



Gresham-Barlow School District
HUMAN RESOURCES DEPARTMENT MEMO

**Family & Medical Leave Act
Oregon Family Leave Act**

Information to Employees of the Gresham-Barlow School District

Definition

• **What is the Family and Medical Leave Act?**

FMLA is a federal law that requires employers with 50 or more employees to grant job protection and up to 12 weeks of unpaid leave per year to employees who are unable to perform their job duties because of:

- Their own serious health condition.
- A child's birth, adoption, or placement for foster care.
- Care for a child (including step-children), parent, or spouse with a serious health condition that requires the employee's participation to provide care during a period of inpatient treatment or when under continuing supervision or treatment by a health care provider. The child must be under the age of 18 years; however, a child of 18 or over who is substantially limited by a physical or mental condition also qualifies.

FMLA has no provision allowing employees time off to care for a parent-in-law or a sick child with an illness that is not a "serious health condition." The district is not required to grant an employee leave for routine medical or dental appointments for themselves or their family members, or because school is not in session, or because the baby-sitter fails to show up. The employer does not have to allow leave if another family member of the employee is available to provide care for the sick child, as long as the other family member is physically present and able to provide care.

FMLA is available in certain circumstances to members of the Armed Forces, including members of the National Guard or Reserves, and to their families. Human Resources can provide guidance in determining eligibility.

- **What is the Oregon Family Leave Act?**

The Oregon Family Leave Act (OFLA) is an Oregon law that sets guidelines for employers and workers in the granting and taking of leave for family and medical reasons. Many components of the Oregon law are enacted on a national level through FMLA. Reasons for leave include those listed under FMLA but also to care for a sick or injured child who requires home care but is not suffering from a serious health condition. The care for a same-sex domestic partner*, grandparent, and grandchild with a serious health condition are also reasons covered under OFLA, but not under FMLA. (*Completion of domestic partner affidavit required)

Who Is Covered?

- **Eligibility for FMLA**

To be eligible, an employee must have worked for the district for at least 12 months prior to the date on which the leave is to commence, and must have worked for at least 1,250 hours in the 12 months immediately prior to the first day on which the leave is to commence.

The 12 months an employee must have been employed need not be consecutive months. If an employee is maintained on the payroll for any part of the week, including periods of paid or unpaid leave (sick leave and vacation), during which other benefits or compensation are provided by the employer, the week counts as a week of employment. For purposes of determining whether employment qualifies as “at least 12 months”, 52 weeks is determined to equal 12 months.

- **Eligibility for OFLA**

To be eligible, an employee must have worked for the district an average of 25 hours per week during the last 180 days immediately prior to the first day on which the leave is to commence. However, an employee requesting leave to care for a newborn or child newly placed through adoption or foster care need only have worked at least 180 days with no associated hour-per-week requirement.

Duration of Leave

- **Maximum Length of Leave**

Eligible employees who qualify for leave are entitled to 12 weeks of FMLA leave in a rolling 12-month period. For intermittent leave, the number of hours equivalent to 12 work weeks is available.

Eligible employees who qualify for leave are entitled to 12 weeks of OFLA leave in a rolling 12-month period. For intermittent leave, the number of hours equivalent to 12 work weeks is available. All time taken under OFLA will run concurrently with time granted under FMLA.

An employee eligible for Military Caregiver Leave is entitled to a total of 26 work weeks of leave to care for a covered service member during a 12 month period. The 12 month period begins when the Military Caregiver Leave begins.

Upon exhaustion of time allowed under FMLA and OFLA, the employee may apply for additional unpaid leave pursuant to the collective bargaining agreement covering their bargaining unit.

- **Intermittent Leave**

Leave for the serious health condition of the employee or their parent, spouse, same-sex domestic partner, child, grandchild, or grandparent may be taken as one continuous absence or an intermittent basis (multiple shorter absences taken for the same condition or situation.)

Leave taken for the care of a newborn, adoption, or foster child placement must be taken as a continuous leave. Leave for these purposes must be taken within 12 months of the birth, adoption, or foster care placement. Intermittent leave is not available for these purposes.

Pay While on Leave

FMLA and OFLA do not directly provide income replacement or paid leave beyond those granted by the district, if any.

In the case of leave taken for care of a newborn, adoption, or foster child placement, the following paid leave will be applied, up to the amount of unused leave available to the employee at the time of leave:

1. Sick Leave
2. Family Illness Leave
3. Personal Leave
4. Vacation (12-month classified, confidential and administrators only)

In the case of leave taken for an employee's own serious health condition, the following paid leave may be applied, up to the amount of unused leave available to the employee at the time of the leave:

1. Sick Leave
2. Personal Leave
3. Exhausted Sick Leave (licensed staff only, subject to eligibility as stated in the collective bargaining agreement)
4. Sick Leave Bank (subject to eligibility and application, as stated in the collective bargaining agreement)
5. Vacation (12-month classified, confidential and administrators only)

In the case of leave taken to care for a qualified family member's serious health condition, or for a sick child*:

1. Family Illness Leave (subject to definition of eligible family members in the collective bargaining agreement)
2. Personal Leave
3. Vacation (12-month classified, confidential and administrators only)
4. Sick Leave (sick leave can only be used if employee is OFLA eligible)

Leave for the serious health condition of qualified family members must meet the definition of a serious health condition as defined by FMLA/OFLA guidelines. The serious health condition must be documented by a healthcare provider.

*Please note that sick child leave is for non-serious or non-chronic health conditions. Medical certification may be required. Sick child leave need not be granted if another family member is available to care for the child.

The district requires that the employee use any applicable and available paid leave while on FMLA or OFLA. The employee will be notified of any paid leave benefits available upon approval of a FMLA and/or OFLA-designated leave.

Special Rules for Licensed Staff

Special rules apply with respect to periods of leave near the completion of the academic term.

- **Leave More than 5 Weeks Prior to End of Term**

If the eligible employee begins leave more than 5 weeks prior to the end of the academic term, the district may require that leave continue until the end of the term if the leave is at least 3 weeks long and the return to employment would occur during the 3-week period before the end of the term.

- **Leave Less than 5 Weeks Prior to End of Term**

If the eligible employee begins leave during the period that commences 5 weeks prior to the end of the academic term, the district may require that leave continue until the end of the term if the leave is greater than 2 weeks and the return to employment would occur during the 2-week period before the end of the term.

Leave Less than 3 Weeks Prior to End of Term

If the eligible employee begins leave during the period that commences 3 weeks prior to the end of the academic term, the district may require that leave continue until the end of the term if the leave is greater than 5 working days.

If a licensed staff member is required by the district to remain on leave to the end of the academic term, only the period of leave the employee requested shall be charged against the OFLA entitlement.

Job Protection

Under Federal and State law, employees on qualified FMLA and/or OFLA leave are afforded job protection. If an employee returns to work on or before exhaustion of the maximum amount of leave, the employee will be returned to his/her same or comparable position consistent with applicable law.

Continuation of Benefits During Leave

- **Continuation of Benefits**

The district is obligated to provide health benefits under the conditions that coverage would have been provided if the employee had been actively at work

provided the leave qualifies under FMLA. (The maximum period of coverage required in a twelve-month period is twelve weeks.) The district's obligation to maintain health benefits under FMLA ceases if and when the employee informs the district of his or her intent not to return from leave (including at the start of leave if the district is so informed before the leave starts), or the employee fails to return from leave, and thereby terminates employment, or the employee exhausts his or her FMLA leave entitlement. An employee who fails to return to work upon expiration of the approved leave will be required to reimburse the district for the cost of providing group health benefits incurred during the leave.

If the employee qualifies for leave under OFLA, but not under FMLA, there is no obligation to the district to continue health benefits except as may be required by a collective bargaining agreement.

The employee is required to pay any share of premiums that they were required to pay prior to the leave. Failure to pay contributions within 30 days of the date they are due may result in discontinuation of benefits. The district 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 group health benefits are to cease.

The employee may choose not to retain employee-paid health coverage during FMLA/OFLA leave. If coverage is dropped the employee will, upon return to work, be entitled to be reinstated on the same terms as prior to taking the leave, without any qualifying period, physical examination, or exclusion of pre-existing conditions.

Definitions

A **“serious health condition”** under **federal law** is defined as an illness, injury, or impairment or physical or mental condition that involves:

1. Any period of incapacity or treatment in connection with or consequent to inpatient care (i.e., an overnight stay) in a hospital, hospice, or residential medical care facility.
2. Any period of incapacity requiring absence from work, school, or other regular daily activities, of more than three calendar days, that also involves continuing treatment by, or under the supervision of, a health care provider, or
3. Continuing treatment by, or under the supervision of, a health care provider for a chronic or long-term health condition that is incurable or so serious that, if not treated, it would likely result in a period of incapacity of more than three calendar days.

4. Illness, disease or condition is terminal, requires constant care, and poses an imminent danger of death; or
5. Disability due to pregnancy, childbirth or prenatal care.

Subject to certain conditions, the continuing treatment requirement may be met by a period of incapacity of more than three consecutive 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.

This definition is meant to include pregnancy and prenatal care; chronic conditions (such as asthma, diabetes and epilepsy) that continue over an extended period of time but may involve periods of incapacity of less than three days and do not involve a visit to a health care provider; long-term conditions for which treatment may not be effective; and treatment involving multiple visits to a health care provider such as dialysis, physical therapy, or chemotherapy, without which the covered employee would likely be incapacitated for more than three days. A "serious health condition" is not intended to cover short-term conditions, such as the common cold, the flu, an upset stomach, etc.

An employee is unable to perform the functions of the position when the health care provider finds that the employee is unable to work at all or is unable to perform any of the essential functions of the employee's position within the meaning of the Americans with Disabilities Act of 1990 and Americans with Disabilities Act Amendments of 2008 and federal regulations.

A "**serious health condition**" under **state law** is defined as an illness, injury, or impairment or physical or mental condition that involves:

1. Requires inpatient care in a hospital, hospice, or residential medical care facility such as a nursing home. When a family member resides in a long-term residential care facility, leave shall apply only to:
 - a. Transition periods spent moving the family member from one home or facility to another, including time to make arrangements for such transitions;
 - b. Transportation or other assistance required for a family member to obtain care from a physician;
 - c. Serious health conditions as described in this regulation below.
2. The treating health care provider judges to pose an imminent danger of death, or that is terminal in prognosis with a reasonable possibility of death in the near future;
3. Requires constant or continuing care such as home care administered by a health care professional;

4. Involves a period of incapacity. Incapacity is the inability to perform at least one essential job function, or to attend school, or perform regular daily activities for more than three calendar days, and any subsequent required treatment or recovery period relating to the same condition. This incapacity must involve:
 - a. Two or more treatments by a health care provider, or
 - b. One treatment plus a regimen of continuing care.
5. Results in a period of incapacity or treatment for a chronic serious health condition that requires periodic visits for treatment by a health care provider, continues for an extended period time, and may cause episodic rather than a continuing period of incapacity such as asthma, diabetes, and epilepsy.
6. Involves permanent or long-term incapacity due to a condition for which treatment may not be effective, such as Alzheimer's disease, a severe stroke, or terminal stages of a disease;
7. Involves multiple treatments for restorative surgery or for a condition such as chemotherapy for cancer, physical therapy for arthritis, or dialysis for kidney disease that if not treated would likely result in incapacity of more than three days; or
8. Involves any period of disability of a female due to pregnancy or childbirth or period of absence for prenatal care.

"Serious injury or illness", for the purpose of caring for a covered service member, means an injury or illness incurred by the member in line of duty on active duty in the Armed Forces that may render the member medically unfit to perform the duties of the member's office, grade, rank, or rating.

"Child", for the purpose of taking parental and sick child leave under federal and state law, means a biological, adopted, foster child, or a stepchild of the employee, for whom the employee has parental rights and duties as defined by law, or a child with whom the employee is or was in a relationship of "in loco parentis." A legal or biological relationship is not required. The child must be under 18 years of age or may be 18 years of age or older if incapable of self-care due to mental or physical impairment.

"Family Member" means the spouse, same-sex domestic partner, custodial parent, non-custodial parent, adoptive or foster parent, biological parent, parent in law, or a person with whom the employee is or was in a relationship of "in loco parentis." It also includes the biological, adopted or foster child, stepchild, grandchild, or grandparent of an employee.

"Child", for the purpose of taking parental and sick child leave under state law, means a biological, adopted, foster or stepchild of the employee, or the child of an employee's same sex domestic partner. The child must be under 18 years of age or

may be 18 years of age or older if incapable of self-care due to mental or physical impairment.

“Parent” means the employee’s biological, foster or adoptive parents, step-parents, and/or legal guardians.

“Family Member” under federal law means the spouse, child or parent. Under state law “family member” means the spouse, same-sex domestic partner, custodial parent, non-custodial parent, adoptive or foster parent, biological parent, parent-in-law, parent of same-sex domestic partner, or a person with whom the employee is or was in a relationship of “in loco parentis.” It also includes the biological, adopted or foster child, or stepchild of an employee or the employee’s same sex domestic partner.

Medical Certification Required

The employee is required to provide to human resources medical verification from a health care provider that the leave is needed due to the employee's own serious health condition or that of a family member.

Prior to returning to work from a continuous leave for the employee’s own serious medical condition or pregnancy, the employee must furnish human resources with a written release from the employee’s health care provider.

The district may, at their expense, require a second medical opinion. If the first and second opinions differ, the district may request a third opinion at their expense. The third opinion is then binding.

Fitness for Duty Certification

If the leave was required for the employee's own serious health condition, including intermittent leave, the district may require the employee to obtain and present a fitness for duty certification from the health care provider that the employee is able to resume work. 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 district is going to require a fitness for duty certification upon return to work, the district must notify the employee of such requirement when the leave is designated as FMLA leave. The district is responsible for any co-pay or other out-of-pocket costs incurred by the employee in providing certification. Failure to provide the fitness for duty certification may result in a delay or denial of reinstatement.

When an Employee Does not Return from Leave

If an employee fails to return from leave, and there is no documentation of the need for extension of leave, the employee may be terminated for abandonment. Prior to that action, the district will send the employee notification of intent to terminate and outline the process for the employee to request an extension of leave.

How To Apply For A Leave

- **Advanced Notice Required**

The employee shall send a written or e-mail notice to Tom Richards, Human Resources Specialist (503-261-4563), a minimum of 30 days in advance of a planned absence. When it is not possible to give 30 days advance notice, notice must be given as soon as it is practical, considering the facts and circumstances surrounding the need for leave. If an employee fails to provide 30 days notice of foreseeable leave, the employer may delay the FMLA leave until 30 days after the notice was received. Leave notice may also be given by completing the “FMLA/OFLA Application Form” found on the Gresham-Barlow web site in the iVisions web portal in the information center under benefits and then under “Parental & Medical Leaves”.

Written notification should include:

1. Reason for leave (surgery, birth of baby, etc)
2. Anticipated date leave is to commence
3. Anticipated date of return to work.

Human resources will respond to the employee with written approval (if eligible) that includes official FMLA/OFLA notification, information regarding salary, benefits, and paid and unpaid leave.

If the employee will require further time off after expiration of the employee’s approved leave, the employee must submit a request for an extension of leave to HR within 2 business days of the date the employee’s circumstances change making it necessary for the employee to take more leave than initially anticipated. The request for extension of leave must be supported by appropriate documentation from the employee’s health care provider.

- **After Leave is Approved**

1. The employee will arrange with his or her building principal and head secretary or district supervisor for substitute coverage or a replacement, if required.

2. The employee will enter his or her absence into SmartFindExpress and on the appropriate monthly exception reports.
3. The employee will provide HR with the appropriate documentation/proof of eligibility at the beginning of the leave and a written health care provider's release to return to work at the end of the leave.

The foregoing information is intended as a summary only. For complete information regarding FMLA and OFLA please refer to the statutes. The Gresham-Barlow School District contact is:

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