

Metro | *Policies and procedures*

Subject Family and Medical Leave
Section Human Resources
Approved by Martha Bennett, Chief Operating Officer; MERC Commission

POLICY

It is the policy of Metro to grant Family and Medical Leave to eligible employees in accordance with federal and state law. Family and Medical Leave is intended to ensure that eligible employees have the opportunity to take protected leave to care for oneself or a family member with a serious illness or injury, to care for a sick child, and/or to care for a newborn child, newly adopted child, or newly placed foster child in the employee's home. In addition, the Family and Medical Leave Act provides protected leave for eligible employees to care for family members who are covered military service members or veterans recovering from a serious illness or injury sustained in the line of duty and to handle exigencies related to active duty. The Oregon Family Leave Act also provides protected bereavement leave to grieve the death of an immediate family member. Employees may also be entitled to protected leave for additional purposes under other federal and state laws and Metro policies. Lastly, represented employees may have greater leave rights under their applicable collective bargaining agreement with Metro.

Applicable to

All employees.

Where provisions of an applicable collective bargaining agreement directly conflict with this policy, the provisions of that agreement will prevail.

Types of Leave Covered By This Policy

Serious Health Condition Leave: An eligible employee may take leave on a continuous or intermittent basis for his or her own serious health condition or to care for an immediate family member with a serious health condition.

Parental Leave: An eligible employee may take leave to care for a newborn, newly adopted or newly placed foster child. Parental Leave may be taken any time within 12 months of the birth, adoption, or placement of the child. Parental Leave may also be used to complete legal procedures prior to the adoption.

Sick Child Leave: An eligible employee may take leave to care for their child due to a non-serious health condition requiring home care. Non-serious health conditions include a cold, the flu, or a condition not requiring hospitalization. Metro may request a doctor's note after the fourth occurrence of such leave.

Military Family Leave:

Caregiver Leave. Leave to care for a military service member or veteran 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 illness or injury incurred or aggravated in the line of covered active duty. For purposes of caregiver leave, an eligible employee is the spouse, son, daughter, parent or “next of kin” of the military service member. Eligible employees may take up to 26 weeks of leave during a single rolling consecutive 12-month period for this reason. Leave to care for a military service member, when combined with all other Family and Medical Leave, may not exceed 26 weeks in a single 12-month period.

Qualifying Exigency Leave. Leave allows eligible employees to take up to 14 days to handle exigencies related to a family member’s active duty military service or call to active duty. Qualifying exigency leave is specifically intended to cover events other than medical needs, including making financial, legal or childcare arrangements or to facilitate rest and recuperation. Eligible employees may also take leave to care for a military member’s parent who is incapable of self-care when the care is necessitated by the member’s covered active duty. For purposes of exigency leave, an eligible employee is a spouse, son, daughter, or parent of a military service member on active duty (or notified of an impending call or order to active duty) in support of a contingency operation. Metro and the employee must agree to both the timing and duration of any such leave. This leave will be counted against the employee’s 12-week FMLA leave entitlement.

Note: Military service members, veterans, and their families have additional employment rights, including protected leave rights, under other laws and Metro policies. Please contact the Human Resources Department if you have any questions related to military service, military leave, or veteran status.

Bereavement Leave: Leave taken by an eligible employee to grieve the death of an immediate family member; to make necessary arrangements related to the death; and/or to attend the funeral or alternative ceremony. An eligible employee is entitled to take up to two weeks of unpaid leave per death, up to a maximum of 12 weeks per leave year. OFLA bereavement leave must be completed within 60 days after the date on which the employee receives notice of the death. The leave will be counted against the employee’s 12-week OFLA leave entitlement. OFLA bereavement leave does not alter or expand any paid funeral or bereavement leave that may be available under Metro policies or collective bargaining agreements and runs concurrently with any paid leave.

Definitions

Family and Medical Leave: Leave rights are governed by both the federal Family and Medical Leave Act (FMLA) and the Oregon Family Leave Act (OFLA). Family and Medical Leave is protected leave that allows a covered employee extended time off work on a continuous or intermittent basis under the following circumstances:

- a. to receive treatment or recover from a serious health condition as defined under applicable law;
- b. to respond to a serious health condition of an immediate family member;
- c. for the birth of a child, or placement with the employee of a child under the age of 18 (or older if the child is mentally or physically disabled) for adoption or foster care;

- d. to care for a sick child;
- e. to care for a spouse, son, daughter, parent, or next of kin who is a covered military service member recovering from a serious illness or injury sustained in the line of duty;
- f. to handle qualifying exigencies arising from the fact that the employee's spouse, son, daughter or parent is a covered service member who is on active military duty, or who has been notified of an impending call to active duty status; or
- g. to grieve, attend the funeral, and/or make necessary arrangements related to the death of an immediate family member.

Eligible employees have reinstatement and/or reemployment rights after using Family and Medical Leave. An employee's benefits remain in place while he or she is off work on approved Family and Medical Leave. Family and Medical Leave must be paid from accrued leave time. Once paid leave accrual is exhausted, approved Family and Medical Leave shall be unpaid.

Eligible Employee: Specific eligibility requirements apply under state and federal law. Metro's Human Resources Department will review all leave applications and determine eligibility consistent with state and federal law.

- a. To qualify for FMLA, an employee must have been employed by Metro for a total of at least 12 months (if months are non-consecutive, there can be no more than a seven year break in service), and must have worked at least 1250 hours during the 12-month period immediately preceding the leave.
 - i. Periods of absence due to service covered by the Uniformed Services Employment and Reemployment Rights Act are counted in determining an employee's eligibility for FMLA leave.
- b. To qualify for OFLA, employees must have been employed by Metro for a period of 180 calendar days immediately preceding the date leave begins, and must have worked an average of 25 hours per week during the preceding 180-day period. If the leave is to care for a newborn child or newly placed adopted or foster child, case employees must meet the 180-day requirement only.

Health Care Provider: A person who is primarily responsible for providing health care to an eligible employee or family member; who is a licensed physician, podiatrist, dentist, psychologist, optometrist, naturopath, registered nurse, nurse practitioner, direct entry midwife, certified nurse midwife nurse practitioner, regulated social worker, or chiropractic physician (only to the extent that treatment consists of manual manipulation of the spine to correct a subluxation demonstrated to exist by x-ray); and who is performing within the scope of his or her license. A person who is primarily responsible for treatment solely through spiritual means, such as a Christian Science practitioner, may also be considered a health care provider.

Immediate Family Member: Immediate family members include the employee's spouse, child (biological, adopted, foster step, or for whom the employee stands *in loco parentis*), parent (or individual standing *in loco parentis* of the employee); parent-in-law, grandparent, grandchild, domestic partner, and child or parent of a domestic partner.

Rolling Consecutive Twelve Month Period: Each 12-month period begins on the date of the first day leave is actually taken. Leave taken for any qualifying reason during that 12-month

leave year will be deducted from the 12-week leave allowance. Once the period has expired, the 12-month period recommences with the first day of the next Family and Medical Leave taken.

Serious Health Condition: An illness, injury, impairment, or physical or mental condition that involves one of the following:

- a. Hospital Care/Inpatient Care. Hospital Care/Inpatient Care is 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:
 - i. Treatment two or more times within 30 days of the first day of incapacity, unless extenuating circumstances exist, by a health care provider, by a nurse or physician's assistant under direct supervision of a health care provider, or by a provider of health care services (e.g. a physical therapist) under orders of, or on referral by, a health care provider; or
 - ii. Treatment by a health care provider on at least one occasion which results in a regimen of continuing treatment under the supervision of the health care provider.
- c. Pregnancy Disability or Prenatal Care. Any period of incapacity due to pregnancy or leave for prenatal care.
- d. Chronic Conditions Requiring Treatments. A chronic condition which:
 - i. Requires periodic visits for treatment by a health care provider, or by a nurse or physician's assistant under direct supervision of a health care provider;
 - ii. Continues over an extended period of time; and
 - iii. 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 permanent and long-term incapacity 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 associated period of recovery) 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), and kidney disease (dialysis).

Procedures

1. Generally, eligible employees may take a maximum of 12 weeks of Family and Medical Leave within a rolling forward, consecutive 12-month period. Each 12-month period begins on the first day of actual leave taken. Leave may be taken continuously, intermittently, or, under certain circumstances, on a reduced workweek schedule. Except for limited circumstances, Federal Family and Medical Leave typically runs concurrently with other leaves, including time loss for Workers' Compensation. Oregon

Family and Medical Leave typically runs concurrently with other leaves except Workers' Compensation leave.

2. Eligible employees who work less than 40 hours per week will have a pro-rated number of hours available based on the average hours worked over the previous 12 months.
3. Employees initially request leave through Metro's electronic timekeeping system. Employees without electronic access may request leave using a **Leave Request Form**, available from the Human Resources Department. This requires approval by the immediate supervisor. The approved leave request is then forwarded to Human Resources to determine if the employee is eligible under FMLA/OFLA. When the need for Family and Medical Leave can be anticipated, the employee should submit a leave request to his or her supervisor at least 30 days prior to the commencement of the leave. If leave is unexpected, notice should be provided as soon as possible.
4. Notification of eligibility will occur within 5 days of receipt of the leave request. At that time, the appropriate **Certification Form** will be sent to the employee.
 - a. An employee requesting leave related to a family member's or his or her own serious health condition will receive a Medical Certification Form, which he or she may forward to their treating medical provider to certify the need and duration of leave.
 - b. An employee requesting Sick Child Leave may be asked for medical verification after the 4th occurrence.
 - c. An employee requesting Military Family Leave for exigencies unrelated to a serious health condition may provide a copy of the service member's military orders as certification of the need for leave.
 - d. An employee requesting Bereavement Leave may provide a copy of a death certificate, obituary notice, funeral announcement, or other similar documents that can confirm eligibility for leave.
5. In an emergency, an employee may initially make a verbal request for Family and Medical Leave to Human Resources or his or her supervisor. The employee must provide enough information to put Human Resources on notice that protected Family and Medical Leave is requested or may be appropriate under the circumstances. A verbal request must be followed up with the completed Certification Form within 15 calendar days of receiving the request for certification.
6. Human Resources will notify the employee whether or not his or her time off from work qualifies as protected leave.
7. Failure to complete the Medical Certification Form in full and timely submit it to Human Resources may result in the delay of leave approval. It is the employee's responsibility to make sure the health care provider completes the form in full, including specific information regarding requested leave dates, times, and frequency.
8. Metro reserves the right to place employees who fail to return the Medical Certification Form on FMLA.
9. Metro may provide a temporary reassignment for a pregnant employee unable to perform her job duties without significant risk to the health and safety of the employee and the pregnancy, if there is suitable, available work for which the employee is qualified to perform, and the reassignment can be reasonably accommodated. If there is no suitable, available work for which the employee is qualified for temporary reassignment, Metro shall provide a pregnancy leave of absence if the leave can be reasonably accommodated.

10. An employee who takes Family and Medical Leave has a duty to make reasonable efforts to schedule medical treatment or supervision on days off or around their current work schedule, subject to the approval of the health care provider, in order to minimize disruption of Metro's operations.
11. Employees on leave must follow the call-in procedures in their respective collective bargaining agreement, non-represented employee policy and/or work rule. Employees must provide sufficient information to communicate that the absence is for a purpose covered by protected leave.
12. Family and Medical Leave must be paid from accrued personal leave time. Once paid leave accrual is exhausted, approved Family and Medical Leave shall be unpaid.
13. Health and welfare coverage will continue at the same level of benefits and contributions for employees on Family and Medical Leave as for active benefit-eligible employees. Employees taking approved leave without pay are required to make direct payment to Metro for their premium payments on elected benefits.
14. If an employee fails to return from leave, Metro is entitled to recover the full amount of health premiums the agency paid on behalf of the employee while on leave, except in cases where the employee fails to return due to their own serious health condition.
15. Prior to returning to work from leave for an employee's own serious health condition, the employee will be required to submit a release for work from their health care provider to the Human Resources Department. The Human Resources Department will then review the release and file it in the employee's confidential medical file.
16. An employee returning from Family and Medical Leave shall be reinstated with no greater or lesser rights in employment than if the employee had not taken the leave.
17. Employees who do not return to work by the date specified by their health care provider may be disciplined, up to and including dismissal.
18. No employee will be subject to retaliation for taking or inquiring about protected leave.

Responsibilities

Employees:

- Request the leave through Metro's timekeeping system or by completing a Leave Request Form and obtain the appropriate supervisor authorization. This leave form is then sent to the Human Resources Department to determine eligibility. Become familiar with the Leave packet that includes Frequently Asked Questions, Your Rights Under FMLA, and the certification form that will be sent to you if it is determined you are eligible for leave.
- If you are requesting Family and Medical Leave for your own or a family member's serious health condition, you are required to provide medical certification. Such medical certification shall come from an approved health care provider and must be submitted to the Human Resources Department 30 days prior to the anticipated leave, or in the case of emergency leave, no later than 15 days of the receipt of certification.
- Employees are responsible for ensuring the medical certification is completed in full by the treating provider including the dates of absence, anticipated date of return and any intermittent frequency for leave. Leave approval may be delayed if the medical certification is not complete.

- If an employee's anticipated return to work date changes, he or she shall immediately notify Human Resources by providing a written medical update from the approved health care provider.
- Upon approval, the FMLA letter will include your return to work date and requirements to provide a physician's release for duty, if necessary.
- Complete Kronos coding appropriately. If you have any questions, be sure to check with your department timekeeper.
- If you are requesting intermittent Family and Medical Leave, you are still required to provide 30 days advance notice when at all possible. You must also follow the call-in procedures in your respective collective bargaining agreement, non-represented employee policy and/or work rule. You must provide sufficient information to communicate that the absence is for a purpose covered by protected leave. When possible, physician's visits and care for family members should be scheduled around your work schedule to minimize disruptions of Metro's operations.
- Metro will periodically request recertification as necessary. Periodically check in with the supervisor as to return to work status while on leave.

Supervisors:

- Notify the Benefits Manager and the employee when you think an employee may be on leave that would qualify as Family and Medical Leave and forward approved Leave Request Forms to Human Resources.
- Communicate with the Benefits Manager on staffing issues and the employee's return to work timeline.
- If an employee directly provides you medical paperwork, forward it to the Benefits Manager; do not keep it in the employee file on site.

Human Resources:

- Within 5 days of the receipt of a Leave Request Form or electronic leave request, Human Resources will provide an employee with initial eligibility determination and a Family and Medical Leave certification form.
- Within 10 days of receipt of the Medical Certification form, Human Resources will determine if the situation qualifies under Family and Medical Leave and notify the employee and the supervisor of its determination or need for further information.
- Notify an employee and supervisor 30 days prior to the end of the allowable Family and Medical Leave.
- Notify an employee if they are in a leave without pay status and are required to pay their portion of Health & Welfare benefits and any supplemental life insurance. If appropriate, provide notice for availability of Long Term Disability insurance.
- Maintain all medical information in a confidential medical file in Human Resources.
- Metro may request a second or third opinion regarding a Medical Certification Form. Metro may also request recertification if an employee requests an extension of leave, the duration or nature of the condition has changed significantly or Metro receives information contrary to the employee's reason for the absences.
- If an employee requests additional leave time beyond that provided under FMLA/OFLA, Human Resources will discuss with the employee all available options, including those provided under the Americans with Disabilities Act.

References

Oregon Family Leave Act, ORS 659A.150 – 659A.186.

Family and Medical Leave Act, 29 USC Ch. 28

<http://www.dol.gov/whd/regs/compliance/posters/fmlaen.pdf>

http://www.oregon.gov/BOLI/TA/docs/OFLA_Poster_2014.pdf