee's group health insurance contribution (if applicable) during the qualified leave period. The eligible employee is required to pay the employee portion of any such group health insurance contribution as a condition of continued coverage.

For the purposes of FMLA qualified leave, the ESD's obligation to maintain the employee's group health insurance coverage will cease if the employee's contribution is remitted more than 30 calendar days late. The ESD will provide written notice that the premium payment is more than 30 calendar days late. Such notice will be provided within 15 calendar days before coverage is to cease.

For the purposes of OMFLA, the eligible employee is entitled to a continuation of benefits.

Fitness-for-Duty Certification

Prior to the reinstatement of an employee following a leave which was the result of the employee's own serious health condition, the ESD may require the employee to obtain and present a Fitness-for-Duty Certification. The certification will specifically address the employee's ability to perform the essential functions of the employee's job as they relate to the health condition that was the reason for the leave.

If the ESD is going to require a fitness-for-duty certification upon return to work, the ESD must notify the employee of such requirement when the leave is designated as FMLA and/or OFLA leave. Failure to provide the certification may result in a delay or denial of reinstatement.

For the purposes of FMLA qualified leave, any costs associated with obtaining the fitness-for-duty certification shall be borne by the employee.

For the purposes of OFLA qualified leave, any out-of-pocket costs associated with obtaining the fitness-for-duty certification shall be borne by the ESD.

If the leave is qualified under both FMLA and OFLA, any out-of-pocket costs associated with obtaining the fitness-for-duty certification shall be borne by the ESD.

Application

Under federal and state law, an eligible employee requesting FMLA and/or OFLA leave shall provide at least 30 days' notice prior to the leave date if the leave is foreseeable. The notice shall be written and include the anticipated start date, duration and reasons for the requested leave. When appropriate, the eligible employee must make a reasonable effort to schedule treatment, including intermittent leave and reduced leave, so as not to unduly disrupt the operation of the ESD.

The ESD may request additional information to determine that the requested leave qualifies as FMLA and/or OFLA leave. The ESD may designate the employee as provisionally on FMLA and/or OFLA leave until sufficient information is received to properly make a determination. An eligible employee able to give advance notice of the need to take FMLA and/or OFLA leave must follow the employer's known, reasonable and customary procedures for requesting any kind of leave.

For the purposes of FMLA, if advance notice is not possible, an employee eligible for FMLA leave must provide notice as soon as practicable. "As soon as practicable," for the purpose of FMLA leave, means the employee must comply with the employer's normal call-in procedures except in limited and under unique circumstances. Failure of an employee to provide the required notice for FMLA leave may result in the ESD delaying the employee's leave up to 30 days after the notice is ultimately given.

For the purposes of OFLA, an eligible employee is required to provide oral or written notice within 24 hours of commencement of the leave in unanticipated or emergency leave situations. The employee may designate a family member or friend to notify the ESD during that period of time. Failure of an employee to provide the required notice for leave covered by OFLA may result in the ESD deducting up to three weeks from the employee's unused OFLA leave in that one-year leave period. The employee may be subject to disciplinary action for not following the ESD's notice procedures.

When an employee fails to give advance notice for both the FMLA and OFLA above, the ESD must choose the remedy that is most advantageous to the employee.

In all cases, proper documentation must be submitted no later than three working days following the employee's return to work.

Medical Certification

The ESD shall require an eligible employee to provide medical documentation, when appropriate, to support the stated reason for such leave. The ESD will provide written notification to an employee of this requirement within five working days of the employee's request for leave. If the employee provides less than 30 days' notice, the employee is required to submit such medical certification no later than 15 calendar days after receipt of the ESD's notification that medical certification is required.

The ESD may request re-certification of a condition when the minimum duration of a certification expires if continued leave is requested. If the certification does not indicate a duration or indicates that it is ongoing, the ESD may request re-certification at least every six months in connection with an absence.

Under federal law, a second medical opinion may be required whenever the ESD has reason to doubt the validity of the initial medical opinion. The health care provider may be selected by the ESD. The provider shall not be employed by the ESD on a regular basis. Should the first and second medical certifications differ, a third opinion may be required. The ESD and the employee will mutually agree on the selection of the health care provider for a third medical certification. The third opinion will be final. Second and third opinions and the actual travel expenses for an employee to obtain such opinions will be paid for by the ESD.

Second and Third Opinions

1. For the purposes of FMLA, the ESD may designate a second health care provider, but that person cannot be utilized by the ESD on a regular basis except in rural areas where health care is extremely limited. If the opinions of the employee's and the ESD's designated health care provider(s) differ, the ESD may require a third opinion at the ESD's expense. The third health care provider must be designated or approved jointly by the employee and the ESD. This third opinion shall be final and binding.
2. For the purposes of OFLA, and except for leave related to sick child leave under OFLA, the ESD may require the employee to obtain a second opinion from a health care provider designated by the ESD. If the first and second verifications conflict, the employer may require the two health care providers to jointly designate a third health care provider for the purpose of providing a verification. This third verification shall be final and binding.

Notification

Any notice required by federal and state laws explaining employee rights and responsibilities will be posted in all staff rooms and the ESD office. Additional information may be obtained by contacting the Chief Human Resources Officer.

Record Keeping/Posted Notice

The ESD will maintain all records as required by federal and state laws including dates leave is taken by employees, identified separately from other leave; hours/days of leave; copies of general and specific notices to employees, including Board policy(ies) and regulations; premium payments of employee health benefits while on leave and records of any disputes with employees regarding granting of leave.

Medical documentation will be maintained separately from personnel files as confidential medical records.

The ESD will post notice of FMLA and OFLA leave requirements.

Federal vs. State Law

Both federal and state law contain provisions regarding leave for family illness. Federal regulations state an employer must comply with both laws; that the federal law does not supersede any provision of state law that provides greater family leave rights than those established pursuant to federal law; and that OFLA and FMLA leave entitlements run concurrently. State law requires that FMLA and OFLA leave entitlements run concurrently when possible.

For example, due to differences in regulations, an eligible employee who takes OFLA leave after 180 days of employment, but before he/she is eligible for FMLA leave, is still eligible to take a full 12 workweeks of FMLA leave after meeting FMLA's eligibility requirements. Thereafter, any eligible leave period will run concurrently, when appropriate.

EMPLOYEE RIGHTS AND RESPONSIBILITIES UNDER THE FAMILY AND MEDICAL LEAVE ACT

Basic Leave Entitlement

FMLA requires covered employers to provide up to 12 weeks of unpaid, job-protected leave to eligible employees for the following reasons:

- For incapacity due to pregnancy, prenatal medical care or child birth;
- To care for the employee's child after birth, or placement for adoption or foster care;
- To care for the employee's spouse, son or daughter, or parent, who has a serious health condition; or
- For a serious health condition that makes the employee unable to perform the employee's job.

Military Family Leave Entitlements

Eligible employees with a spouse, son, daughter, or parent on active duty or call to active duty status in the National Guard or Reserves in support of a contingency operation may use their 12-week leave entitlement to address certain qualifying exigencies. Qualifying exigencies may include attending certain military events, arranging for alternative childcare, addressing certain financial and legal arrangements, attending certain counseling sessions, and attending post-deployment reintegration briefings.

FMLA also includes a special leave entitlement that permits eligible employees to take up to 26 weeks of leave to care for a covered servicemember during a single 12-month period. A covered servicemember is a current member of the Armed Forces, including a member of the National Guard or Reserves, who has a serious injury or illness incurred in the line of duty on active duty that may render the servicemember medically unfit to perform his or her duties for which the servicemember is undergoing medical treatment, recuperation, or therapy; or is in outpatient status; or is on the temporary disability retired list.

Benefits and Protections

During FMLA leave, the employer must maintain the employee's health coverage under any "group health plan" on the same terms as if the employee had continued to work. Upon return from FMLA leave, most employees must be restored to their original or equivalent positions with equivalent pay, benefits, and other employment terms. Use of FMLA leave cannot result in the loss of any employment benefit that accrued prior to the start of an employee's leave.

Eligibility Requirements

Employees are eligible if they have worked for a covered employer for at least one year, for 1,250 hours over the previous 12 months, and if at least 50 employees are employed by the employer within 75 miles.

Definition of Serious Health Condition

A serious health condition is an illness, injury, impairment, or physical or mental condition that involves either an overnight stay in a medical care facility, or continuing treatment by a health care provider for a condition that either prevents the employee from performing the functions of the employee's job, or prevents the qualified family member from participating in school or other daily activities.

Subject to certain conditions, the continuing treatment requirement may be met by a period of incapacity of more than 3 consecutive calendar days combined with at least two visits to a health care provider or one visit and a regimen of continuing treatment, or incapacity due to pregnancy, or incapacity due to a chronic condition. Other conditions may meet the definition of continuing treatment.

Use of Leave

An employee does not need to use this leave entitlement in one block. Leave can be taken intermittently or on a reduced leave schedule when medically necessary. Employees must make reasonable efforts to schedule leave for planned medical treatment so as not to unduly disrupt the employer's operations. Leave due to qualifying exigencies may also be taken on an intermittent basis.

Substitution of Paid Leave for Unpaid Leave

Employees may choose or employers may require use of accrued paid leave while taking FMLA leave. In order to use paid leave for FMLA leave, employees must comply with the employer's normal paid leave policies.

Employee Responsibilities

Employees must provide 30 days advance notice of the need to take FMLA leave when the need is foreseeable. When 30 days notice is not possible, the employee must provide notice as soon as practicable and generally must comply with an employer's normal call-in procedures. Employees must provide sufficient information for the employer to determine if the leave may qualify for FMLA protection and the anticipated timing and duration of the leave. Sufficient information may include that the employee is unable to perform job functions, the family member is unable to perform daily activities, the need for hospitalization or continuing treatment by a health care provider, or circumstances supporting the need for military family leave. Employees also must inform the employer if the requested leave is for a reason for which FMLA leave was previously taken or certified. Employees also may be required to provide a certification and periodic recertification supporting the need for leave.

Employer Responsibilities

Covered employers must inform employees requesting leave whether they are eligible under FMLA. If they are, the notice must specify any additional information required as well as the employees' rights and responsibilities. If they are not eligible, the employer must provide a reason for the ineligibility. Covered employers must inform employees if leave will be designated as FMLA-protected and the amount of leave counted against the employee's leave entitlement. If the employer determines that the leave is not FMLA-protected, the employer must notify the employee.

Unlawful Acts by Employers

FMLA makes it unlawful for any employer to:

- Interfere with, restrain, or deny the exercise of any right provided under FMLA;
- Discharge or discriminate against any person for opposing any practice made unlawful by FMLA or for involvement in any proceeding under or relating to FMLA.

Enforcement

An employee may file a complaint with the U.S. Department of Labor or may bring a private lawsuit against an employer. FMLA does not affect any Federal or State law prohibiting discrimination, or supersede any State or local law or collective bargaining agreement which provides greater family or medical leave rights.

FMLA section 109 (29 U.S.C. § 2619) requires FMLA covered employers to post the text of this notice. Regulations 29 C.F.R. § 825.300(a) may require additional disclosures.

For additional information:

1-866-4US-WAGE (1-866-487-9243) TTY: 1-877-889-5627

WWW.WAGEHOUR.DOL.GOV

U.S. Department of Labor | Employment Standards Administration | Wage and Hour Division

**Linn Benton Lincoln
Education Service District**

Code: **GCBDA/GDBDA-AR(2)**

Reviewed: 8/8/17

Request for Family and Medical Leave

Employee Request for Family and Medical Leave (FMLA) and/or Oregon Family Leave (OFLA)

(PLEASE PRINT)

Where the need for the leave may be anticipated, written request for family and medical leave must be made, if practical, at least 30 days prior to the date the requested leave is to begin. Failure to request leave in a timely manner could result in either the leave being postponed or the amount of leave available reduced up to three weeks.

Name _____ Effective Date of the Leave _____

Department _____ Title _____

Status: Fulltime Part-time Temporary

Hire Date _____ Length of Service _____

Have you taken a family leave in the past 12 months? _____ Yes _____ No

If yes, how many work days? _____ Reason for leave _____

I request family or medical leave for one or more of the following reasons:¹⁰

_____ 1. Because of the birth of my child and in order to care for him or her. (Complete **Certification of Health Care Provider, Employee's Serious Health Condition**, GCBDA/GDBDA-AR(3)(A) Certification Form

Expected date of birth _____ Actual date of birth _____

Leave to start _____ Expected return date _____

_____ 2. Because of the placement of a child with me for adoption or foster care. (Complete **Certification of Health Care Provider, Employee's Serious Health Condition**, GCBDA/GDBDA-AR(3)(A) Certification Form)

Age of child _____ Date of placement _____

Leave to start _____ Expected return date _____

3. In order to care for a family member² with a serious health condition. (Complete **Certification of Health Care Provider, Family Member's Serious Health Condition**, GCBDA/ GDBDA-AR(3)(B) Certification Form.

Leave to start _____ Expected return date _____

Please check one: Spouse³ Child⁴ Parent Individual who was in *loco parentis* when employee was a child Parent-in-law or parent of employee's registered domestic partner (OFLA leave only), Custodial parent, Noncustodial parent, Adoptive parent Foster parent
 Grandparent (OFLA leave only) or Grandchild (OFLA leave only.)

Please state name and address of relation:

Name _____ Address _____

Does the condition render the family member unable to perform daily activities?

- _____ 4. For a serious health condition which prevents me from performing my job functions. (Complete **Certification of Health Care Provider, Employee's Serious Health Condition**, GCBDA/GDBDA-AR(3)(A) Certification Form)

Describe _____

Leave to start _____ Expected return date _____

Regarding 3 or 4 above, request intermittent (reduced workday hours) or reduced leave (fewer workdays each workweek) schedule or alternate duty (if applicable, subject to employee's approval). Please describe schedule of when you anticipate you will be unavailable to work: _____

- _____ 5. In order to care for a child with a condition requiring home care which does not meet the definition of serious health condition and is not life threatening or terminal (OFLA leave only).

- _____ 6. A qualifying exigency arising from an employee's spouse, son, daughter, or parent who is a covered service member as defined in GCBDA/GDBDA-AR(1), or leave for the spouse of a military personnel per each deployment of the spouse when the spouse has either been notified of an impending call to active duty, has been ordered to active duty, or has been deployed or on leave from deployment. (Complete **Military Family Leave, Certification of Qualifying Exigency for Military Family Leave**, GCBDA/GDBDA-AR(3)© Certification Form)

- _____ 7. To care for a spouse, son, daughter, parent, or next of kin who is a covered servicemember with a serious illness or injury incurred in the line of duty or active duty in the armed forces. Has leave been taken for the same servicemember and the same injury? _____ Yes _____ No. (Complete **Military Family Leave, Certification for Serious Injury or Illness of Covered Servicemember for Military Family Leave**, GCBDA/GDBDA-AR(3)(D) Certification Form)

If yes, when was the leave taken and for how many work days? _____

- _____ 8. For the death of a family member (OFLA only).

¹ A physician's certification may be required to support a request for family and medical leave. In addition, a fitness for duty certification may be required before reinstatement following the leave.

² "Family member," for purposes of FMLA and OFLA leave, means the spouse, custodial parent, noncustodial parent, adoptive parent, stepparent or foster parent, biological parent, child of the employee (biological, adopted, foster, or step child, a legal ward or child of the employee standing in loco parentis) or a person with whom the employee is or was in a relationship of "in loco parentis." Additionally, when defining "family member" under OFLA (but not FMLA leave), the definition includes the grandparent, grandchild, parents-in-law or the parents of the employee's registered domestic partner.

³ "Spouse" means individuals in a marriage, including "common law" marriage or same-sex marriage. For OFLA, spouse also includes same-sex individuals with a Certificate or Registered Domestic Partnership.

I understand that I may use any available accrued paid leave, including personal and sick leave or available accrued vacation leave during the leave period. The ESD requires me to use any available accrued sick leave, vacation, personal leave days or other paid time established by Board policy(ies) and/or collective bargaining agreement in the order specified by the ESD, and before taking leave without pay, during the leave period. I am required to use any available accrued paid leave, including personal and sick leave or available accrued vacation leave before taking FMLA and/or OFLA leave without pay during the leave period.

If my request for a leave is approved, it is my understanding that without an authorized extension when the need for an extension could be anticipated, I must report to duty on the first workday following the date my leave is scheduled to end. I understand that failure to do so will constitute unequivocal notice of my intent not to return to work and the ESD may terminate my employment. A physician's certification may be required to support a request for family and medical leave. In addition, a fitness-for-duty certification may be required.

I authorize the ESD to deduct from my paychecks any employee contributions for health insurance premiums, life insurance or long-term disability insurance which remain unpaid after my leave, consistent with state and/or federal law.

I have been provided a copy of the ESD's family and medical leave policy and a copy of my rights and responsibilities under the Family Medical Leave Act leave request form.

Signature of Employee: _____

Date: _____

To be completed by health care provider:

Your patient has requested leave under the FMLA. Answer, fully and completely, all applicable parts below. Several questions seek a response as to the frequency or duration of a condition, treatment, etc. Your answer should be the best estimate based upon your medical knowledge, experience and examination of the patient. Be as specific as you can; terms such as "lifetime," "unknown" or "indeterminate" may not be sufficient to determine FMLA coverage. Limit your responses to the condition for which the employee is seeking leave. So not provide information about genetic tests, as defined in 29 C.F.R § 1635.3(f), genetic services, as defined in 29. C.F.R. § 1635.3 or the manifestation of disease or disorder in the employee's family members, as defined in 29 C.F.R. 1635.3(b). Extra space is provided, should you need it. Please be sure to sign the form on the last page.

Provider's name and business address: _____

Type of practice/Medical specialty: _____

Telephone: () _____ Fax: () _____

Email: _____

Medical Facts

1. The approximate date the condition commenced: _____

The probable duration of the condition: _____

Was the patient admitted for an overnight stay in a hospital, hospice or residential medical care facility?
 No Yes If yes, dates of admission: _____

List the dates(s) you treated the patient for the condition: _____

Was medication, other than over-the-counter medication, prescribed? No Yes

Will the patient need to have treatment visits at least twice per year due to the condition?
 No Yes

Was the patient referred to other health care provider(s) for evaluation or treatment (e.g., physical therapist)? No Yes

If yes, state the nature of such treatments and expected duration of treatment:

2. Is the medical condition pregnancy? No Yes

If yes, expected delivery date: _____

3. Use the information provided by the ESD in the "To be completed by the ESD" section to answer this question. If the ESD fails to provide a list of the employee's essential functions or a job description, answer these questions based upon the employee's own description of his/her job functions.

Is the employee unable to perform any of his/her job functions due to the condition:

No Yes If yes, identify the job functions the employee is unable to perform:

4. Describe other relevant medical facts, if any, related to the condition for which the employee seeks leave (such medical facts may include symptoms, diagnosis or any regimen of continuing treatment such as the use of specialized equipment):

Amount of leave needed

1. Will the employee be incapacitated for a single continuous period of time due to his/her medical condition, including any time for treatment and recovery? No Yes

If yes, estimate the beginning and ending dates for the period of incapacity: _____

2. Will the employee need to attend follow-up treatment appointments or work part-time or on a reduced schedule because of the employee's medical condition? No Yes

If yes, are the treatments or the reduced number of hours of work medically necessary?

No Yes

Estimate treatment schedule, if any, including the dates of any scheduled appointments and the time required for each appointment, including any recovery period:

Estimate the part-time or reduced work schedule the employee needs, if any:

_____ hour(s) per day; _____ days per week from _____ through _____

3. Will the condition cause episodic flare-ups periodically preventing the employee from performing his/her job functions? No Yes

Is it medically necessary for the employee to be absent from work during the flare-ups?

No Yes If yes, explain: _____

Based upon the employee's medical history and your knowledge of the medical condition, estimate the frequency of flare-ups and the duration of related incapacity that the employee may have over the next six months (e.g., one episode every three months lasting one to two days):

Frequency: _____ times per _____ week(s) _____ month(s)

Duration: _____ hours or _____ day(s) per episode

Additional Information – Identify the question number with your additional answer:

Signature of Health Care Provider

Date

Describe the care you will provide to your family member and estimate the leave needed to provide such care:

Employee signature

Date

To be completed by health care provider:

The employee listed above has requested leave under the FMLA to care for your patient. Answer, fully and completely, all applicable parts below. Several questions seek a response as to the frequency or duration of a condition, treatment, etc. Your answer should be the best estimate based upon your medical knowledge, experience and examination of the patient. Be as specific as you can; terms such as "lifetime," "unknown," or "indeterminate" may not be sufficient to determine FMLA coverage. Limit your responses to the condition for which the patient needs leave. Do not provide information about genetic tests, as defined in 29 C.F.R § 1635.3(b), C.F.R § 1635.3(f). Extra space is provided, should you need it. Please be sure to sign the form on the last page.

Provider's name and business address: _____

Type of practice/medical specialty: _____

Telephone: () _____ Fax: () _____

Email: _____

Medical Facts

1. The approximate date the condition commenced: _____

The probable duration of the condition: _____

Was the patient admitted for an overnight stay in a hospital, hospice or residential medical care facility?
 No Yes If yes, dates of admission: _____

List the date(s) you treated the patient for their condition: _____

Was medication, other than over-the-counter medication, prescribed? No Yes

Will the patient need to have treatment visits at least twice per year due to the condition?
 No Yes

Was the patient referred to other health care provider(s) for evaluation or treatment (e.g., physical therapist)? No Yes

If yes, state the nature of such treatments and expected duration of treatment:

2. Is the medical condition pregnancy? No Yes

If yes, expected delivery date: _____

3. Describe other relevant medical facts, if any, related to the condition for which the employee seeks leave (such medical facts may include symptoms, diagnosis or any regimen of continuing treatment such as the use of specialized equipment):

Amount of leave needed

When answering these questions, keep in mind that your patient’s need for care from the employee seeking leave may include assistance with basic medical, hygienic, nutritional, safety or transportation needs, or the provision of physical or psychological care:

1. Will the patient be incapacitated for a single continuous period of time, including any time for treatment and recovery? No Yes

If yes, estimate the beginning and ending dates for the period of incapacity: _____

During this time, will the patient need care? No Yes

Explain the care needed by the patient and why such care is medically necessary:

2. Will the patient require follow-up treatments, including any time for recovery? No Yes

Estimate treatment schedule, if any, including the dates of any scheduled appointments and the time required for each appointment, including any recovery period:

Explain the care needed by the patient, and why such care is medically necessary: _____

3. Will the patient require care on an intermittent or reduced schedule basis, including any time for recovery?
 No Yes

Estimate the hours the patient needs care on an intermittent basis, if any:

_____ hour(s) per day; _____ days per week from _____ through _____

Explain the care needed by the patient, and why such care is medically necessary: _____

4. Will the condition cause episodic flare-ups periodically preventing the patient from participating in normal daily activities? No Yes

Based upon the patient's medical history and your knowledge of the medical condition, estimate the frequency of flare-ups and the duration of related incapacity that the patient may have over the next six months (e.g., one episode every three months lasting one to two days):

Frequency: _____ times per _____ week(s) _____ month(s)

Duration: _____ hours or _____ day(s) per episode

Does the patient need care during these flare-ups? No Yes

Explain the care needed by the patient, and why such care is medically necessary _____

Additional Information – (Identify the question number with your additional answer):

Signature of Health Care Provider
CR4.13.17 | RS

Date

Part A: Qualifying reason for leave

- 1. Describe the reason you are requesting FMLA leave due to a qualifying exigency (including the specific reason you are requesting leave):

- 2. Describe the reason you are requesting OMFLA leave (include the specific reason below, either a) an impending call or order to active duty, or b) impending leave from deployment):

- 3. A complete and sufficient certification to support request for qualifying leave due to a qualifying exigency includes any available written documentation which supports the need for leave; such documentation may include a copy of a meeting announcement for informational briefings sponsored by the military; a document confirming the military member's Rest and Recuperation Leave; a document confirming an appointment with a third party, such as a counselor, school official or staff at a care facility; or a copy of a bill for services for the handling of legal or financial affairs. Is available written documentation supporting this request for leave attached? Yes No None available

Part B: Amount of leave needed

- 1. The approximate date the qualifying exigency or deployment commenced or will commence is:

The probable duration of such exigency or deployment is:

- 2. Will you need to be absent from work for a single continuous period of time due to the qualifying exigency or deployment?

Yes No

If yes, estimate the beginning and ending dates for the period of absence _____

- 3. Will you need to be absent from work periodically to address this qualifying exigency or deployment?

Yes No

If yes, estimate the schedule of leave, including the dates of any scheduled meetings or appointments:

- 4. Estimate the frequency and duration of each appointment, meeting or leave event, including any travel time (i.e. one deployment-related meeting every month lasting four hours)(FMLA only):

Frequency: _____ times per _____ week(s) _____ month(s)

Duration: _____ hours or _____ day(s) per event

Part C: Third party certification

If leave is requested to meet with a third party (such as to arrange for childcare, to attend counseling, to attend meetings with school or childcare providers, to make financial or legal arrangements, to act as the covered military member’s representative before a federal, state or local agency for purposes of obtaining, arranging or appealing military service benefits, or to attend any event sponsored by the military or military service organizations), a complete and sufficient certification includes the name, address and appropriate contact information of the individual or entity with whom you are meeting (i.e. either the telephone or fax number or email address of the individual or entity). This information may be used by the ESD to verify that the information contained on this form is accurate. (FMLA only)

Name of individual _____ Title _____

Organization _____

Address _____

Telephone () _____ Fax () _____

Email _____

Describe the nature of the meeting: _____

Part D: Employee Signature

I certify that the information I provided above is true and correct. (For OMFLA leave purposes, notice must be given by the employee within five business days of receiving an official notice).

Signature of Employee

Date

**Linn Benton Lincoln
Education Service District**

Code: GCBDA/GDBDA-AR(3)(D)
Revised/Reviewed: 8/8/17

Military Family Leave

Certification for Serious Injury or Illness of Covered Servicemember for Military Family Leave

Notice and Instructions to the ESD:

The Family Medical Leave Act (FMLA) provides that an ESD may require an employee seeking FMLA leave due to a serious injury or illness of a covered servicemember to submit a certification providing sufficient facts to support the request for leave. Employees may not be asked to provide more information than allowed under the FMLA regulations 29 C.F.R. § 825.310. The ESD will maintain records and documents relating to medical certification, recertification or medical histories of employees or employees' family member, created for FMLA purposes, as confidential medical records in separate files from personnel files and in accordance with 29 C.F.R. § 1630.14(c)(1), if the Americans with Disabilities Act applies.

SECTION 1

PART A: Employee information

Complete the employee and covered servicemember information below before giving this form to your family member or his/her medical provider.

ESD name and address

Name of employee requesting leave to care for covered servicemember:

| | | |
|-------|--------|------|
| First | Middle | Last |
|-------|--------|------|

Name of covered servicemember for whom employee is requesting leave to care for:

| | | |
|-------|--------|------|
| First | Middle | Last |
|-------|--------|------|

Relationship of employee to covered servicemember requesting leave to care for:

- Spouse Parent Child Next of kin

PART B: Covered Servicemember Information

1. Is the covered servicemember a current member of the regular Armed Forces, the National Guard or Reserves, or a veteran? Yes No

If a current servicemember, please provide the covered servicemember’s military branch, rank and unit currently assigned to:

If a qualifying veteran, when was the date of discharge?

Is the covered servicemember assigned to a military medical treatment facility as an outpatient or to a unit established for the purpose of providing command and control of members of the Armed Forces receiving medical care as outpatients (such as medical hold or warrior transition unit)?

- Yes No

If yes, provide the name of the medical facility or unit:

2. Is the covered servicemember on the Temporary Disability Retired List (TDRL)?
 Yes No

PART C: Care to be provided to the covered servicemember

Describe the care to be provided to the covered servicemember and an estimate of the leave needed to provide the care: _____

Section 2:

(For completion by a United States Department of Defense (DOD) Health Care Provider or a Health Care Provider who is either: (1) a United States Department of Veterans Affairs (VA) health care provider; (2) a DOD TRICARE network authorized private health care provider; (3) a DOD non-network TRICARE authorized private health care provider; or (4) a health care provider as defined in 29 D.F.R. § 825.125.)

If you are unable to make certain of the military-related determinations contained below in Part B, you are permitted to rely upon determinations from an authorized DOD representative (such as a DOD recovery care coordinator). Please ensure that Section 1 above has been completed before completing this section. Please be sure to sign the form on the last page.

PART A: Health care provider information

Health care provider’s name and business address:

Type of practice/Medical specialty: _____

Please state whether you are either: (1) a DOD health care provider; (2) a VA health care provider; (3) a DOD TRICARE network authorized private health care provider; (4) a DOD non-network TRICARE authorized private care provider; or (5) a health care provider as defined in 29 C.F.R. § 825.125.

Telephone () _____ Fax () _____ Email _____

PART B: Medical status

1. Covered servicemember’s medical condition is classified as (check one of the appropriate boxes):

- (VSI) Very Seriously Ill/Injured – Illness/Injury is of such a severity that life is imminently endangered. Family members are requested at the bedside immediately. (Please note this is an internal DOD casualty assistance designation used by DOD healthcare providers.)
- (SI) Seriously Ill/Injured – Illness/Injury is of such severity that there is cause for immediate concern, but there is no imminent danger to life. Family members are requested at bedside. (Please note this is an internal DOD casualty assistance designation used by DOD healthcare providers.)
- Other Ill/Injured – A serious injury or illness that may render the servicemember medically unfit to perform the duties of the member’s office, grade, rank or rating.
- None of the above. (Note to employee: If this box is checked, you may still be eligible to take leave to care for a covered family member with a “serious health condition”. If such leave is requested, you may be required to complete the form *Certification of Health Care Provider for Family Member’s Serious Health Condition.*)

2. Was the condition for which the covered servicemember is being treated incurred in line of duty on active duty in the Armed Forces? Yes No

If no, did the condition exist before the beginning of active duty and aggravated by service in the line of duty while on active duty? Yes No

3. Appropriate date condition commenced: _____

4. Probable duration of condition and/or need for care: _____

5. Is the covered servicemember undergoing medical treatment, recuperation or therapy?

- Yes No

If yes, please describe medical treatment, recuperation or therapy:

PART C: Covered servicemember’s need for care by family member

1. Will the covered servicemember need care for a single continuous period of time, including any time for treatment and recovery? Yes No

If yes, estimate the beginning and ending dates for this period of time _____

2. Will the covered servicemember require periodic follow-up treatment appointments? Yes No
If yes, estimate the treatment schedule: _____
3. Is there a medical necessity for the servicemember to have periodic care for these follow-up treatment appointments? Yes No
4. Is there a medical necessity for the covered servicemember to have periodic care for other than scheduled follow-up treatment appointments (e.g. episodic flare-ups of medical conditions)?
 Yes No

If yes, estimate the frequency and duration of the periodic care.

Signature of health care provider

Date

**Linn Benton Lincoln
Education Service District**

Code: GCBDA/GDBDA-AR(4)

Reviewed: 8/8/17

FMLA/OFLA Eligibility Notice to Employee

Date _____

TO: _____

(Employee's Name)

FROM: _____

LBL Human Resources Office

SUBJECT: Request for FMLA and/or OFLA Leave

On _____ you notified us of your need to take family/medical leave due to:

1. _____ The birth of your child, or the placement of a child with you for adoption or foster care;
2. _____ A serious health condition that makes you unable to perform the essential functions of your job;
3. _____ A serious health condition of your spouse¹, child² (including the biological, grandchild, adopted or foster child or stepchild of an employee, or a child with whom the employee is or was in a relationship of "in loco parentis"), parent (biological parent of an employee or an individual who stood "in loco parentis" to an employee when the employee was a child), grandparent (OFLA leave only), parent-in-law or parent of employee's registered domestic partner (OFLA leave only), custodial parent, noncustodial parent, adoptive parent, foster parent or stepparent for which you are needed to provide care;
4. _____ An illness or injury to your child which requires home care but is not a serious health condition (OFLA leave only).
5. _____ A qualifying exigency arising from a spouse, child or parent in the Armed Forces on covered active duty, or in the National Guard or Reserves on covered active duty,
6. _____ Your spouse has been notified of an impending call to active duty, has been ordered to active duty, or has been deployed or on leave from deployment.
7. _____ A serious illness or injury, incurred in the line of duty, of a covered servicemember who is your spouse, child, parent or next of kin;
8. _____ For the death of a family member (OFLA only).

¹"Spouse" means individuals in a marriage, including "common law" marriage or same-sex marriage. For OFLA, spouse also includes same-sex individuals with a Certificate of Registered Domestic Partnership.

You notified us that you need this leave beginning on _____ and that you expect leave to continue until on or about _____. The FMLA requires that you notify the ESD as soon as possible if dates of scheduled leave changes are extended, or were initially unknown.

Except as explained below, you have a right under the FMLA and/or OFLA for up to 12 workweeks of unpaid leave in a 12-month period for the reasons listed above.¹ The ESD will use a “rolling” 12-month period measured backward from the date the employee uses any family medical leave. FMLA leave and OFLA leave generally run concurrently. In order to care for an injured servicemember, you are entitled to up to 26 weeks of leave in a single 12-month period.

Also, your health benefits under FMLA must be maintained during any period of unpaid leave under the same conditions as if you continued to work, including you continuing to pay the same portion of the premiums you currently pay. You will be reinstated to the same position or in some cases under state or federal law, to an equivalent position. The ESD is not required to maintain benefits if you only qualify for OFLA leave unless provided otherwise by Board policy or collective bargaining agreement; however, all such benefits will be restored in full upon your return to the ESD.

If you do not return to work following FMLA and/or OFLA leave for a reason other than: (1) the continuation, recurrence or onset of a serious health condition which would entitle you to FMLA and/or OFLA leave; or (2) other circumstances beyond your control, you may be required to reimburse the ESD for health insurance premiums paid on your behalf during your FMLA and/or OFLA leave.

This is to inform you that (*check appropriate boxes, explain where indicated*):

1. You are **eligible** **not eligible** for leave under **FMLA** **OFLA** or **both FMLA and OFLA**.
2. The requested leave **may** be counted against your annual **FMLA leave entitlement** **OFLA leave entitlement** **both FMLA and OFLA leave entitlements**.
3. You **will** **will not** be required to furnish a medical certification of a serious health condition. If required, you must furnish the certification by _____ (must be at least 15 days after notification of this requirement).
4. The ESD **will** require that you substitute accrued paid leave for unpaid FMLA and/or OFLA leave. If paid leave will be used the following conditions will apply: _____

¹Oregon Military Family Leave allows for 14 days of leave per deployment.

- 5a. If you normally pay a portion of the premiums for your health insurance, these payments will continue during the period of FMLA and/or OFLA leave. Arrangements for payment have been discussed with you and it is agreed that you will make premium payments as follows: (*describe detail, e.g., the 10th of each month, or pay periods, etc. that specifically cover the agreement with the employee.*)

- 5b. You have a minimum 30-day Other _____ grace period in which to make premium payments. If payment is not timely made, your group health insurance may be canceled. We will notify you in writing at least 15 days before the date that your health coverage will lapse. At our option, we may also pay your share of the premiums during your FMLA and/or OFLA leave as provided by Board policy and/or collective bargaining agreement, and recover these payments from you upon your return to work. We **will** **will not** pay your share of health insurance premiums while you are on FMLA and/or OFLA leave.
- 5c. The ESD **will** **will not** do the same with other benefits (e.g., life insurance, disability insurance, etc.) while you are on FMLA and/or OFLA leave. If we do pay your premiums for other benefits, when you return from leave you **will** **will not** be expected to reimburse us for the payments made on your behalf.
- 5d. Except as noted above, in the event you do not return to work for the ESD after your FMLA and/or OFLA leave and the ESD has paid your share of benefit premiums, you **will** **will not** be responsible for reimbursing the ESD the amount paid on your behalf, with the exceptions noted in C.R.R. § 104(c)(2)(B) of the FMLA.
6. You **will** be required to present a fitness-for-duty certification prior to being restored to employment following leave for your own serious health condition. If such certification is required but not received, your return to work may be delayed until the certification is provided. Your job description is attached. The fitness-for-duty certification must address your ability to perform the essential functions listed in your job description.
- You **will not** be required to present a fitness-for-duty certification prior to being restored to employment following leave for your own serious health condition.
- 7a. You **are** **are not** a “key employee” as described in C.F.R. § 825.218 of the FMLA regulations. If you are a “key employee,” reinstatement to employment may be denied following FMLA leave on the grounds that such restoration will cause substantial and grievous economic injury to the ESD. (FMLA leave only.)
- 7b. We **have** **have not** determined that restoring you to employment at the conclusion of FMLA leave will cause substantial and grievous economic harm to us. (FMLA leave only.) (*Explain 7(a) and/or 7 (b) below.*)
- _____
- _____
8. While on FMLA and/or OFLA leave, you **will** **will not** be required to furnish us with periodic reports every _____ (*indicate interval of periodic reports, as appropriate for the particular leave situation*) of your status and intent to return to work. If the circumstances of your leave change and you are able to return to work earlier than the date indicated on this form, you **will** **will not** be required to notify us at least two workdays prior to the date you intend to report for work.

9. You **will** **will not** be required to furnish recertification relating to a serious health condition. (FMLA leave only.) *(Explain below, if necessary, including the interval between certifications as prescribed in C.F.R § 825.308 of the FMLA regulations.)*

10. You are notified that all leave taken for the purposes of the death of a family member counts toward the total period of authorized family leave. \

**Linn Benton Lincoln
Education Service District**

Code: **GCBDA/GDBDA-AR(5)**

Revised/Reviewed: 8/8/17

Sample Designation Letter of Notice to Employee - FMLA/OFLA Leave

The following is a sample cover letter to an employee notifying the employee that the employer is treating a request for leave as a request for FMLA and/or OFLA leave (either paid or unpaid) that will reduce the employee's FMLA and/or OFLA leave entitlement. This letter, along with the Designation Notice form GCBDA/GDBDA-AR(6) or the FMLA/OFLA Eligibility Notice form GCBDA/BDBDA-AR(4), should be mailed to the employee within five working days after receiving enough information to determine whether the leave qualifies under FMLA or OFLA.

Dear Employee:

On _____ you advised the ESD that you were requesting a leave that may qualify for protected time under the Family and Medical Leave Act (FMLA) and/or the Oregon Family Leave Act (OFLA). Under our policy, a leave of absence that qualifies for family and medical leave under state or federal law (FMLA), may run concurrently with other types of leave such as sick leave, vacation leave, short-term disability leave, (OFLA) and leave for a workers' compensation injury or illness. A leave of absence that qualifies for family and medical leave under state law (OFLA) may run concurrently with other types of leave such as sick leave, vacation leave, short-term disability leave but cannot run concurrently with a leave for a workers' compensation injury or illness (unless you refuse a light-duty assignment).

We have determined the purpose of your requested leave qualifies as family or medical leave under state and/or federal law. Accordingly, this letter is to notify you that the leave will be counted against your annual family and medical leave entitlement. Also attached is a form titled Designation Notice which contains other information for you regarding federal and state family medical leave rights, including an estimate of time that will count toward your protected time.

If you have any questions regarding your leave, now or at any time during your leave, please contact, [the personnel office] as soon as possible.

Sincerely,

Human Resources

Enclosure (FMLA and/or OFLA Designation Notice form)
CR 4/13/17 | RS

**Linn Benton Lincoln
Education Service District**

Code: **GCBDA/GDBDA-AR(6)**
Revised/Reviewed: 8/8/17

Designation Notice – FMLA/OFLA

Leave covered under the Family and Medical Leave Act (FMLA) and/or Oregon Family Leave Act (OFLA) must be designated as FMLA and/or OFLA-protected and the ESD must inform the employee of the amount of leave that will be counted against the employee’s FMLA and/or OFLA leave entitlement.

In order to determine whether leave is covered under the FMLA and/or OFLA, the ESD may request that the leave be supported by a physician’s certification. If the certification is incomplete or insufficient, the employer must state in writing what additional information is necessary to make the certification complete and sufficient.

Employee: _____

Date: _____

We have reviewed your request for leave under the FMLA and any supporting documentation that you have provided. We received your most recent information on:

Please be advised:

- Your request is approved for FMLA. All leave taken for this reason will be designated as FMLA leave.
- Your request is approved for FMLA and OFLA. This designation of leave will run concurrently.
- Your request is approved for OFLA. All leave taken for this reason will be designated as OFLA leave.

The FMLA requires that you notify us as soon as practicable if dates of scheduled leave change or are extended, or were initially unknown. Based on the information you have provided to date, we are providing the following information about the amount of time that will be counted against your entitlement:

- Provided there is no deviation from your anticipated leave schedule, the following number of hours, days or weeks will be counted against your leave entitlement: _____

- Because the leave you will need will be rescheduled, it is not possible to provide the hours, days or weeks that will be counted against your FMLA and/or OFLA entitlement at this time. You have the right to request this information once in a 30-day period (if leave was taken in the 30 day period).

Please be advised (check if applicable):

- You have requested to use paid leave during your FMLA and/or OFLA leave. Any paid leave taken for this reason will count against your FMLA and/or OFLA leave entitlement.
- We are requiring you to substitute or use paid leave during your FMLA and/or OFLA leave.
- You will be required to present a fitness-for-duty certification to be reinstated to your position. If such certification is not timely received, your return to work may be delayed until certification is provided. The Fitness-for-Duty Certification form is attached, please have your medical provider complete this form prior to the termination of your leave. A list of the essential functions of your position is is not attached. If attached, the fitness-for-duty certifications must address your ability to perform these functions.

- Additional information is needed to determine if your FMLA leave request can be approved.
- The certification you have provided is incomplete and insufficient to determine whether the FMLA and/or OFLA applies to your leave procedures. You must provide the following information no later than _____ (date) (at least 15 calendar days), unless it is not practicable under the particular circumstances despite your diligent good faith efforts, or your leave may be denied. The information needed to make the certification complete and sufficient is¹:

- We are exercising our right to have you obtain a second or third opinion medical certification at our expense, and we will provide further details at a later time.

- Your FMLA leave request is NOT APPROVED
- The FMLA does not apply to your leave request
- You have exhausted your FMLA leave entitlement in the applicable 12-month period. (Note: Federal Military Family Leave is on a separate 12-month period.)
- Your OFLA leave request is NOT APPROVED.
- The OFLA does not apply to your leave request.

- You have exhausted your OFLA leave entitlement in the applicable 12-month period.

¹If you fail to provide a complete and sufficient certification by the due date, we may (a) delay the commencement of your leave: or (b) withdraw any designation of FMLA leave, in which case your leave of absences may be unauthorized and subject to discipline, up to and including termination.