



## **Policy Title: Temporary Expanded Family and Medical Leave (EFMLA) and Expanded Oregon Family Leave Act (EOFLA)**

**Purpose:** To provide employees with protected leave as outlined by the Families First Coronavirus Response Act (FFCRA) expanding the federal Family and Medical Leave Act (FMLA), and by the Oregon Temporary Administrative Order BLI 4-2020 and temporary Oregon Administrative Rule (OAR) 839-09-0230 covering the Oregon Family Leave Act (OFLA).

**Scope:** Applies to all City employees.

**Policy Statement:** To help reduce economic stress and assist employees affected by the COVID-19 outbreak, the City is implementing a temporary policy to provide eligible employees job-protected leave through Expanded Family and Medical Leave under the Families First Coronavirus Response Act (FFCRA), effective 4/1/2020-12/31/2020, and Expanded Oregon Family Leave under Temporary Oregon Administrative Rule 839-09-0230(4)(a), effective 3/18/2020-9/13/2020, unless extended. These laws extend protections only during school and childcare closures due to a public health emergency related to COVID-19, and as such the employee's eligibility for leave may be ended prior to the dates listed above. The employee will be granted leave under the law that provides the greatest benefit to the employee.

**Policy Procedure:** The Employee Resource Center administers protected leaves outlined in this temporary policy.

### **Reason for Leave**

Eligible employees who are unable to work (or telework) due to a need to care for their child when the school or place of care has been closed or the regular childcare provider is unavailable due to a public health emergency with respect to COVID-19 may be eligible for EFMLA/EOFLA. With supervisor approval, leave may be taken intermittently in any agreed upon increment. If the child's school or place of care is re-opened, the employee's eligibility under these policies will end.

"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

(A) under 18 years of age; or

(B) 18 years of age or older and incapable of self-care because of a mental or physical disability.

"Childcare provider" means a provider who receives compensation for providing childcare services on a regular basis, including:

- a center-based childcare provider
- a group home childcare provider

- a family childcare provider (one individual who provides childcare services for fewer than 24 hours per day, as the sole caregiver, and in a private residence)
- other licensed provider of childcare services for compensation
- a childcare provider that is 18 years of age or older who provides childcare services to children who are either the grandchild, great grandchild, sibling (if such provider lives in a separate residence), niece, or nephew of such provider, at the direction of the parent.

“School” means an elementary or secondary school.

### **Duration of Leave**

Employees will have up to 12 weeks of leave to use for the reasons stated above. This time is included in, and not in addition to, the employee’s total FMLA/OFLA leave entitlement.

### **Concurrent Leave**

Leave that qualifies as both FMLA and OFLA will run concurrently. Where the law allows, all approved leaves, whether paid or unpaid, are counted against an employee's annual FMLA and OFLA leave entitlement under this policy and the laws, and FMLA and OFLA leave time taken with pay may run concurrently with the Oregon Sick Time Law.

### **Pay During Leave**

Leave eligible only under the Expanded **Oregon Family Leave Act** (EOFLA) is unpaid. However, employees are required to code all accrued leave, except Comp Time, for OFLA leave taken. Employees may, but are not required to, use accrued compensatory time during FMLA/OFLA leave. LWOP may be taken in accordance with the LWOP policy in the APM.

Leave eligible under the Expanded **Family and Medical Leave Act** (EFMLA) will be unpaid for the first two weeks of eligible leave; however, employees may use any accrued paid vacation, sick or other personal leave during this time. The employee may also elect to use the paid leave provided under the Emergency Paid Sick Leave Act.

After the first two weeks of eligible EFMLA leave is taken, employees are required to code all accrued leave, except Comp Time, for additional EFMLA leave taken. Employees may, but are not required to, use accrued compensatory time during FMLA/OFLA leave. If all accrued leave and Comp Time is exhausted, employees would be eligible to apply for Emergency COVID-19 Leave Donations. Once all accrued and donated leave is exhausted, the remaining eligible EFMLA leave entitlement will be paid at 2/3 of the employee’s regular rate of pay for the number of hours the employee would otherwise be scheduled to work.

For employees with varying hours, one of two methods for computing the number of hours paid will be used:

- The average number of hours that the employee was scheduled per day over the 6-month period ending on the date on which the employee takes leave, including hours for which the employee took leave of any type; or,
- If the employee has worked less than 6 months, the expected number of hours to be scheduled per day at the time of hire.

## **Effect on Benefits**

Health, Life and LTD insurance benefits will be maintained while the employee is on FMLA or OFLA leave under the same conditions as coverage would have been if the employee had been continuously employed during the entire leave period. Any share of health plan premiums that an employee paid prior to going on leave must continue to be paid by the employee during the FMLA or OFLA leave period.

Appropriate leave accruals continue during any portion of the leave which is paid leave.

Participation in the Flexible Spending Accounts (FSA) Program continues as usual during a paid leave. Employees may elect to continue participation in the FSA Program during an unpaid FMLA/OFLA leave by pre-paying or remitting the required contributions or employees may elect to suspend participation during an unpaid FMLA/OFLA leave.

## **Request Procedure**

Employees must provide verbal or written notice to their supervisor as soon as practicable. Written notice and documentation of the need for leave will be required prior to leave being approved.

The employee should work with their supervisor to arrange the leave schedule to minimize disruption in the workplace. All leave requests should be forwarded to the Benefits Leaves Team in the Employee Resource Center.

On a basis that does not discriminate against employees on FMLA/OFLA leave, the City may require an employee to report periodically on the employee's status and intent to return to work.

## **Designating Leave**

It is the employers' duty to designate leave as qualifying for FMLA/OFLA. When supervisors learn of an employee's family or medical qualifying event, they should promptly contact the Benefits Leaves Team in the Employee Resource Center (ERC). The ERC will designate qualifying leave and send the applicable Family and Medical Leave Notice to the employee and a copy to the supervisor.

ERC staff are required to designate the leave within 5 business days from the time the employee gives notice of the need for leave. The leave will begin on the first day an employee has had time away from work due to the qualifying event.

In addition, as required by FMLA and OFLA, employees must still re-qualify for ongoing FMLA and OFLA leave annually.

## **Reinstatement**

Generally, an employee returning from approved family and medical leave will be returned to the position the employee held before the leave began unless the position has been eliminated or the employee would have been displaced had they not taken leave, in which case the employee may be returned to an available equivalent position. An employee on family and medical leave is subject to layoff in the same manner as similarly situated employees not on leave. An employee on family and medical leave has the same rights they would have if no leave had been taken.