

What is continuing treatment?

Continuing treatment is treatment for a condition that lasts more than three days. Treatment for your condition must also require two trips to the doctor (the first within seven days of the start of your incapacity, the second within 30 days) **or** one trip which results in a course of treatment such as therapy with special equipment.

Continuing treatment also includes:

- Any incapacity due to pregnancy
- Incapacity due to a permanent or long-term condition for which treatment may not be effective - for example, Alzheimer's, a stroke or the terminal stages of a disease
- Any absences needed for multiple treatments - for example, dialysis, chemotherapy or physical therapy

If FMLA leave is for a chronic serious health condition, you need to visit a health care provider at least twice a year.

Who is eligible to take FMLA leave?

Under federal law, you must have been employed by a company with at least 50 employees (within 75 miles) for the past 12 months and have worked at least 1,250 hours during that time.

The 12 months do not have to be continuous or consecutive - all time worked for your employer is counted so long as any break in your employment does not exceed seven years. The 1,250 hours include only those hours actually worked. Paid, unpaid, and FMLA leave are not included.

This means you need to have worked one of the following within the past 12 months in order to be eligible for FMLA leave:

- 24 hours/week
- Over 104 hours/month
- 40 hours/week for more than 31 weeks

What is the Oregon Family Leave Act (OFLA)?

OFLA is a state law that requires that your employer provide you with job-protected leave to care for yourself or your family members in case of illness, injury, childbirth and adoption.

And, a woman using pregnancy disability leave is entitled to 12 additional weeks of leave in the same leave year for any qualifying OFLA purpose.

Your rights under OFLA are essentially the same as under FMLA.

What is a serious health condition according to OFLA?

OFLA has a more restrictive definition of a serious health condition than does FMLA. To take leave, the illness must involve inpatient care in a hospital, hospice or residential medical care facility **or** a condition that poses an imminent danger of death, is terminal in the near future or requires constant care.

However, that language has been interpreted by Oregon's courts and Bureau of Labor & Industries (BOLI) as being consistent with the broader federal law. This means that if you have a condition that requires continuing treatment, you are covered under OFLA.

Who is eligible to take OFLA leave?

You must have been employed by a company with at least 25 Oregon employees for at least 180 days (and have averaged 25 hours/week) prior to the time you take leave.

Who is considered an immediate family member?

Your spouse, children, and parents are immediate family members under FMLA. Children age 18 or over who are incapable of self-care because of a mental or physical disability that limits one or more major life activities are also included.

This does not include a parent-in-law under FMLA.

Under OFLA, an adoptive or foster parent or child, grandparent or grandchild, and parent-in law are also included.

Do I have to take all my leave at once?

No. You can take leave on an as-needed basis. This means you can take leave in blocks of time, or by reducing your normal work schedule, for up to 12 weeks of leave per year.

You may take intermittent FMLA leave for childbirth and care or for a child's adoption or foster care.

FMLA leave may also be taken intermittently whenever medically necessary to care for a seriously ill family member, or because you periodically have your medical condition flare up, or need a few hours off every few weeks to manage your condition.

What kind of notice do I need to give my employer?

If your need for leave is foreseeable (childbirth or scheduled surgery), you need to give your employer 30 days notice and an explanation as to why you need the leave.

Otherwise, you must let your employer know as soon as you can - if possible, in accordance with your employer's policies for notice of any absence. Notice can be over the phone or in writing, and may be given by you or someone on your behalf.

It is recommended that all communications concerning FMLA leave be confirmed in writing.

Your employer may require verification, or medical certification, supporting your need for leave, and that you get a second medical opinion at their expense. The health care provider selected by your employer must not work for your employer or have a contract with your employer to provide medical services (unless there are two or less health care providers in the vicinity to provide the type of medical services for the health care provider).

Within five days of your providing information, your employer must notify you whether it deems your leave to qualify.

Your employer may also request periodic reports during your FMLA leave regarding your status and intent to return to work, and a fitness for duty certification before you return to work.

Do I have to give my employer my medical records for leave due to a serious health condition?

No. You do not have to provide medical records. Your employer may only request that you provide medical certification confirming that any leave you take is due to a serious health condition.

It is a good idea to personally make sure all the required documentation from your doctor is provided to the proper person where you work, generally to someone in Human Resources.

How can I be sure that my medical information remains confidential?

Your employer must keep all medical information in a single confidential medical file, separate from the usual personnel file.

The file may contain both FMLA and Americans with Disabilities Act (ADA) medical information if your employer follows the ADA confidentiality standards.

Employers may not give supervisors and managers unlimited access to employee medical files, but may give supervisors and managers information concerning necessary restrictions and accommodations.

What happens to my job?

When you return from FMLA or OFLA leave at or before the time your leave ends, you must be restored to your original job, or to an equivalent job with equivalent pay, benefits, and other terms and conditions of employment.

Under limited circumstances where returning to work when someone else has been doing the job will cause substantial and economic injury to its operations, an employer may refuse to reinstate highly paid “key” employees after using FMLA leave during which health coverage was maintained.

A key employee is a salaried eligible employee who is among the highest paid 10% of employees within 75 miles.

May my employer offer an accommodation that will enable me to continue working as an alternative to taking leave?

Yes. Your employer may offer you a reasonable accommodation under the ADA instead of the leave you requested under FMLA, **as long as the accommodation is effective.** Examples of effective accommodations include:

- An assistive device
- An opportunity to work reduced hours in your current job
- A temporary assignment to another job

You have the right to take leave for up to 12 weeks in 12 months if you are eligible for FMLA leave and have a serious health condition that prevents you from performing an essential job function, even if you could continue working with an effective reasonable accommodation. **FMLA does not prevent you from accepting an alternative to leave, but your acceptance must be voluntary and uncoerced.**

What happens to my benefits while I am on leave?

Under federal law, your employer is required to continue providing the same group benefits that were provided to you at the time you took FMLA leave. If you are only covered under OFLA, your employer need not provide continuing coverage.

What if my company already provides me with paid sick leave?

Family and medical leave is unpaid leave. If your employer offers sick leave, personal leave, or vacation, your employer may require that you take that first, and you would be paid for that time off under company policies. However, the total leave you take may not exceed 12 weeks in any given year unless your employer chooses to allow you more time off, which is not required by law.

What are my rights under federal law regarding military leave?

In 2008, FMLA was amended to include two categories of leave for employees with family members serving in the military: military caregiver leave and qualifying exigency leave.

What is military caregiver leave?

Military caregiver leave provides an eligible employee up to 26 weeks of leave in one 12-month period to care for a covered servicemember with a serious injury or illness.

Eligible employees must be the spouse, child, parent or next of kin of the servicemember.

If all 26 weeks are not used, the remaining leave may be used for other FMLA purposes.

What is a covered servicemember?

A covered servicemember is a current member of the Armed Forces, National Guard or Reserves who is undergoing medical treatments for a serious injury or illness suffered in the line of duty.

What is qualifying exigency leave?

Qualifying exigency leave provides an eligible employee with up to 12 weeks of unpaid leave for qualifying exigencies that are caused when a covered military member is called to active duty status in the National Guard or Reserves in support of a contingency operation. **See p. 8, What are the qualified exigencies?**

What is a covered military member?

Only a member of the National Guard or Reserves is considered a covered military member.

Eligible employees must be the spouse, child or parent of a covered military member.

Family members of servicemembers in the regular Armed Forces are not eligible for qualifying exigency leave.

What are the qualified exigencies?

There are eight qualified exigencies:

1. Short-notice deployment (seven days notice or less) for up to seven days of leave
2. Military events & related activities
3. Leave to arrange alternate childcare, to provide childcare on an urgent basis, or to enroll in or transfer to a new school or childcare when necessary
4. Leave to make financial & legal arrangements to address a covered military member's absence
5. Counseling as a result of active duty or call to active duty other than that provided by a health care provider
6. Up to five days to spend time with a covered military member on short-term rest & recuperation during a deployment
7. Post-deployment activities held during a 90-day period following the end of active duty, including leave to address issues arising from a covered military member's death
8. Additional activities on which the employer & employee agree

What is the Oregon Military Family Act (OMFA)?

OMFA requires employers to provide up to 14 days of unpaid leave per deployment before deployment and/or during leave from deployment to employees who are spouses of members of the Armed Forces, National Guard or Reserves that are on active duty.

Military family leave counts against an employee's general OFLA leave.

See p. 3, What is the Oregon Family Leave Act (OFLA)?

How do I enforce my rights & file a complaint under FMLA?

An administrative complaint may be filed by you or any other person on your behalf, either in person, by letter or by telephone. However, the complaint must be formalized in writing.

Generally, a complaint must be filed within two years of the date of the last action which you contend was in violation of your FMLA rights. The FMLA website is:

www.dol.gov/esa/whd/fmla

Complaints may be filed with the Wage & Hour Division office of the U. S. Department of Labor. Call 1-866-4USWAGE (1-866-487-9243) to locate your local Wage & Hour office. A customer service representative will provide you with information from 8am -5pm in your time zone. Or, visit:

www.wagehour.dol.gov

The U.S. Department of Labor will review the merits of your complaint and, where appropriate, will try to resolve your complaint administratively, through negotiations with your employer. When your complaint is resolved administratively, actions are limited to a two-year period and interest and liquidated damages are not recovered. In some cases, the Secretary of Labor may file a lawsuit on your behalf in the event negotiations with your employer are unsuccessful and the Secretary is convinced that your FMLA rights were violated.

How do I enforce my rights & file a complaint under OFLA?

You may file an administrative complaint with Oregon's Bureau of Labor & Industries (BOLI). The process is similar to that under FMLA. BOLI's website is:

www.boli.state.or.us

However, a complaint must be filed with BOLI within one year after the date of the last action which you contend was in violation of your OFLA rights.

How do I file a lawsuit under FMLA or OFLA?

You can file a lawsuit in federal or state court without going through the administrative complaint process.

A lawsuit in federal court to enforce your FMLA rights must usually be brought within two years of the date of the last action which you contend violated your FMLA rights.

A lawsuit to enforce OFLA must be brought in state court within one year of the date of the last action which you contend violated your OFLA rights.

What kind of remedies can I receive if my employer is found to be in violation of FMLA?

Remedies available to you in the event your employer is found to have violated FMLA may include:

- Wages
- Employment
- Promotion
- Liquidated damages (an amount equal to your lost wages)
- Other compensation denied or lost to you
- Reasonable expert witness fees
- Benefits
- Reinstatement
- Interest
- Cost of providing care (limited to 12 weeks of your wages)
- Reasonable attorney's fees
- Other costs of action

The usual recovery period is two years. If the discriminatory conduct is found to be wilful, then the court will go back three years from the date of filing.

What kind of remedies can I receive if my employer is found to be in violation of OFLA?

A court may order injunctive relief and appropriate equitable relief, including rehiring with or without back pay. Back pay may only be awarded for the two-year period prior to the filing of the action. The court may also award prevailing party costs and reasonable attorney's fees. In addition, the court may order compensatory damages or \$200, whichever is greater, and punitive damages.

However, some remedies are not available under OFLA. Benefits, such as health insurance, are not required to continue to accrue during your leave, so you are not eligible to receive them as part of damages. Nor is an award of liquidated damages available.

Major funding for the PABSS Program at Disability Rights Oregon (DRO) is provided by the Social Security Administration (SSA). SSA has reviewed this publication for technical accuracy only; this should not be considered an official SSA document. Alternate formats available upon request. **Disability Rights Oregon is the Protection & Advocacy System for Oregon.**

DISABILITY RIGHTS OREGON

Voice: 503.243.2081 or 800.452.1694

Fax: 503.243.1738

E-mail: welcome@droregon.org

Website: www.droregon.org