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Portland, OR 97232-2736

# Policies and procedures

<b>Subject</b>	Family and Medical Leave
<b>Section</b>	Human Resources
<b>Approved by</b>	Marissa Madrigal, Chief Operating Officer
<b>Approved on</b>	March 1, 2024
<b>Supersedes</b>	Family and Medical Leave, adopted 8/19

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## POLICY PURPOSE

This policy outlines the requirements and processes for Metro to provide protected leave to eligible employees in accordance with the Family and Medical Leave Act (FMLA), Oregon Family Leave Act (OFLA), and Paid Leave Oregon (PLO). This policy also outlines procedures for employees to use benefits under PLO, which provides partial or full wage replacement for time away from work to eligible individuals.

For Metro-specific leave benefits, see [employee policies](#).

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## APPLICABLE TO

This policy is applicable to all employees eligible for leave as identified by federal and state law. Where provisions of an applicable collective bargaining agreement directly conflict with this policy, the provisions of that agreement will prevail.

## LEAVE TYPES COVERED BY THIS POLICY

When leave under FMLA, OFLA and PLO is “protected”, eligible employees returning to work after taking such leave are entitled to be restored to the position of employment they held when the leave commenced if that position still exists. An employee’s benefits remain in place while they are off work on approved Family and Medical Leave. Protected leave types required by Oregon law but not federal law, are indicated in parentheses.

Bereavement Leave (OFLA): Leave taken by an eligible employee to grieve the death of a 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. 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 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.

### 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 forward looking 52-week leave year 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 leave year.

Qualifying Exigency Leave: Leave allows eligible employees to take up to 12 unpaid workweeks 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.

Oregon Military Family Leave (OFLA): Leave allows an employee to take up to 14 days of leave per deployment to spend time with a spouse or domestic partner who is in the military and has been notified of an impending call or order to active duty or who has been deployed during a period of military conflict.

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.

Pregnancy Disability Leave: An eligible employee may take leave before or after the birth of a child or for pregnancy related absences.

Safe Leave (PLO): Leave taken for survivors of sexual assault, domestic violence, harassment, stalking or bias to seek legal or law enforcement assistance, seek medical treatment, assist a minor child or dependent, obtain victim services or to relocate.

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

Sick Child Leave (OFLA): An eligible employee may take leave to care for their child due to an illness, injury or non-serious health condition requiring home care, or to care for a child who requires home care due to the closure of the child's school or childcare provider as a result of a public health emergency. Metro may request a doctor's note after the third occurrence of such leave.

## DEFINITIONS

Family and Medical Leave: Leave rights are governed by the federal Family and Medical Leave Act (FMLA), the Oregon Family Leave Act (OFLA) and Paid Family Medical Leave Insurance (PMFLI) (PLO) act of 2019. Family and Medical Leave is protected leave that allows eligible employees extended time off from work on a continuous or intermittent basis under the following circumstances:

- a. to receive treatment or recover from a serious health condition;
- b. to care for a family member with a serious health condition;
- c. for prenatal care or other care before or after the birth of a child;
- d. 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;
- e. to care for a sick child (OFLA only);
- f. 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;
- g. to handle qualifying exigencies arising from the fact that the employee's spouse, child, 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 (not PLO eligible);
- h. to grieve, attend the funeral, and/or make necessary arrangements related to the death of a family member (OFLA only);
- i. for absences related to domestic violence, harassment, sexual assault or stalking. (PLO only).

Eligibility: 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. The State of Oregon will review all PLO applications and determine eligibility.

- 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.

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, employees must meet the 180-day requirement only.

During a public health emergency, employees may become eligible with just 30 days of employment (rather than 180) if they have worked an average of 25 hours a week in the 30 days before taking leave. This path to eligibility requires the average of 25 hours worked even for parental leave.

- c. To qualify for PLO, employees must work in Oregon, have earned \$1,000 in wages in the base year or alternate base year, contributed to Paid Leave through payroll deductions in the base or alternate base year, and have a qualifying life event. In order to be eligible for job protections under PLO, an employee has to work 90 days for their current employer.

Family Member: Family members include the employee's spouse (including same-sex marriages), child (biological, adopted, foster step, or for whom the employee stands *in loco parentis*), or parent (or individual standing *in loco parentis* of the employee).

For OFLA and PLO family members also include the employee's domestic partner, a child's spouse or domestic partner, a parent's spouse or domestic partner, a sibling or stepsibling or the sibling's or stepsibling's spouse or domestic partner, grandparent or the grandparent's spouse or domestic partner, grandchild or the grandchild's spouse or domestic partner, or any individual related by blood or affinity whose close association with an individual is the equivalent of a family member.

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, physician assistant, 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 their 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.

Leave Year: Metro uses a "forward looking" 52-week period. Under the forward-looking method, an employee's 52-week leave year begins on the Sunday prior to the first day leave is taken for the first qualifying reason and ends on the Saturday 52 weeks later. The employee's leave entitlement for the beginning of each qualifying reason would be any balance of the 12 weeks which has not been used during the 52 week leave year established by the first qualifying reason. Additional weeks may be available due to the qualifying reason of the leave. Once that 52-week leave year has expired, a new 52-week leave year recommences on the Sunday prior to the first day of the next Family and Medical Leave taken.

Metro Paid Parental Leave Top-Off or Safe Leave Top-Off: Metro paid benefit that covers the difference between an employee's wage and the PLO benefit received from the state.

- a. Parental Leave provides eight (8) weeks of paid leave top-off for the birth, adoption or placement of a child under 18 in the employee's home, or for an adopted or foster child older than 18 years of age if the child is incapable of self-care because of a mental or physical disability.
- b. Safe Leave provides four (4) weeks of leave top-off for absences related to domestic violence, harassment, sexual assault, stalking or bias crimes.
- c. For the purposes of Leave Top-Off, the leave year shall be the same leave year as FMLA, OFLA and PLO.
- d. Leave taken to bond and care for a newborn child or newly adopted child under the age of 18. Metro PPL may also be taken for new Foster Care placement of a child. For the purposes of Metro PPL, Foster Care means a new, temporary living arrangement in the employee's home for minor children provided through a state-certified Foster Care program. Placement in the employee's home is made by or with the agreement of the State and involves a minor child who is in the legal or physical custody and care of the State.
- e. Leave for an employee or to take care of their dependent child who are survivors of sexual assault, domestic violence, harassment, or stalking to obtain legal or law enforcement assistance, seek medical treatment or recover from injuries, obtain counseling or support services, or relocate or take other steps to secure the health and safety of themselves or their dependent child.

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 leave year. Leave may be taken continuously, intermittently, or, under certain circumstances, on a reduced workweek schedule. Except for limited circumstances, 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. Family and Medical Leave must be paid from accrued leave time unless it runs concurrently with an approved PLO claim. Once paid leave accruals are exhausted, approved Family and Medical Leave will be unpaid. Paid Leave Oregon leave determination and benefits are provided directly from the State of Oregon.
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 printed copy of the **Leave Request Form**, available from the Human Resources Department. To obtain a printed and physical copy of the Leave Request Form, visit [HR Forms](#). The 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 their supervisor or to HR at [benefits.help@oregonmetro.gov](mailto:benefits.help@oregonmetro.gov) at least 30 days prior to the commencement of the leave. If leave is unexpected, notice should be provided as soon as possible. Failure to provide Metro notice 30 days prior to leave may result in reduced PLO benefits.
4. Metro will provide employees a notification of eligibility 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 the employee's own serious health condition will receive a Medical Certification Form, which they 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 3rd 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 the Human Resources Department or their supervisor. The employee must provide enough information to inform the Human Resources Department 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 their time off from work qualifies as protected leave.
7. Failure to complete the Medical Certification Form in full and timely submit it to the Human Resources department 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. For employees who fail to return the Medical Certification Forms, Metro reserves the right place them on FMLA or OFLA.
9. Metro may provide a temporary reassignment for a pregnant employee unable to perform their 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 may provide a pregnancy leave of absence if the leave can be reasonably accommodated.
10. Employees must apply directly to the State of Oregon for PLO benefits. Employees may be required to provide documentation of approved claim to Metro. If an employee has multiple PLO claims, the employee must communicate with their supervisor and the Human Resources Department which claim they are using when missing work.
11. 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.
12. 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.
13. Family and Medical Leave must be paid from accrued leaves available unless it runs concurrently with an approved PLO claim. Once paid leave accrual is exhausted, approved Family and Medical Leave shall be unpaid.
14. For active benefits-eligible employees, health and welfare coverage will continue at the same level of benefits and contributions for employees on Family and Medical Leave as before going on leave. Employees taking approved leave without pay are required to make direct payment to Metro for their premium payments on elected benefits.
15. 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.
16. 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.
17. An employee returning from Family and Medical Leave and PLO shall be reinstated with no greater or lesser rights in employment than if the employee had not taken the leave.
18. Employees who do not return to work by the date specified by their health care provider may be disciplined, up to and including dismissal.
19. No employee will be subject to retaliation for taking or inquiring about protected leave.

## **Metro Paid Top-Off Leave**

All regular, probationary, limited duration, variable hour and temporary employees, are eligible for a total of 8 weeks of PPL top-off in a leave year after 90 calendar days of employment. The top off will be the difference between regular base wages and the benefit amount from Paid Leave Oregon. If the benefit from the state is equal to or greater than an employee's regular base wages, there would be no top-off available. The top off amount will be converted to a number of hours per day based on the employee's normal work schedule. For those in part time, variable hour and temporary positions, base wages will be determined using the average number of hours worked per week during the previous 12 months prior to the day the employee commences leave relating to the pregnancy, birth, adoption, or foster placement or; for probationary employees, the average number of hours worked during the previous 180 days.

Unused PPL Top-Off from one event may not be carried over to a future event.

Metro PPL Top-Off may be taken intermittently, in whole day increments, during the first year following birth, adoption or foster care placement. While on Metro PPL Top-Off, employees must not engage in any work activity for compensation, including job-related training, nor perform service for Metro or any other entity for compensation in any other capacity.

Metro Paid Parental Leave Top-Off must be used within twelve months following the birth, adoption or Foster Care placement of a child. Paid Parental Leave Top-Off can only be used for leave post birth, adoption or Foster Care placement of a child. If an employee qualifies for PLO, FMLA, OFLA leaves, and/or parental leave under a collective bargaining agreement, Metro PPL under this rule must run concurrently with said leaves and must be used during the approved FMLA and/or OFLA parental leave. An employee who exhausts all available FMLA and/or OFLA entitlements for a different reason will still be eligible to take Metro PPL under this rule.

### Metro Paid Safe "Top Off" leave:

All regular, probationary, limited duration, variable hour and temporary employees are eligible for 4 weeks of Safe top-off in a leave year after 90 calendar days of employment. For those in part time, variable hour and temporary positions, the work schedule will be equivalent to the average number of hours worked per week during the previous 12 months prior to the day the employee commences leave relating to the pregnancy, birth, adoption, or foster placement or; for probationary employees, the average number of hours worked during the previous 180 days.

## **Responsibilities**

### Employees:

- Request the leave through Metro's timekeeping system or by completing a Leave Request Form. This leave form is used 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 must 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.
- Employees are responsible for applying, submitting required documents and submitting weekly claims directing with the State of Oregon for a PLO qualifying events. For PPL events, employees can provide the benefit letter from the State of Oregon to HR Benefits to ensure wages are made whole between the two programs.
- If an employee's anticipated return to work date changes, they must immediately notify the Human

Resources Department at [benefits.help@oregonmetro.gov](mailto:benefits.help@oregonmetro.gov) by providing a written medical update from the approved health care provider.

- If required, employees are responsible for providing a physician's release for duty or restrictions upon returning to work.
- Communicate with your supervisor and/or the Human Resources Department when time off needs to be applied to your leave case. Review timecard for accuracy. 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 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.

#### 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, including the employee's return-to-work date and requirements to provide a physician's release for duty, if necessary, or need for further information.
- Notify employee 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 Short or Long-Term Disability insurance.
- Maintain all medical information in a restricted access 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, 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/PLO, 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.

Paid Leave Oregon, ORS 657B.210

Family and Medical Leave Act, 29 USC Ch. 28

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

<https://www.oregon.gov/boli/TA/docs/OFLA-Poster.pdf>