



PROTECTED LEAVE USE POLICY AND PROCEDURES

1. Purpose

This policy and procedure is to ensure the City of Woodburn complies with all federal and state laws regarding protected leave.

2. Scope

All City of Woodburn employees.

3. Policy

It is the policy of the City to comply with all federal and state laws concerning leaves of absence. The City provides protected leave in conformance with: (1) the Federal Family Medical Leave Act (FMLA); (2) Oregon Family Medical Leave Act (OFLA); (3) Oregon Crime Victims Law; (4) Oregon Victims of Certain Crimes Leave Act (OVCCLA); and (5) Oregon Military Family Leave Act (OMFLA).

4. Procedures

A. The Relevant Laws:

- a. FMLA: Family Medical Leave Act (FMLA): A federal law that provides unpaid protected leave (up to 12 weeks or 480 hours) for serious health conditions of employees and their family members, the birth, adoption or foster care placement of a child, and leave time for pregnant employees to seek prenatal and postnatal care. The law also provides protected leave (up to 26 weeks) for employees to care for a family member injured or ill as a result of active duty military service.
- b. Oregon Family Medical Leave Act (OFLA): A state law that provides unpaid protected leave for: serious health conditions of employees and their family members, the birth, adoption or foster care placement of a child,

bereavement leave, and leave time for pregnant employees to seek prenatal and postnatal care. The Oregon law is more comprehensive, allowing more than 12 weeks or 480 hours per year under certain conditions.

- c. Crime Victim Leave: This law provides leave for an employee who is a crime victim who has personally suffered financial, social, psychological, or physical harm as the result of a felony, or who is a member of the immediate family of a crime victim. Leave may be used for attending criminal proceedings related to the circumstances of the crime.
- d. Victims of Certain Crimes Leave Act (OVCCLA): This act is an extension of the OFLA and provides leave for an employee who is the victim of domestic violence, sexual assault, or stalking; or is the parent or guardian of a minor child or dependent who is the victim of domestic violence, sexual assault, or stalking. Leave may be used to seek legal or law enforcement assistance, to seek remedies to ensure health and safety, to seek medical treatment for injuries or to recover from injuries, to obtain counseling, to seek other domestic violence services, to relocate or secure existing housing, or to attend criminal proceedings related to these circumstances.
- e. Oregon Military Family Leave Act (OMFLA): This act is an extension of OFLA and provides up to 14 calendar days of leave per deployment for a spouse or same-sex domestic partner of a member of the Armed Forces of the United States, the National Guard, or the military reserve forces.

B. Eligible Employees:

- a. FMLA: Employees may be eligible for protected leave under FMLA if they have been employed by the City for a total of at least 12 months, which does not need to be consecutive, and have worked at least 1,250 hours during the 12-month period immediately preceding the family medical leave.
- b. OFLA: Full-time or part-time employees who meet the qualifying purposes for leave and the following criteria:
 - i. Have been employed by the City for at least 180 days (26 weeks) or more before the first day of the protected leave; and,
 - ii. Have worked an average of 25 or more hours per week for the City as of the day before the request for leave is made. This average will be calculated over the 180 days preceding the request for leave. However for the purpose of taking leave in the event of the birth or adoption of a child, or the legal placement of a foster child, an employee does not need to meet the hours requirement. For leave related to a spouse being called to active duty, the employee must have worked an average of 20 or more hours per week for the City.

- c. Crime Victim Leave: Employees who meet the 25-hour average of work in the past 180 days standard under OFLA and who meet the definition of a "crime victim."
- d. Victims of Certain Crimes Leave Act: Employees who are victims of or at risk of domestic violence, sexual assault, or stalking are eligible, regardless of how long or how many hours per week they have worked for the City.

C. Qualifying Purposes of Leave:

The City designates leave based on qualifying conditions, regardless of whether the employee has leave accruals to cover the absence or whether the employee requests family medical leave. Request for protected leave will be evaluated by the Human Resources Department on a case by case basis. The most common qualifying purposes for which employees may be entitled to protected leave include:

- a. When the employees' own serious health condition prevents them from performing the essential functions of the job.
- b. The birth or adoption of a child under the age of 18 (including the legal placement of a foster child under the age of 18) within 12 months of the event.
- c. To care for a spouse, parent, or child under the age of 18 who has a serious health condition, or a mentally/physically impaired child aged 18 or over (FMLA); a biological, adopted or foster child, grandparent, grandchild, parent-in-law, same-sex domestic partner, or child or parent of a same-sex domestic partner (OFLA).
- d. To provide home care for a child under the age of 18 with a non-serious health condition, provided another family member is not willing and able to care for the child (Oregon Sick Child Leave).
- e. For the death of a qualifying family member (OFLA). Employee is provided up to two weeks of leave for three death-related purposes: attending the funeral or alternative to a funeral of a family member; making arrangements necessitated by the death of the family member; and/or grieving the death of the family member.
- f. To care for a spouse, parent, child, or next of kin who is a covered service member or veteran. The covered service member or veteran must have a serious injury or illness incurred or aggravated while on active duty (leave must begin within five (5) years of the veteran leaving military service).
- g. For an exigency leave related to a spouse, child, or parent of a covered service member who is on active duty, called to active duty, and during leave from deployment.

- h. To seek legal assistance, medical treatment, counseling, or to relocate or secure an existing residence when the employee is a victim of domestic violence, sexual assault, or stalking; or the parent or guardian of a minor child or dependent who is the victim of domestic violence, sexual assault, or stalking.
- i. To attend a criminal proceeding as a crime victim or family member of a crime victim.

D. Request for Protected Leave:

- a. Anticipated Situations:
 - i. In situations where the need for protected leave is known, employees are expected to give 30 days' advanced notice to take protected leave.
 - ii. If the anticipated leave is known less than 30 days in advance, employees must give notice as soon as practicable.
 - iii. An employee who intends to take leave to attend a criminal proceeding must give reasonable notice to a supervisor of the impending leave once the employee has received official notice of the proceeding.
 - iv. An employee who intends to take domestic violence-related leave must give reasonable notice to a supervisor of the impending leave unless giving advance notice is not feasible.
 - v. An employee who intends to take military-related leave must give notice to a supervisor within five business days of receiving official notice of an impending call or order to active duty, or of a leave from deployment.
 - vi. Upon notice, the City will provide the employee with a Protected Leave Application Form HR-FMLA/02, which must be completed and returned to Human Resources Department as soon as is practicable.
- b. Unanticipated Situations:
 - i. In unanticipated or emergency situations in which there is no opportunity to give notice, employees or their family members must notify their supervisor verbally, preferably within two working days of the emergency situation, or as soon as is practicable.
 - ii. Upon notice, the City will provide the employee with a Protected Leave Application Form HR-FMLA/02, which must be completed and returned to Human Resources Department as soon as is practicable.
 - iii. Notice may be provided by a family member or other individual when an employee is unable to provide notice.

E. Certification:

- a. Certification of the need for family medical leave may be required. If certification is required in the event of an employee health condition or that of a family member, it must be provided by a medical professional on the applicable certification form within 15 days of the request for family medical leave. Failure to provide required medical certification may delay the start of family medical leave or may cause the denial of family medical leave.
- b. The employee may be required to furnish the City with periodic medical reports as frequently as every 30 days. A recertification may be requested in less than 30 days if the circumstances described by the previous certification have changed, if the employee requests an extension of leave, or if the City receives information that causes it to doubt the employee's stated reason for the absence or the continuing validity of the existing medical certification. In all cases, the City may request recertification every six months.
- c. In the event of a request for parental leave to care for a newly adopted child or a newly placed foster child, the employee may be required to provide verification from the agency representative regarding the adoption or placement of the child.
- d. In the event of a request for domestic violence-related leave, the employee may be required to certify that he/she qualifies for leave and that the leave is to be taken for an authorized purpose.
- e. In the event of a request for leave to attend criminal proceedings, the employee may be required to provide copies of the notice of the scheduled proceedings.
- f. In the event of a request for military care giver or exigency leave, the employee may be required to provide travel orders, medical certification, active duty orders, or other appropriate facts related to the particular qualifying exigency for which leave is sought.
- g. In the event of a request for bereavement leave under OFLA, if the employee commences leave without prior notice, oral notice must be given to the City within 24 hours of commencing leave, and a written notice must be given within 3 days of returning to work.

F. Intermittent or Reduced Schedule:

- a. When medically necessary family medical leave is requested to be taken on an intermittent or reduced schedule; details of the proposed schedule must be verified by the certifying medical professional on the applicable certification form.

- b. Employees who have received a designation of intermittent family medical leave must comply with the sick leave notification policy in effect in his or her division or department. Failure to do so may result in disciplinary action.
- c. Intermittent leave or a reduced schedule is allowed upon the adoption of a child, or the placement of a foster child, to accommodate the required legal process leading to the adoption of a child or the placement of a foster child.
- d. Intermittent leave or a reduced schedule for bonding purposes upon the birth or adoption of a child is allowed only with the pre-approval of the Department Director of the employee. Employees must turn in the requested intermittent schedule to Human Resources Department who will obtain the response from the Department Director.

G. Designation of Leave:

- a. When the qualifying purpose of the leave is covered under both FMLA and OFLA, the leave will be designated concurrently toward the time allowed under both laws.
Leaves potentially covered under workers' compensation will be designated under FMLA if the absence is for a qualifying purpose under the applicable laws.

H. Use of Accrued Leave:

- a. While on FMLA/OFLA leave for their own serious health condition, employees will use sick leave first, then vacation, and then must use other forms of leave prior to leave without pay, unless specified otherwise under the applicable collective bargaining agreement.
- b. While on FMLA/OFLA leave for the serious health condition of a family member or for parental leave, employees may choose to use other forms of paid leave prior to using sick leave, unless specified otherwise under the applicable collective bargaining agreement. All leave accruals must be exhausted prior to leave without pay.
- c. While on Domestic Violence Leave, employees may choose to use other forms of paid leave prior to using sick leave. All leave accruals must be exhausted prior to leave without pay.
- d. While on Military Leave, employees may choose to use other forms of paid leave prior to using sick leave. All leave accruals must be exhausted prior to leave without pay.
- e. OFLA Bereavement Leave shall run concurrently with any City paid bereavement leave, unless specified otherwise under the applicable collective bargaining agreement.

I. Other Provisions:

- a. FMLA/OFLA: While the employee is on an absence covered by FMLA/OFLA, the City will continue to pay its share of benefit premiums whether or not the employee is receiving wages while on leave. The employee will be required to pay the employee's regular contribution toward premiums.
- b. Employees returning from family medical leave taken for their own health condition are required to provide a Medical Release to Return to Work Form HR-FMLA/11 prior to or upon return indicating that they are able to return to work and whether they have any restrictions.
- c. Employees returning from family medical leave will be reinstated to the same or an equivalent position with equivalent benefits, pay, and other terms and conditions of employment; unless their former positions have been eliminated for business reasons.
- d. Failure to complete and submit required documentation and/or submitting insufficient or incomplete documentation may result in denial or delay of protected leave designation.

5. **Forms**

HR-FMLA/01 Protected Leave Instructions
HR-FMLA/02 Protected Leave Application
HR-FMLA/03 Protected Leave Release of Health Information
HR-FMLA/04 Protected Leave Health Care Provider Certification –Self
HR-FMLA/05 Protected Leave Health Care Provider Certification – Family Member
HR-FMLA/06 Protected Leave Military Exigency Leave
HR-FMLA/07 Protected Leave Military Caregiver
HR-FMLA/08 Protected Leave Veteran Caregiver
HR-FMLA/09 Protected Leave Notice of Eligibility
HR-FMLA/10 Protected Leave Rights and Responsibilities under FMLA/OFLA
HR-FMLA/11 Release of Return to Work
HR-FMLA/12 Cover Letter to Employee
HR-FMLA/13 Supervisor Notification Memo
HR-FMLA/14 Protected Leave Expiring Notice to Employee
HR-FMLA/15 Protected Leave Return to Duty Supervisor Memo
HR-FMLA/16 Protected Leave FMLA Enrollment Notice for WC Leave

6. **References**

Family Medical Leave Act (FMLA) of 1993 – 29 CFR 825.301
Family Medical Leave Act National Defense Authorization Act of 2010 Amendments
(2010 NDAA)
Oregon Family Leave Act (OFLA) – ORS 659A.150-659A.186
Oregon Military Family Leave Act (OMFLA) – ORS 659A.090-659A.099
Oregon Crime Victims Law – ORS 659A.190-659A.198

7. Review of Policy and Procedures

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

Adopted: February 2017



Scott C. Derickson, City Administrator

2/8/17

Date