



City of Eugene
Family and Medical Leave (FMLA/OFLA)
Frequently Asked Questions (FAQ)

This document is designed to answer questions that are frequently asked of the Employee Resource Center Leaves staff about Family & Medical Leave (FMLA/OFLA). For detailed information on the City's FMLA and OFLA policies and procedures, please refer to the [Family & Medical Leave Guide](#).

If you have a question that is not answered here, please contact the [COE Benefits Leave Team](#) in the Employee Resource Center for assistance.

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ELIGIBILITY

- 1. When determining an employee's eligibility does the City count all hours coded on an employee's timesheet?** No. The eligibility requirements include only hours actually worked for the employer. Paid and unpaid leaves, including time coded to FMLA and/or OFLA, do not count towards an employee's eligibility.
- 2. Does my Family & Medical Leave (FMLA/OFLA) designation for either my own or a family member's on-going serious health condition need to be renewed every year?** Yes. An employee's eligibility determination will be maintained for 12 months; once an employee establishes eligibility for FMLA leave, all absences for the same qualifying reason that occur within 12 months are considered a single leave. If the employee requires additional leave for the same condition it is the employee's responsibility to notify their Supervisor and the Employee Resource Center before the end date of this designation (excluding Parental Leave). At that time, you may be required to fill out an updated Family & Medical Leave Information Form and/or supply a Medical (Re-)Certification.

ENTITLEMENTS UNDER FAMILY & MEDICAL LEAVE (FMLA/OFLA)

- 3. If employers are covered by both FMLA and OFLA, does that mean they are required to give me 24 weeks of leave, instead of 12 weeks, in a year?** Generally, no. However, there are a few situations where an employee may potentially qualify for more. For examples of these exceptions please refer to the How Much FMLA and OFLA Leave Do I Get? Section of the [Family & Medical Leave Guide](#).
- 4. If my spouse also works for the City of Eugene are we both entitled to take time off for a Family & Medical Leave (FMLA/OFLA) qualifying event?** A husband and wife who are eligible for FMLA leave and are employed by the same covered employer may be limited to a combined total of 12 weeks of leave during any 12-month period if the leave is taken for birth of the employee's son or daughter or to care for the child after birth, for placement of a son or daughter with the employee for adoption or foster care or to care for the child after placement, or to care for the employee's parent with a serious health condition.

OFLA states that family members working for the same employer may not take family leave at the same time unless one of the employees is suffering from a serious health condition, you both take OFLA Bereavement Leave for the same family member at the same time, or the employer allows the taking of concurrent leave.
- 5. When my qualifying Family & Medical Leave (FMLA/OFLA) has been completed am I entitled to return to my job?** FMLA states that an employee returning from leave is entitled to his or her former job or an equivalent job. OFLA states that an employee returning from leave is entitled to the former job or to an available equivalent job if the former job has been eliminated. Employers covered under both OFLA and FMLA must therefore allow the employee on leave to return to the former job, if that job still exists.
- 6. How do I know when my employee is out of Family and Medical Leave?** An employee, timekeeper, or supervisor may contact [COE Benefits Leave Team](#) to find out how much time has been coded to Family & Medical Leave (FMLA/OFLA) in the previous 12 months.
- 7. I have a new hire that has been in the hospital for a week with a serious medical condition. Why am I being told by the Employee Resource Center that they do not qualify for FMLA or OFLA?** All employees must meet FMLA and OFLA eligibility requirements in order to qualify for either. In cases of new employees, most times they will have either, 1) not worked for the City long enough to qualify and/or, 2) have not worked enough hours to qualify. For more details on Family & Medical Leave eligibility requirements, please refer to the Am I Eligible for FMLA or OFLA Leave? Section of the [Family & Medical Leave Guide](#).
- 8. I just found out that one of my employees has been coding sick leave for a chronic condition. Can FMLA/OFLA be designated retroactively?** Yes, but only under certain circumstances. Contact [COE Benefits Leave Team](#) as soon as possible with the details.

GENERAL FAMILY & MEDICAL LEAVE INFORMATION

- 9. Where can I access detailed information on the City of Eugene's Family & Medical Leave (FMLA/OFLA) policies and procedures?** You can access these through the [Family and Medical Leave webpage](#) which is accessible 24 hours a day, and is available internally as well as externally.

You can also find information on the City's Family & Medical Leave policies in section 11.1 of the Administrative Policies Manual (APM).

- 10. What notice is required by me, the employee?** An employee must provide the employer at least 30 days advance notice before your Family & Medical Leave is to begin if the need for the leave is foreseeable based on an expected birth, placement for adoption or foster care, planned medical treatment for a serious health condition of the employee or of a family member, or the planned medical treatment for a serious injury or illness of a covered servicemember. If 30 days' notice is not practicable, such as because of a lack of knowledge of approximately when leave will be required to begin, a change in circumstances, or a medical emergency, you must give notice as soon as practicable. If you do not comply with the City's usual notice and procedural requirements, and no unusual circumstances justify the failure to comply, FMLA/OFLA-protected leave may be delayed or denied.
- 11. I have a surgery scheduled that qualifies as a serious health condition under Family & Medical Leave (FMLA/OFLA), but I have plenty of sick time and do not want my leave to be coded as FMLA/OFLA. Should I still notify the Leaves staff of the condition?** Yes! If an employee has an FMLA and/or OFLA qualifying event, then **by law** it has to be designated as such. FMLA and OFLA are statutory rights guaranteed to an employee by statute, enforceable by law, and offenses are legally punishable. Per the Family and Medical Leave Federal regulations, "Employees cannot waive, nor may employers induce employees to waive, their prospective rights under FMLA." Employees are not able to choose whether or not they want to have their Family & Medical Leave (FMLA/OFLA) qualifying event designated; if it qualifies then it must be designated. Per BOLI, an employee trying to waive their rights to Family & Medical Leave (FMLA/OFLA) is like trying to waive their rights to minimum wage; to do so would clearly be against the law. At the same time, employers cannot persuade their employees to waive those rights either or deny them the right to apply. Employers found to be in violation of these laws can be held liable and subject to pay damages.
- 12. Does the City still have to designate my leave as FMLA and/or OFLA, even if I do not request it (either verbally or in writing)?** An employee does not need to specifically assert his or her rights under FMLA/OFLA, or even mention FMLA/OFLA when providing notice. The employee must provide "sufficient information" to make the employer aware of the need for FMLA/OFLA leave and the anticipated timing and duration of the leave.
- 13. If an employee can only work 10 hours a week due to an Family & Medical Leave (FMLA/OFLA) qualifying condition should I submit an EAR form to change their standard hours?** No. Under Family & Medical Leave (FMLA/OFLA) employees are eligible to use their hours in one whole block of time, intermittently, or on a reduced work schedule. The difference between the employee's regularly schedule hours and actual hours worked should be coded to Family & Medical Leave. Once they have exhausted all their Family & Medical Leave entitlements the employee's supervisor should contact the division's PAF Preparer for directions on how to proceed.
- 14. Is the flu considered a "serious health condition" under Family & Medical Leave (OFLA/FMLA)?** The flu should be treated as any other illness. The flu can be a qualifying event if the employee meets the eligibility requirements and the condition falls within the definition of a "serious health condition." For example, inpatient hospitalization or absences due to their illness for more than three consecutive calendar days that involves two or more treatments by a medical provider. For detailed information on FMLA's and OFLA's eligibility requirements and what qualifies as a "serious health condition" please refer to the [Family & Medical Leave Guide](#).
- 15. If I have an employee who meets all the eligibility requirements for Family & Medical Leave stays home to care for a child experiencing flu-like symptoms, may the employee code their time off**

to Family & Medical Leave (FMLA/OFLA)? It depends on the age of the child and whether the child has a “serious health condition.” If the child is 17 years of age or younger (or 18 or older but incapable of self-care) and the employee is taking leave to care for their child suffering from an illness or injury that requires home care but is not a “serious health condition” then their time off should be coded to OFLA (FMLA does not cover non-serious sick child leave). However, if the leave is taken to care for a child (17 years of age or younger, or 18 or older but incapable of self-care) suffering from a “serious health condition” (as defined in [Family & Medical Leave Guide](#)) then the time off should be coded to FMLA (which, in this case, will run concurrently with OFLA).

If you feel you have an employee who potentially qualifies for Family & Medical Leave, please contact the [COE Benefits Leave Team](#) with the details of the employee’s situation and they will advise you how to proceed.

16. If I am eligible for Family & Medical Leave (FMLA/OFLA) and my child’s school is closed for general health reasons, can I code my time off to stay home with my child to Family & Medical Leave (FMLA/OFLA)? You will not be able to code your time off to Family & Medical Leave unless your child suffers from an illness, injury or condition that requires home care.

BENEFITS

17. How will using Family & Medical Leave (FMLA/OFLA) affect my benefits? FMLA and OFLA require that the City maintain the employee’s group health insurance coverage during their FMLA/OFLA entitlement, under the same conditions as if the employee were still working. The City will maintain your group health coverage at the same level as prior to your leave until the end of the month in which you exhaust your FMLA and/or OFLA leave entitlement or until the end of the month in which you exhaust your available paid leave accruals, whichever is later.

If a payroll deduction was required to pay a portion of the health insurance premium, that amount will continue to be deducted. If you exhaust your paid leave accruals resulting in a leave without pay, your portion of the health insurance premium payment will go into arrears and will be deducted out of the first paycheck in which you code paid time.

The City may recover employer-paid medical premiums (for those months you are on leave without pay) if you fail to return from your Family & Medical Leave, EXCEPT if you do not return because of:

- a. The continuation of a serious health condition,
- b. The recurrence or onset of a serious health condition,
- c. Other circumstances beyond your control.

18. Is the City required to compensate me during my Family & Medical Leave? No, there is no requirement that employers pay employees for FMLA and/or OFLA. However, the employee must be allowed to use any existing accrued vacation leave.

19. When out on a Family & Medical Leave do I have to use all my sick leave before I use other leave codes? The City does not dictate in what order an employee must use their paid leaves; the employee can code from any of their accrued leave banks in any order the employee wants unless applicable union contracts state otherwise. However, employees must code all of their paid leave balances to FMLA or OFLA (with the exception of Comp Time) before coding unpaid leave.

The only exception to this policy is if the employee is allowed to code their FMLA/OFLA approved time off to voluntary furlough.

MEDICAL CERTIFICATION

20. Who determines if an employee is required to supply the City of Eugene with a Medical (Re-) Certification for their time off related to Family & Medical Leave (FMLA/OFLA)? While we ask supervisors to provide us with any information that will help us determine if a Medical (Re-) Certification will be requested, the final decision is ultimately the responsibility of the Employee Resource Center. Both FMLA and

OFLA have ***strict rules regulating when and why an employer may request Medical (Re-) Certification*** so leaving the decision in the hands of the ERC staff ensures the City is fully compliant with all applicable laws.

21. I have an employee with a qualifying Family & Medical Leave (FMLA/OFLA) situation that often calls in sick at the start and end of their workweek. Is there anything I can do? Yes. We can request the employee provide us with a Medical Certification completed by their health care provider. The Medical Certification will let us know if the pattern of absence is consistent with the medical condition. It can be also used to give us more information about the condition, including frequency of flare-ups, duration of absences, and the impact it might have on the employee's required job duties.

22. What if my employee refuses to return the Medical (Re-)Certification? Under Federal and State regulations pertaining to Family and Medical Leave, an employee must provide (re-)Certification within the time request by the employer (which must allow at least 15 calendar days after the request) or the employer may deny the taking of or continuation of FMLA and/or OFLA until the employee provides sufficient Certification. If the employee never produces the Certification, then any time off work related to the applicable medical condition will not be coded as FMLA and/or OFLA.

Furthermore, if it is the initial designation and the employee has only been provided a Provisional Notice, pending receipt of the Medical Certification, any time coded to either FMLA or OFLA for the condition in which they refused to return the Medical Certification for will be reversed.

These provisions apply in any case where an employer requests a Certification, whether it is the initial Certification, a Re-certification, a second, or a third opinion.

23. How often can the City request a Medical (Re-)Certification? An employer may request (Re-)Certification not more often than every 30 days and only in connection with an absence by the employee, unless the employee requests an extension of leave, circumstances described by the previous Certification have changed significantly (e.g., the duration or frequency of the absence, the nature or severity of the illness, complications), or the employer receives information that casts doubt upon the employee's stated reason for the absence or the continuing validity of the Certification.

24. Can the City contact their employee's medical provider directly to authenticate or clarify information provided in the Medical (Re-)Certification? Employers may not contact the medical provider directly. However, a health care provider representing the employer may contact the employee's health care provider, ***with the employee's permission***, for purposes of clarification and authenticity of the Medical Certification.

In cases where a Certification is deemed "incomplete" the employer can request the employee gather additional information from their medical provider. A Certification is considered incomplete if the employer receives a Certification, but one or more of the applicable entries have not been completed, or if the (Re-)Certification is complete but the information provided is vague, ambiguous, or non-responsive. The employer must provide the employee with seven calendar days (unless not practicable under the particular circumstances despite the employee's diligent good faith efforts) to cure any such deficiency. If the deficiencies specified by the employer are not cured in the resubmitted Certification, the employer may deny the taking of FMLA/OFLA leave.

WORKER'S COMPENSATION

25. I'm being told to code my time off to Family & Medical Leave, but my absences are due to a Workers' Compensation claim. Will this affect my personal leave balances? Under FMLA, the Federal regulations do not look at whether an illness or injury is work-related or not. So, regardless of the cause, if an employee's illness or injury meets the definition of a serious health condition it will be designated as such. However, OFLA's definition of "family leave" excludes leave taken by an employee who is unable to work because of a "disabling compensable injury", therefore, a leave of absence which qualifies as an accepted disabling workers' compensation claim will **not** run concurrently with OFLA leave.

If your medical provider has authorized you to be off work due to a Workers' Compensation claim which also qualifies as FMLA you will use the code FOJ on your timesheet. Any time coded to FOJ will be paid through your Workers' Compensation claim and will **not** affect personal leave balances.

If you have a disabling compensable injury and refuse an offer of a modified duty assignment, OFLA leave will immediately begin if you meet eligibility and purpose requirements.

MILITARY RELATED LEAVES

- 26. How do I know if I have a “qualifying exigency leave”?** “Qualifying exigency leave” may be taken for any qualifying exigency arising out of the fact that a covered military member is on active duty or call to active duty status. Qualifying exigencies permit eligible employees who are family members of a covered military member to take FMLA leave to address the most common issues that arise when a covered military member is deployed, such as attending military-sponsored functions, making appropriate financial and legal arrangements, and arranging for alternative childcare.
- 27. Who is a “covered military member”?** A covered military member is the employee’s spouse, son, daughter, or parent who is on active duty or call to active duty status.
- 28. What is “active duty or call to active duty status”?** Active duty or call to active duty status refers to a member of the National Guard or Reserves who is under a call or order to active duty (or has been notified of an impending call or order to active duty) during a period of military conflict.
- 29. Can the City require Certification of me for taking qualifying exigency leave?** The first time that an employee requests qualifying exigency leave, an employer may require the employee to provide a copy of the covered military member’s active duty orders or other documentation issued by the military that indicates that the covered military member is on active duty or call to active duty status in support of a contingency operation, and the dates of the covered military member’s active duty service.
- In addition, each time that an employee first requests leave for one of the qualifying exigencies, an employer may require Certification of the exigency necessitating leave.
- 30. What is “military caregiver leave”?** “Military caregiver leave” may be taken by an spouse, son, daughter, parent, or next of kin to care for a covered servicemember with an injury or illness that was incurred in the line of duty on active duty that renders him or her medically unfit to perform the duties of the member’s office, grade, rank, or rating. A “covered servicemember” is a current member of the Armed Forces, including a member of the National Guard or Reserves, who is undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list, for a serious injury or illness incurred in the line of duty on active duty.
- 31. How much leave may I take to care to for a covered servicemember?** An eligible employee is entitled to take up to 26 workweeks of leave during a “single 12-month period” to care for a seriously injured or ill covered servicemember. The “single 12-month period” begins on the first day the eligible employee takes military caregiver leave and ends 12 months after that date, regardless of the method used by the employer to determine the employee’s 12 workweeks of leave entitlement for other FMLA-qualifying reasons.
- 32. What type of notice must I provide to my employer when taking military caregiver FMLA leave because of a qualifying exigency?**
An employee must provide 30 days advance notice of the need to take FMLA leave for planned medical treatment for a serious injury or illness of a covered servicemember. When 30 days advance notice is not possible, the employee must provide notice as soon as practicable taking into account all of the facts and circumstances. When the need for leave is unforeseeable, an employee must comply with an employer’s normal notice or call-in procedures, absent unusual circumstances.
- 33. Are there Certification requirements for taking military caregiver leave?** Yes. When leave is taken to care for a covered servicemember with a serious injury or illness, an employer may require an employee to obtain a Certification completed by an authorized health care provider of the covered servicemember.

34. What is Oregon Military Family leave?

Under OFLA only, during a period of military conflict, an eligible employee who is a spouse or same-sex domestic partner of a member of:

- a) the Armed Forces of the United States,
- b) the National Guard,
- c) or the military reserve forces, who has been notified of:
 - 1. an impending call or order to active duty, or
 - 2. impending leave from deployment

is entitled to a total of 14 days of unpaid leave per deployment before deployment and/or during leave from deployment. Military family leave counts against an employee's general OFLA leave entitlement.