



ADMINISTRATIVE POLICIES

SECTION: Human Resources		POLICY #:	305
TITLE: Protected Leave		PROCEDURE #:	305-A
		ORDER #:	17-151
DEPT: Business Services			
ADOPTED: 9/02	REVIEWED: 12/17	REVISED:	12/17

PURPOSE: The purpose of the Protected Leave Policy is to ensure that Marion County complies with all federal and state laws regarding protected leave including but not limited to the Oregon Family Leave Act (OFLA), Oregon Military Family Leave Act (OMFLA) Family and Medical Leave Act of 1993 (FMLA), Oregon Victims of Certain Crimes Leave Act, (OVCCLA), and The Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA).

AUTHORITY: The Marion County Board of Commissioners may establish rules and regulations in reference to managing the interest and business of the county under ORS 203.010, 203.035, 203.111 and 203.230.

The Marion County Board of Commissioners expresses the governing body’s formal, organizational position of fundamental issues or specific repetitive situations through formally adopted, written policy statements.

The Administrative Policies and Procedures Manual of the Board of Commissioners outlines the forms and process through which the board takes official action on administrative policy, and is the official record of county administrative policy.

APPLICABILITY: All county employees

GENERAL POLICY: Marion County provides protected leave for qualifying employees in the form of family, medical, domestic violence, and military leave in conformance with the Family Medical Leave Act (FMLA), Oregon Family Medical Leave Act (OFLA), Oregon Victims of Certain Crimes Leave Act (OVCCLA), Oregon Military Family Leave Act (OMFLA) and The Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA).

SUBJECT: PROTECTED LEAVE

POLICY:

1. Responsibilities:

- 1.1. Marion County Business Services Department – Human Resources and Employee Benefits Program is responsible for implementing this policy. Implementation includes training, advice, and assistance to management staff on the county’s obligations under state and federal laws.

2. Federal and State Laws:

- 2.1. Family Medical Leave Act (FMLA): A federal law that provides unpaid protected leave (up to 12 weeks or 480 hours) for serious health conditions of employees and their family members, the birth, adoption or foster care placement of a child, and leave time for pregnant employees to seek prenatal and postnatal care.
- 2.2. Oregon Family Medical Leave Act (OFLA): A state law that provides unpaid protected leave for serious health conditions of employees and their family members, the birth, adoption or foster care placement of a child, bereavement leave, and leave time for pregnant employees to seek prenatal and postnatal care. The Oregon law is more comprehensive, allowing more than 12 weeks or 480 hours per year under certain conditions.
- 2.3. Victims of Certain Crimes Leave Act (OVCCCLA): This act is an extension of the OFLA and provides leave for an employee who is the victim of domestic violence, harassment, sexual assault, or stalking; or is the parent or guardian of a minor child or dependent who is the victim of domestic violence, sexual assault, or stalking. Leave may be used to seek legal or law enforcement assistance, to seek remedies to ensure health and safety, to seek medical treatment for injuries or to recover from injuries, to obtain counseling, to seek other domestic violence services, to relocate or secure existing housing, or to attend criminal proceedings related to these circumstances.
- 2.4. Oregon Military Family Leave Act (OMFLA): This act is an extension of OFLA and provides up to 14 calendar days of leave per deployment for a spouse or same-sex domestic partner of a member of the Armed Forces of the United States, the National Guard, or the military reserve forces.
- 2.5. The Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA) protects civilian job rights and benefits for veterans and members of reserve components.

3. Definitions:

- 3.1. Bereavement Leave: Leave for the death of a family member in order to attend the funeral or alternative to a funeral of a family member; make arrangements necessitated by the death of a family member; or, for the process of grieving the loss of the family member.
- 3.2. Crime Victim: A person who has suffered financial, social, psychological, or physical harm as a result of a crime covered by OVCCCLA as defined in OAR 839-009-0340(4).
- 3.3. Exigency Leave (National Guard or Reserves):
 - 3.3.1. For a short-notice deployment, meaning a call or order that is given no more than 7 calendar days before deployment (the employee can take up to 7 days beginning on the date of notification);
 - 3.3.2. For military events and related activities, such as official military-sponsored ceremonies and family support and assistance programs sponsored by the military and related to the family member’s call to duty;
 - 3.3.3. For urgent (as opposed to recurring and routine) child-care and school activities, such as arranging for child care;

SUBJECT: PROTECTED LEAVE

- 3.3.4. For financial and legal tasks, such as making or updating legal arrangements to deal with the family member's active duty;
 - 3.3.5. For counseling for the employee or his/her minor child that is not already covered by the FMLA;
 - 3.3.6. To spend time with the covered service member on rest and recuperation breaks during deployment, for up to 5 days per break;
 - 3.3.7. For post-deployment activities such as arrival ceremonies and reintegration briefings or to address issues from the service member's death while on active duty; or,
 - 3.3.8. For other purposes arising out of the call to duty, as agreed on by the employee and employer.
- 3.4. Family Member:
- 3.4.1. FMLA defines family members to include the employee's spouse, parent, son or daughter. A "spouse" is the husband or wife of the employee. A "parent" is the biological or legal parent or one who is in loco parentis. Son and daughter are defined as a biological, adopted or foster child; a legal ward; or a child of a person standing in loco parentis, under the age of 18, or older if incapable of self-care because of mental or physical disability.
 - 3.4.2 OFLA defines family members to include parents, spouses, children, same gender domestic partner, custodial parent, non-custodial parent, adoptive parent, parent in law, foster parent, biological parents, step-parent of same gender domestic partner, grandparent, grandchild, a person whom the employee is or was in a relationship of in loco parentis, biological, adopted, foster or step children of an employee's same gender domestic partner.
- 3.5. Parental Leave: OFLA provides leave during the year following the birth, of a child, adoption, foster placement of a child under 18 or a child 18 or older if incapable of self-care due to a mental or physical disability. Marion County does not allow parental leave to be taken as intermittent or reduced schedule leave.
 - 3.6. Pregnancy Disability: FMLA and OFLA cover a variety of absences related to pregnancy or childbirth incapacity and routine prenatal visits to healthcare providers.
 - 3.7. Serious Health Condition: Illness, injury, impairment or other physical or mental condition that requires inpatient care, hospice, continuous treatment by a health care provider involving a period of incapacity, regular absence of more than 3 consecutive calendar days or a chronic, long term condition; absence to receive treatments including recovery period. A serious health condition leave can be continuous, intermittent or require a reduced schedule.
 - 3.8. Serious Injury or Illness in the Line of Duty: FMLA defines serious injury or illness that must have occurred or been aggravated while in the military; and, the veteran must be undergoing medical treatment, recuperation, or therapy for the serious injury or illness that occurred any time during the five years preceding the date of treatment. Leave can be designated for spouse, parent, child, or next of kin of current military personnel or veteran.
 - 3.9. Service in the Uniformed Services: The performance of duty on a voluntary or involuntary basis in a uniformed service.
 - 3.10. Sick Child Leave: OFLA allows time off to any eligible employee whose child requires home care for an illness or injury that is not a serious health condition. Sick child leave is not for routine medical or dental appointments, or because school is not in session, or for other child care issues.
 - 3.11. Uniformed Services: Consists of Army, Navy, Marine Corps, Air Force, Coast Guard, Army Reserve, Naval Reserve, Marine Corps Reserve, Air Force Reserve, Coast Guard Reserve, Army National Guard, Air National Guard, Commissioned Corps of the Public Health Service; and any other category of persons designated by the President in time of war or emergency.

SUBJECT: PROTECTED LEAVE

- 3.12. Week: For purposes of protected leave, a week is the employee's normal workweek schedule. Marion County will count family medical leave from the first day of absence under the qualifying purpose.
- 3.13. Year: For the purposes of protected leave, the 12-month period begins on the first day an employee begins protected leave. Marion County will count family medical leave from the first day of absence under the qualifying purpose.
4. Qualifying Purposes of Leave: Marion County designates leave based on qualifying conditions. Employees who qualify may be designated for protected leave in the following situations:
 - 4.1. When the employees' own serious health condition prevents them from performing the essential functions of their job.
 - 4.2. The birth or adoption of a child under the age of 18 (including the legal placement of a foster child under the age of 18). Continuous parental leave within 12 months of the event.
 - 4.3. To care for a family member with a serious health condition as defined by OFLA or FMLA.
 - 4.4. To provide home care for a child under the age of 18 with a non-serious health condition.
 - 4.5. To care for a spouse, parent, child, or next of kin who is a covered service member or veteran. The covered service member or veteran must have a serious injury or illness incurred or aggravated while on active duty (leave must begin within five (5) years of the veteran leaving military service).
 - 4.6. For an exigency leave related to a spouse, child, or parent of a covered service member who is on active duty, called to active duty, and during leave from deployment.
 - 4.7. To seek legal assistance, medical treatment, counseling, or to relocate or secure an existing residence when the employee is a victim of a crime covered by OVCCLA; or the parent or guardian of a minor child or dependent who is the victim of a crime covered by OVCCLA.
 - 4.8. To attend a criminal proceeding as a victim of a crime covered by OVCCLA; or the parent or guardian of a minor child or dependent who is the victim of a crime covered by OVCCLA
 - 4.9. In accordance with USERRA, leave for uniformed service up to 30 days.
5. Eligible Employees:
 - 5.1. Eligible employees under Oregon protected leave laws are:
 - 5.1.1. Full-time or part-time employees who meet the qualifying purposes for leave and the following criteria:
 - 5.1.2. Have been employed by Marion County for at least 180 days (26 weeks) or more before the first day of the protected leave; and, have worked an average of 25 or more hours per week for Marion County as of the day before the request for leave is made. This average will be calculated over the 180 days preceding the request for leave. However for the purpose of taking leave in the event of the birth or adoption of a child, or the legal placement of a foster child, an employee does not need to meet the hours requirement. For leave related to a spouse being called to active duty, the employee must have worked an average of 20 or more hours per week for Marion County.
 - 5.1.3. Employees who are victims of or at risk of domestic violence, sexual assault, or stalking, regardless of how long he or she has worked for Marion County and regardless of how many hours per week the employee works.
 - 5.2. Eligible Employees under FMLA have been employed by Marion County for a total of at least 12 months (does not need to be consecutive) and have worked at least 1,250 hours during the 12-month period immediately preceding the family medical leave.

SUBJECT: PROTECTED LEAVE

6. Request for Protected Leave: Request and notifications for leave should be made in accordance with departmental standards.
 - 6.1. Anticipated Situations:
 - 6.1.1. In situations where the need for protected leave is known, employees are expected to give 30 days advanced notice to take protected leave.
 - 6.1.2. If the anticipated leave is known less than 30 days in advance, employees must give notice as soon as practicable.
 - 6.1.3. Upon notice, the county will provide the employee with a Protected Leave Request Form. All employees are required to complete a Protected Leave Request Form and submit the completed certification prior to the commencement of protected leave.
 - 6.1.4. An employee who intends to take leave to attend a criminal proceeding must give reasonable notice of the impending leave once the employee has received official notice of the proceeding.
 - 6.1.5. An employee who intends to take domestic violence-related leave must give reasonable notice of the impending leave unless giving advance notice is not feasible (see Section 6.2).
 - 6.1.6. An employee who intends to take military-related leave must give notice within five business days of receiving official notice of an impending call or order to active duty, or of a leave from deployment. Unless giving notice is impossible or precluded by military necessity.
 - 6.2. Unanticipated Situations:
 - 6.2.1. In an unanticipated or emergency situation in which there is no opportunity to give notice, employees must notify their supervisor verbally within two working days of the emergency situation. The required paperwork must be completed and returned as soon as is practicable. Notice may be provided by a family member or other individual when an employee is unable to provide notice.
7. Certification/Designation:
 - 7.1. Certification of Need: A certification of the need for protected leave may be required.
 - 7.1.1. In the event of a serious health condition of an employee or that of a family member, certification must be provided by a medical professional on the applicable certification form within 15 days of the request for family medical leave. Failure to provide required medical certification may delay the start of family medical leave or may cause the denial of family medical leave. The employee may be required to furnish the county with periodic recertification as frequently as every 30.
 - 7.1.2. In the event of a request for parental leave to care for a newly adopted child or a newly placed foster child, the employee may be required to provide verification from the agency representative regarding the adoption or placement of the child.
 - 7.1.3. In the event of a request for domestic violence-related leave, the employee may be required to certify that he/she qualifies for leave and that the leave is to be taken for an authorized purpose.
 - 7.1.4. In the event of a request for leave to attend criminal proceedings, the employee may be required to provide copies of the notice of the scheduled proceedings.
 - 7.2. Intermittent or Reduced Schedule: When medically necessary protected leave may be taken on an intermittent or reduced schedule. Details of the proposed schedule must be verified by the certifying medical professional on the applicable certification form.
 - 7.2.1. Employees who have received a designation of intermittent protected leave must comply

SUBJECT: PROTECTED LEAVE

with the sick leave notification policy in effect in his or her division or department. Failure to do so may result in disciplinary action.

- 7.2.2. Intermittent leave or a reduced schedule is not allowed upon the birth or adoption of a child, except to accommodate the required legal process leading to the adoption of a child or the placement of a foster child.
- 7.3. Employer Designations: Marion County will designate leaves of absence as covered under FMLA and OFLA, even when not requested by the employee, if the employee is eligible and the reason for the absence is a qualifying purpose under one or both of the laws.
- 7.4. Concurrent Designations:
 - 7.4.1. When the qualifying purpose of the leave is covered under both FMLA and OFLA, the leave will be designated concurrently toward the time allowed under both laws.
 - 7.4.2. Leaves potentially covered under workers' compensation will be provisionally designated under both FMLA and OFLA if the absence is for a qualifying purpose under the applicable laws. If a workers' compensation claim is found to be compensable, the designation will be withdrawn and the leave taken will not count toward the employee's available leave under FMLA or OFLA.
8. General Provisions:
 - 8.1. Use of Accrued Leave:
 - 8.1.1. While on FMLA/OFLA leave for their own serious health condition, employees will use sick leave first, then vacation, and then may use other forms of leave prior to leave without pay.
 - 8.1.2. While on FMLA/OFLA leave for the serious health condition of a family member or for parental leave (not to be confused with pregnancy disability), employees may choose to use other forms of paid leave prior to using sick leave. All leave accruals must be exhausted prior to leave without pay.
 - 8.1.3. Employees on FMLA/OFLA leave, for other than intermittent leave, may elect in writing at the onset of their leave to retain up to 40 hours of sick leave. Employees with leave accruals are not eligible for donated leave.
 - 8.1.4. While on Domestic Violence Leave, employees may choose to use other forms of paid leave prior to using sick leave. All leave accruals must be exhausted prior to leave without pay.
 - 8.1.5. While on USERRA Leave, employees may choose to use sick or vacation accruals prior to leave without pay.
 - 8.2. Health Care Benefits During Leave: The employee will be required to pay the employee's regular contribution toward premiums.
 - 8.2.1. F M L A : While the employee is on an absence covered by FMLA or OFLA, Marion County will continue health care coverage at the same rate as an active employee.
 - 8.2.2. USERRA: While on a USERRA Leave of up to 30 days, health care coverage will be continued at the same rate as an active employee.
 - 8.3. Medical Release: Employees returning from family medical leave taken for their own health condition are required to provide a medical release to return to work prior to or upon return indicating that they are able to return to work and whether they have any restrictions.
 - 8.4. Reinstatement: Employees returning from protected leave will be reinstated to the same or an equivalent position with equivalent benefits, pay, and other terms and conditions of employment; unless their former positions have been eliminated for business reasons.
 - 8.5. All qualified protected leave must be reported on an employee's time sheet. Reporting qualified

SUBJECT: PROTECTED LEAVE

leave is required regardless of whether the leave is paid or unpaid. FMLA and OFLA are not voluntary; it is mandatory when the employee and condition qualifies for protected leave. Exempt employees may not be required to utilize accrued leave for intermittent protected leave; however, they are required to record all hours taken as protected leave on their time sheet.

9. Violations: Failure to complete and submit required documentation or submitting insufficient documentation may result in denial of Protected Leave status.
10. Periodic Review: This policy will be reviewed every three years or as state and federal regulations are revised and necessitate a change in the policy.

ADOPTED: 9/02

REVISED: 11/09
4/12
1/14
12/17