

## **FAMILY MEDICAL LEAVE, PARENTAL OR PREGNANCY LEAVE (FMLA)**

The Southwestern Oregon Community College District is a covered employer under the Federal Family Medical Leave Act (FMLA) as well as the Oregon Family Leave Act (OFLA). Please note that an employee may be entitled to more than one type of leave for the same absence. If so, the leaves will run concurrently unless specifically prohibited by law. For information on these leave of absence policies, contact the Human Resources department.

### **FAMILY LEAVE UNDER THE FEDERAL FMLA:**

**Eligibility and Amount of Leave:** To be eligible for FMLA benefits, you must have worked for the College for a total of 12 months or more, and have worked at least 1,250 hours over the previous 12 months. You must also work in a location in which the College employs at least 50 employee within 75 miles. An eligible employee is entitled to a total of 12 workweeks of unpaid leave during each calendar year, for one or more of the following reasons:

1. For the birth or placement of a child for adoption or foster care;
2. To care for an immediate family member (spouse, child or parent), with a serious health condition.
3. To care for a covered service member with a serious injury or illness, if the employee is the spouse, son, daughter, parent or next-of-kin of the service member. [Note: an eligible employee is entitled to a total of 26 workweeks of leave for this purpose during a single 12-month period, measured forward from the first date the employee uses covered service member leave as required by law]; or
4. To take medical leave when the employee is unable to work because of a serious health condition.
5. Because of a qualifying exigency arising out of the fact that the employee's spouse, son, daughter or parent is on active duty (or has been notified of an impending call or order to active duty) in the Armed Forces in support of a contingency operation as required by law.

**Please note:** Spouses employed by the College are jointly entitled to a combined total of 12 workweeks of family leave for the birth or placement of a child for adoption or foster care, and to care for a parent who has a serious health condition. Leave for birth or placement for adoption or foster care must conclude within twelve (12) months of the birth or placement. Also, employees taking leave for a covered service member are entitled to only a combined 26 workweeks of leave during the single 12-month period for covered service-member leave. Likewise, spouses employed by the College, taking leave for a covered service-member are jointly entitled to a combined total of 26 weeks of leave during the single 12 month period in accordance with applicable law.

Under some circumstances, employees may take leave intermittently, which means taking leave in blocks of time or by reducing their normal weekly or daily work schedule. If leave is for a birth or placement for adoption or foster care, use of intermittent leave is subject to the College's approval. However, FMLA leave may be taken intermittently whenever medically necessary to care for a seriously ill family member or covered service member, because the employee is seriously ill and unable to work, and for qualifying exigencies.

A “covered service-member” is a member of the Armed Forces, including the National guard or Reserves, or a qualified veteran of the Armed Forces, National Guard or Reserves during the first five years following discharge from military service, 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.

**Next-of-Kin**: An employee’s Next-of-Kin for military caregiver leave purposes includes the nearest blood relative other than the covered service member’s spouse, parent, son, or daughter in the following priority: Blood relatives who have been granted legal custody of the covered service member by court decree or statutory provisions; Brothers and sisters; Grandparents; Aunts and uncles; and First Cousins. The covered service member may also designate, in writing, another blood relative as their “Next-of-Kin” for FMLA purposes. That designation shall control the determination.

**Qualifying Exigency**: Qualifying Exigencies include:

1. **Short-Notice Deployment**: Up to seven (7) calendar days of leave may be taken to address any issue that arises from the fact that a covered military member is notified of an impending call or order to active duty for a contingency operation seven or fewer calendar days prior to the date of deployment. This leave may be used beginning on the date the military member is notified of the deployment.
2. **Military Events and Related Activities**: Attendance at any official ceremony or program sponsored by the military and related to the active duty of the covered military member, or attendance at family support or other assistance programs and informational briefings sponsored or promoted by the military, military service organizations, or the American Red Cross that are related to the active duty or call to active duty of the covered military member.
3. **Childcare and School Activities**: To arrange for alternative childcare, to provide childcare on an urgent, immediate need basis (not regular, ongoing care), to enroll or transfer to a new school or day care facility, or to attend meetings with staff of a school or day care. In all cases, the need must be caused by the active duty or call to active duty status of a covered military member and covered family member.
4. **Financial and Legal Arrangements**: To make or update financial or legal arrangements to address the covered military members’ absence (such as preparing financial and healthcare powers of attorney, updating wills, etc.); to act as the covered military member’s representative before a federal, state or local agency for obtaining, arranging or appealing military service benefits (while on active duty. or within 90 days following termination of active duty only); and attending counseling (provided by someone other than a healthcare provider for yourself) for the covered military member, of their covered child, if that counseling is needed due to the active duty or call to active duty status.
5. **Rest and Recuperation**: Up to five (5) days of leave may be taken (per instance of rest and recuperation leave) to spend time with a covered military member who is on short-term, temporary, rest and recuperation leave during the period of deployment.
6. **Post-Deployment Activities**: To attend arrival ceremonies, reintegration briefings and events, and any other official ceremony or program sponsored by the military for a period of 90 days following the termination of the covered service member’s active duty status; or

to address issues arising from the death of a covered service member (such as recovering the body, making funeral arrangements, etc).

7. Other activities as agreed to by the College

**Definition of Serious Health Condition:** “Serious health condition” under the federal law means an illness, injury, impairment, or physical or mental condition that involves:

- a. Hospital Care: Inpatient care (i.e., an overnight stay) in a hospital, hospice, or residential medical care facility, including any period of incapacity or subsequent treatment in connection with or consequent to such inpatient care.
- b. Absence Plus Treatment: A period of incapacity of more than three consecutive calendar days (including any subsequent treatment or period of incapacity relating to the same condition), that also involves:
  - Treatment two or more times by a healthcare provider, by a nurse or physician’s assistant under direct supervision of a healthcare provider, or by a provider of healthcare services (e.g., physical therapist) under orders of, or on referral by, a healthcare provider; or
  - Treatment by a healthcare provider on at least one occasion which results in a regimen of continuing treatment under the supervision of the health care provider.
- c. Pregnancy: Any period of incapacity due to pregnancy, or for prenatal care.
- d. Chronic Conditions Requiring Treatments: A chronic condition which:
  - Requires periodic visits for treatment by a healthcare provider, or by a nurse or physician's assistant under direct supervision of a healthcare provider;
  - Continues over an extended period of time (including recurring episodes of a single underlying condition); and
  - May cause episodic rather than a continuing period of incapacity (e.g., asthma, diabetes, epilepsy, etc.).
- e. Permanent/Long-term Conditions Requiring Supervision: A period of incapacity which is permanent or long-term due to a condition for which treatment may not be effective. The employee or family member must be under the continuing supervision of, but need not be receiving active treatment by, a health care provider. Examples include Alzheimer’s, a severe stroke, or the terminal stages of a disease.
- f. Multiple Treatments (Non-Chronic Conditions): Any period of absence to receive multiple treatments (including any period of recovery therefrom) by a health care provider or by a provider of health care services under orders of, or on referral by, a health care provider, either for restorative surgery after an accident or other injury, or for a condition that would likely result in a period of incapacity of more than three consecutive calendar days in the absence of medical intervention or treatment, such as cancer (chemotherapy, radiation, etc.), severe arthritis (physical therapy), kidney disease (dialysis).

"Incapacity" means the inability to work, attend school or perform other regular daily activities due to the serious health condition, treatment therefore, or recovery therefrom.

"Treatment" includes examinations to determine if a serious health condition exists and evaluations of the condition. Treatment does not include routine physical examinations, eye examinations, or dental examinations.

A regimen of "continuing treatment" includes, for example, a course of prescription medication (e.g., an antibiotic) or therapy requiring special equipment to resolve or alleviate the health condition. A regimen of treatment does not include the taking of over-the-counter medications such as aspirin, antihistamines, or salves; or bed-rest, drinking fluids, exercise, and other similar activities that can be initiated without a visit to a health care provider.

**Wages and Benefits During FMLA Leave:** FMLA leave is without payment of wages unless you have accrued paid leave benefits available. Additionally, in accordance with the College's leave of absence policies or an applicable collective bargaining agreement, you will be required to use accrued paid leave benefits before taking FMLA leave as unpaid. Employees who are absent due to on-the-job serious health conditions are eligible for workers' compensation benefits.

The College will maintain group health insurance coverage for an employee on FMLA leave whenever such insurance was provided before the leave was taken and on the same terms as if the employee had continued to work. In some instances, the College may recover premiums they paid to maintain health coverage for an employee who fails to return to work from FMLA leave.

**Reinstatement:** In order to have reinstatement rights when you are returning from family leave you must request reinstatement promptly upon the expiration of leave. If you make a timely request for reinstatement and comply with other requirements under the federal regulations, you will be reinstated to your former position in accordance with applicable law. If you cannot be reinstated to your former position because that position no longer exists, you will be reinstated to an available, equivalent position in accordance with applicable law. The use of FMLA leave will not result in the loss of any employment benefit that the employee earned or was entitled to before using FMLA leave that was not used during leave.

**Other Requirements:** If you use FMLA leave, you will be required to provide the following:

- Thirty (30) days advance notice of the need to take FMLA leave when the need is foreseeable. When 30 days notice is not possible, you must provide notice as soon as practicable. You must also generally comply with the College's normal attendance call-in procedures;
- Employees needing FMLA leave must provide sufficient information for the College 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 the job functions, that 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 must also notify the College if the requested leave is for a reason for which FMLA leave was previously taken or certified.
- Medical verification of the need for leave due to a serious health condition affecting the employee or an immediate family member;
- Medical verification of the need for leave due to the serious injury or illness of a spouse, son, daughter, parent, or next of kin who is a covered service-member;
- Certification of the need for qualifying exigency leaves;

- Second or third medical opinions (at the College 's expense), and periodic recertifications and fitness for duty reports;
- Weekly reports during FMLA leave regarding your status and intent to return to work; and
- Fitness for duty certification upon return to work.

All employees who are either fully or partially released to return to work must report to the College upon receipt of the release. When leave is needed to care for an immediate family member or the employee's own illness and is for planned medical treatment, the employee must try to schedule treatment so as not to unduly disrupt the College's operation.

When an employee gives notice of the need for an FMLA qualifying leave, the College will notify you whether you are eligible under FMLA and will give you additional, specific information on your rights and responsibilities. If you are not eligible, you will be given a reason for why you have been determined to be ineligible.

Employees who believe their FMLA rights have been violated are encouraged to contact the Human Resources Department or the Vice President of Administration to discuss their concerns. In addition, you may contact the US Department of Labor or bring a private action. Also, employees should note that the FMLA does not affect any Federal or State 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 more information on these leave of absence policies, contact the Human Resources department. In all circumstances, the College's policy will be interpreted and applied in accordance with applicable state and federal regulations.

### **FAMILY LEAVE UNDER OFLA**

If you are an employee who has been employed at least one hundred eighty (180) days immediately preceding the date your family leave would begin and you have worked an average of twenty-five (25) hours per week during that time, you are eligible for Oregon family leave of up to twelve (12) weeks during each calendar year, in accordance with applicable law. (Please note that employees are not required to work the 25-hour minimum average in order to qualify to use family leave for parental leave).

Like federal law, OFLA provides family leave for their own serious health conditions, a family member's serious health conditions, and to bond with a newborn, newly adopted, newly placed minor or adult disabled child, etc. In addition, OFLA provides eligible employees with family leave to care for grandparents, grandchildren, parents-in-law, step-children, same-sex domestic partners and their parents or children. OFLA also allows eligible employees to take family leave to care for the non-serious illnesses of their children and to take extra family leave during pregnancy/childbirth as well as to spend time with a spouse who is a member of the Armed Forces of the United States, the National Guard or the military reserve forces of the United States, and has been notified of an impending call or order to active duty or who has been deployed. Additionally, OFLA provides that eligible employees must be allowed to use any accrued and unused paid leave benefits (including

sick, vacation, etc.) for any OFLA qualifying purpose. As noted above, employees consistent with any applicable collective bargaining agreement, employees will generally be required to use any earned paid leave benefits before unpaid family leave will be granted.

Benefits available under OFLA and FMLA are very similar and you may be eligible for leave under one or both of these laws. Please note that an employee may be entitled to more than one leave for the same absence. If so, the leaves will run concurrently. However, OFLA leave will not run concurrently with workers' compensation leave.

More detailed information about benefits available under OFLA is available from the Human Resources department.