

Policies



Subject Crime Victims Leave and Domestic Violence, Criminal Harassment and Stalking Protections Policy
Section Human Resources
Approved by Marissa, Madrigal, Chief Operating Officer
Approved on May 5, 2022
Replaces Crime Victims’ Leave to Attend Criminal Proceedings adopted on 12/12; Domestic Violence, Sexual Assault, Criminal Harassment and Stalking Protections adopted on 12/12

Policy Purpose: Metro provides excused leave from work for crime victims to attend criminal proceedings as required by Oregon law. Metro also complies with Oregon laws that provide employment protections for victims of domestic violence, sexual assault, criminal harassment and stalking. Metro prohibits discrimination against victims and provides reasonable workplace accommodations to protect their safety. Eligible employees and interns may also be entitled to reasonable leave from work to address safety-related matters.

Policy

1. This policy is applicable to all employees and interns. Where provisions of an applicable collective bargaining agreement directly conflict with this policy, the provisions of that agreement will prevail.
2. Crime Victims Leave.
 - a. Metro provides excused leave from work for crime victims to attend criminal proceedings as required by Oregon law.
 - b. This provision is applicable to all employees. Where provisions of an applicable collective bargaining agreement directly conflict with this policy, the provisions of that agreement will prevail.
 - c. Definitions for purposes of Crime Victims Leave:
 - i. Crime Victim: An employee who has suffered financial, social, psychological or physical harm as the result of a “person felony,” as defined in the rules of the Oregon Criminal Justice Commission (OAR 213-003-0001(14)), or who is an eligible immediate family member of a person who meets these criteria.
 - ii. Criminal Proceeding: Any proceeding that constitutes a part of a criminal action or occurs in court in connection with a prospective, pending or

- completed criminal action, including juvenile proceedings or any other proceeding at which a crime victim has a right to be present arising from their status as a victim.
- iii. Eligible Employee: An employee who meets the above definition of crime victim, and who has worked an average of 25 hours per week or more for at least 180 days immediately preceding the date leave begins.
 - iv. Eligible Immediate Family Member: A spouse, domestic partner, father, mother, sibling, child, stepchild or grandparent. Note that this definition follows applicable law and may differ from other Metro policies.
 - v. Undue hardship: A significant difficulty or expense, determined on a case-by-case basis.
- d. An eligible employee who is a crime victim or a crime victim's eligible immediate family member as defined above will be granted leave from employment to attend a criminal proceeding related to the crime, unless the employee's absence would result in an undue hardship to Metro's operations.
 - e. Leave taken under this policy must be paid from accrued paid leave time. Once paid leave accruals are exhausted, approved leave will be unpaid.
 - f. Leave taken under this policy will not deplete the employee's leave entitlement under the Family and Medical Leave Act (FMLA) or the Oregon Family Leave Act (OFLA). An employee may still be eligible for FMLA or OFLA for a serious health condition related to the crime, or for other qualifying purposes under those laws.
 - g. Crime victims who are victims of domestic violence, sexual assault, harassment or stalking may be entitled to additional protections. See Metro's Domestic Violence, Sexual Assault, Harassment and Stalking policy or contact the Human Resources Department for more information.
 - h. Eligible employees must give reasonable notice to their supervisor and/or the HR Benefits Manager of the intention to take leave. To verify the need for leave, the employee must provide the HR Benefits Manager with a copy of the notice of scheduled criminal proceedings received from a court, district attorney, or law enforcement agency.
 - i. Employees shall request leave by submitting a Leave Request Form and verification documents to Human Resources (HR) 30 days before the date leave is to begin. If the employee receives notice of a criminal proceeding that will occur fewer than 30 days from the date notice is received, the employee shall request leave and submit verification documents to HR as soon as practicable after receiving notice.
 - ii. If the employee receives notice that a criminal proceeding will occur within 48 hours of the date notice is received, the initial request for leave may be verbal or written, and may be directed to the employee's supervisor, Department Director, or the HR Benefits Manager. The employee must submit a completed Leave Request Form and appropriate verification to HR immediately upon return to duty.
 - iii. Employees are not required to disclose to their supervisors the nature of the underlying crime or criminal proceedings. The HR Department will inform the supervisor of the need for leave and the leave approval designation but will maintain the confidentiality of the underlying details and the documents provided for verification in accordance with applicable law. The HR Department, supervisor, and other managers may confer about staffing needs and any operational hardships related to the absence.
 - iv. The HR Department will notify the employee whether the leave is approved.

- i. The employee must promptly notify the HR Benefits Manager of the dates and hours of leave taken under this policy. The HR Department will code the leave appropriately in Kronos.
- j. The maximum length of leave ordinarily will be the duration of the criminal proceeding. Metro may deny the leave request or limit leave to a shorter period only if the employee's absence would result in an undue hardship to Metro's operations.
 - i. Supervisors and Department Directors should notify the Human Resources Department immediately if they believe the employee's absence would create an undue hardship.
 - ii. The HR Department, in consultation with the Department Director and Office of Metro Attorney, will make the decision whether to limit or deny leave based on undue hardship.
- k. An employee on crime victims' leave must keep their supervisor informed of any changes to their anticipated return date and time. If the duration of leave is not known at the outset, the employee should follow regular call-in procedures.
- l. The use of leave under this policy will not be held against the employee when evaluating the employee's attendance.
- m. Metro will maintain the confidentiality of all records related to leave taken under this policy.
- n. Responsibilities
 - i. Employee:
 1. Provide reasonable notice of the intention to take leave following the procedures outlined above.
 2. Provide a copy of the notice of scheduled criminal proceedings received from a court, district attorney, or law enforcement agency.
 3. Keep your supervisor informed of any changes to your anticipated return date and/or follow regular call-in procedures while on leave.
 4. Notify the HR Benefits Manager of dates and hours of leave taken under this policy.
 5. If you experience any adverse employment action or negative treatment as a result of taking leave under this policy, report it following the procedures outlined in Metro's Discrimination and Harassment Policy.
 - ii. Supervisor:
 1. Immediately notify the HR Benefits Manager of any requests for leave under this policy.
 2. Maintain the confidentiality of all records related to leave taken under this policy. Send any verification documents received from the employee to Human Resources without keeping a copy.
 - iii. Department Director:
 1. Immediately notify the HR Benefits Manager of any requests for leave under this policy.
 2. Maintain the confidentiality of all records related to leave taken under this policy. Send any verification documents received from the employee to HR without keeping a copy.
 - iv. Human Resources Department:
 1. Notify the supervisor of any requests for leave under this policy and provide guidance and information to the supervisor and Department Director as needed.

2. Track leave requests and verification of the need for leave, and code the use of paid and unpaid leave following usual procedures.
3. Maintain the confidentiality of all records related to leave taken under this policy.

3. Domestic Violence

a. Definitions

- i. Safety Accommodation: A victim of domestic violence, sexual assault, criminal harassment or stalking as defined by applicable law.
 - ii. Protected Leave from Work: Leave may be taken by a victim of domestic violence, sexual assault, criminal harassment or stalking as defined by applicable law; by a parent or guardian of a victim; or by any other person, including an immediate family member, who has suffered related financial, psychological, social, or physical harm.
 - iii. Reasonable leave: Any amount of leave that does not cause an undue hardship to Metro's operations.
 - iv. Undue Hardship: A significant difficulty or expense, determined on a case-by-case basis.
 - v. Victim: For the purposes of this policy, a victim of domestic violence, sexual assault, criminal harassment, or stalking is an individual against whom one of these offenses has been committed as defined by Oregon statute ORS 659A.270.
 - vi. Victim Services Provider: A prosecutor-based victim assistance program or a nonprofit program offering safety planning, counseling, support or advocacy related to domestic violence, sexual assault, criminal harassment or stalking.
- b. Metro prohibits discrimination against individuals who are victims of domestic violence, sexual assault, criminal harassment, and stalking.
- c. Metro will provide reasonable workplace safety accommodations in response to actual or threatened domestic violence, sexual assault, criminal harassment, or stalking. A request for reasonable accommodation will be granted unless it would cause an undue hardship to Metro's operations.
- d. Metro will provide eligible individual's reasonable leave from work to address safety-related matters, as described below, related to domestic violence, sexual assault, and criminal harassment or stalking.
- i. An employee must use fifty percent (50%) of accrued leave available at the time the leave commences prior to going into an unpaid leave status; however in all cases the employee may retain up to 40 hours of accrued sick leave and 40 hours of accrued vacation for later use.
 - ii. If no accrued paid leave time is available, leave under this policy will be unpaid.
 - iii. The supervisor should contact the Payroll Manager to determine appropriate coding of such leave.
- e. Employees and interns must notify the Human Resources (HR) Department and/or Office of Metro Attorney (OMA) if they apply for or receive a protective order or restraining order that lists any Metro location as a protected area.
- f. Metro will take any necessary steps to protect the safety of other employees and the public while maintaining the victim's confidentiality in accordance with applicable law.
- g. Discrimination prohibited

- i. Metro will not refuse to hire an otherwise-qualified individual because the individual is a victim of domestic violence, sexual assault, criminal harassment or stalking.
 - ii. Metro will not discipline, demote, suspend, terminate, or in any manner discriminate, threaten, or retaliate with regard to promotion, compensation, conditions or privileges of employment because an individual is a victim of domestic violence, sexual assault, criminal harassment or stalking, or because they have inquired about, requested or taken leave under this policy.
 - iii. Anyone who experiences or observes discrimination, harassment, or retaliation prohibited by this policy should report the offending conduct using the procedures specified in Metro's Discrimination and Harassment Policy.
- h. Requesting a safety accommodation or leave of absence
- i. An employee or intern may request a safety accommodation or protected leave by contacting their supervisor or the Human Resources (HR) Department. Written or verbal notice should be provided in advance if possible, or as soon as practicable under the circumstances.
 - ii. Upon receipt of a request for accommodation, the supervisor shall notify the HR Benefits Manager. The HR Department, in consultation with the OMA, will be responsible for determining whether a requested accommodation is reasonable and whether the requested accommodation or leave will result in undue hardship to Metro's operations.
 - iii. The HR Benefits Manager will contact the employee or intern to discuss the requested accommodation, and will consult with the supervisor and/or Department Director to determine the impact of the requested accommodation on Metro operations. HR will inform the employee or intern that they may have a union representative, family member, victims' advocate or other appropriate person present during meetings to discuss possible accommodations.
 - iv. If it is determined that the requested accommodation would pose an undue hardship, the HR Benefits Manager will coordinate an interactive process to determine whether a mutually acceptable alternative accommodation is available.
 - v. Metro may request documentation to confirm eligibility. Metro may, in its discretion, approve an accommodation request on the basis of verbal statements without requesting documentation. Any of the following documents may be provided as certification of eligibility:
 - 1. Court documents;
 - 2. Law enforcement papers;
 - 3. Documentation from an attorney, counselor, victim service provider, health care professional or clergy member.
 - vi. The employee or intern will provide the requested verification as soon as practicable. Failure to timely submit verification may result in the delay of accommodation approval.
 - vii. After receiving sufficient verification, the HR Benefits Manager will inform the individual of whether a requested or alternative accommodation will be granted.
 - viii. If special circumstances make it necessary to expedite the approval process, the HR Benefits Manager may grant an accommodation on a provisional basis before

receiving verification, with the understanding that there is no guarantee the requested accommodation will be granted permanently.

- ix. The employee or intern is required to comply with all applicable policies and work rules while the request for accommodation is under consideration, or if the request is denied.
- x. Anyone with concerns about the accommodation or leave process may contact the Director of Human Resources or Office of Metro Attorney to discuss the matter.
- xi. All documents regarding eligibility and/or the accommodation or leave provided will be kept confidential and may not be released without express permission unless required by law.
- i. Reasonable safety accommodations. Safety accommodations may include, but are not limited to:
 - i. Transfer;
 - ii. Reassignment;
 - iii. Modified schedule;
 - iv. Changed work station or phone number;
 - v. Other measures to address safety.
- j. Protected Leave from Work.
 - i. Safety-related matters for which leave may be permitted may include:
 1. To seek legal or law enforcement assistance to ensure the safety of the victim or their minor child or dependent, including preparing for and participating in protective order proceedings or other civil or criminal proceedings.
 2. To seek medical treatment or recover from injuries suffered by the victim or their minor child or dependent.
 3. To obtain, or to assist the individual's minor child or dependent in obtaining counseling from a licensed mental health professional.
 4. To obtain services from a victim services provider for the individual or their minor child or dependent.
 5. To relocate or takes steps to secure an existing home. "Relocate" includes transition periods spent moving from one home or facility to another, including but not limited to time to pack and make security, transportation or other arrangements for such transitions.
 - ii. The length of leave will be determined by what is reasonable under the circumstances, and will be limited only if the leave creates an undue hardship to Metro's operations.
 - iii. Employees who take leave under this policy to recover from or seek treatment for the serious health condition of the employee or their minor dependent may have leave rights under the Oregon Family Leave Act and the Family and Medical Leave Act. Please see Metro's Family and Medical Leave Policy for more information. To the extent that leave under this policy is also covered by the Oregon Family Leave Act, Metro may administer the two types of leave concurrently.
 - iv. Leave granted under this policy will not be counted against an employee's attendance record for purposes of discipline or performance evaluations.

- v. Employees who are crime victims may also be covered by Metro's Crime Victims' Leave Policy.
- k. Restraining Orders
 - i. All employees or interns who apply for or obtain a protective or restraining order that lists any Metro location as a protected area must provide the HR Department and/or the Office of Metro Attorney with:
 - 1. a copy of the petition and any associated declarations;
 - 2. a copy of any temporary restraining order; and
 - 3. a copy of any permanent restraining order or protective order that is granted.
 - ii. Office of Metro Attorney will be responsible for informing the appropriate staff.
- l. Responsibilities
 - i. Employees
 - 1. Contact your immediate supervisor or the HR Benefits Manager in advance or as soon as practicable if accommodation or leave from work is needed for safety needs arising from domestic violence, sexual assault, criminal harassment or stalking.
 - 2. Provide documentation of eligibility as requested by the HR Benefits Manager.
 - 3. Comply with all applicable policies and work rules while the request for accommodation is under consideration, or if the request is denied. Notify the HR Benefits Manager if safety concerns require an exception to be made immediately.
 - 4. Follow regular call-in procedures while on leave, unless other arrangements are made with the HR Benefits Manager to accommodate safety needs.
 - ii. Supervisor and Department Director
 - 1. Notify the HR Benefits Manager of any requests for accommodation or leave by individuals who are victims of domestic violence, sexual assault, criminal harassment or stalking.
 - 2. Work with the HR Benefits Manager to make any operational adjustments that may be necessary.
 - iii. Human Resources Department
 - 1. Contact the employee or intern and engage in an interactive process to determine whether a reasonable accommodation is appropriate.
 - 2. Request documentation as necessary to certify eligibility for accommodations and/or protected leave.
 - 3. Work with the supervisor and Department Director to determine the impact of the requested accommodation on operations.
 - 4. Determine whether the requested accommodation or leave poses an undue hardship.
 - 5. Notify the individual of the decision and discuss possible alternative accommodations if the requested accommodation is denied.
 - 6. Notify the employee if leave will be charged against the employee's OFLA entitlement.
 - 7. Work with the Supervisor and Department Director to make any necessary operational adjustments.

8. Keep records related to accommodation and leave requests confidential except as expressly permitted by the victim or required by law.
9. Coordinate posting of information as required by law.

References

ORS 659A.190 – ORS 659A.198 (Crime Victims' Leave statute)
OAR 213-003-0001(14) (definition of "person felony")
Metro Domestic Violence, Sexual Assault, Harassment and Stalking Policy
Metro Family and Medical Leave policy
Metro Discrimination and Harassment Policy
ORS 659A.270 to 659A.290
2013 Oregon Laws Ch. 379 (House Bill 2669)
2013 Oregon Laws Ch. 321 (House Bill 2903) Crime Victims' Leave Policy