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CHAPTER 839
BUREAU OF LABOR AND INDUSTRIES

FILING CAPTION: Amends OFLA- and Sick Time- related rules to conform to chapter 20, Oregon Laws 2024.

EFFECTIVE DATE: 07/01/2024

AGENCY APPROVED DATE: 06/28/2024

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RULES:
839-001-0250, 839-005-0026, 839-007-0020, 839-007-0045, 839-009-0200, 839-009-0210, 839-009-0215, 839-009-0220, 839-009-0230, 839-009-0235, 839-009-0240, 839-009-0245, 839-009-0250, 839-009-0260, 839-009-0265, 839-009-0270, 839-009-0280, 839-009-0290, 839-009-0300, 839-014-0630

AMEND: 839-001-0250

RULE TITLE: Deductions for Costs of Benefits Paid by the Employer While the Employee Is on OFLA Leave

NOTICE FILED DATE: 05/08/2024

RULE SUMMARY: Amends rule relating to OFLA to conform to chapter 20, Oregon Laws 2024.

RULE TEXT:
The Oregon Family Leave Act provides that notwithstanding 652.610(3), when an employer pays the employee's portion of the cost of providing health, disability, life or other insurance coverage for an employee while the employee is on family leave, the employer may recover such cost under the following circumstances:
(1) Upon the employee's return to work, the employer may deduct from the employee's pay the amount of the costs it paid, provided, however, that the total amount deducted from any paycheck may not exceed 10% of the employee's gross wages earned in the pay period covered by the paycheck.
(2) If an employee does not return to work, the employer may deduct all of the costs it paid from amounts due and owing to the employee, provided, however, that no deduction may be made if the employee fails to return to work for the following reasons:
(a) The employee's absence from work is caused by a continuation, recurrence or onset of a serious health condition that would entitle the employee to family leave as provided for under OFLA or to benefits under ORS chapter 657B; or
(b) The employee's absence from work is caused by circumstances beyond the control of the employee.
(3) If an employee does not return to work the employer may seek to recover amounts paid for insurance coverage on behalf of the employee by any other legal means provided however, that no legal action may be initiated if the employee failed to return to work for the reasons set out in subsections (2)(a) or (2)(b) of this rule.
(4) The deduction provided for in this rule may be made with or without the employee's authorization. The employer shall notify the employee of the deduction before the deduction is made.

STATUTORY/OTHER AUTHORITY: ORS 651.060, ORS 659A.805

STATUTES/OTHER IMPLEMENTED: ORS 659A.171

AMEND: 839-005-0026

RULE TITLE: Employment Protections and Rights Relating to Pregnancy

NOTICE FILED DATE: 05/08/2024

RULE SUMMARY: Amends rule to include reference to laws other than OFLA that provide employment-related protections to pregnant persons.

RULE TEXT:
(1) Pregnant people are protected from sex discrimination in employment.
(2) ORS 659A prohibits discrimination regarding employee and dependent spouse or domestic partner benefits for pregnancy when employee and dependent spouse or domestic partner benefits exist for other medical conditions.
(3) An employee needing to be absent from work because of pregnancy or childbirth may have rights under the Oregon Family Leave Act, Sick Leave under ORS 653.601 to 653.661, Paid Leave under ORS chapter 657B, ORS 659A.146 and 659A.147 or the federal Pregnant Workers Fairness Act.

STATUTORY/OTHER AUTHORITY: ORS 651.060, ORS 659A.805

STATUTES/OTHER IMPLEMENTED: ORS 659A.029, ORS 659A.030, ORS 659A.147, ORS 659A.148

AMEND: 839-007-0020

RULE TITLE: Permissible Use of Sick Time

NOTICE FILED DATE: 05/08/2024

RULE SUMMARY: Amends Sick Leave-related rule to conform to OFLA-related amendments in chapter 20, Oregon Laws 2024.

RULE TEXT:

Pursuant to ORS 653.616 and these rules an employee may use sick time for any of the following:

(1) For an employee's mental or physical illness, injury or health condition; need for medical diagnosis, care or treatment of a mental or physical illness, injury or health condition; or need for preventive medical care.

(2) For care of a family member with a mental or physical illness, injury or health condition; care of a family member who needs medical diagnosis, care, or treatment of a mental or physical illness, injury or health condition; or care of a family member who needs preventive medical care.

(3) For the following purposes under ORS 659A.159 to 659A.186:

(a) For bereavement leave, child placement leave or pregnancy disability leave, as those terms are described in OAR 839-009-0230.

(b) To care for a child of the employee who is suffering from an illness, injury or condition that requires home care or who requires home care due to the closure of the child's school or child care provider as a result of a public health emergency.

(4) For the following purposes specified in ORS 659A.272:

(a) To seek legal or law enforcement assistance or remedies to ensure the health and safety of the employee or the employee's minor child or dependent, including preparing for and participating in protective order proceedings or other civil or criminal legal proceedings related to domestic violence, harassment, sexual assault or stalking.

(b) To seek medical treatment for or to recover from injuries caused by domestic violence or sexual assault to or harassment or stalking of the eligible employee or the employee's minor child or dependent.

(c) To obtain, or to assist a minor child or dependent in obtaining, counseling from a licensed mental health professional related to an experience of domestic violence, harassment, sexual assault or stalking.

(d) To obtain services from a victim services provider for the eligible employee or the employee's minor child or dependent.

(e) To relocate, pursuant to OAR 839-009-0345, or take steps to secure an existing home to ensure the health and safety of the eligible employee or the employee's minor child or dependent.

(5) To donate accrued sick time to another employee if the other employee uses the donated sick time for a purpose specified in this rule and the employer has a policy that allows an employee to donate sick time to a coworker for a purpose specified in this rule.

(6) In the event of a public health emergency, including, but not limited to:

(a) Closure of the employee's place of business, or the school or place of care of the employee's child, by order of a public official due to a public health emergency;

(b) A determination by a lawful public health authority or by a health care provider that the presence of the employee or the family member of the employee in the community would jeopardize the health of others, such that the employee must provide self-care or care for the family member;

(c) The exclusion of the employee from the workplace under any law or rule that requires the employer to exclude the employee from the workplace for health reasons;

(d) The following public health emergencies are permissible uses of sick leave unless the employee is employed as a first responder:

(A) An emergency evacuation order of level 2 (SET) or level 3 (GO) issued by a public official with the authority to do so, if the affected area subject to the order includes either the location of the employer's place of business or the employee's home address; or

(B) A determination by a public official with the authority to do so that the air quality index or heat index are at a level where continued exposure to such levels would jeopardize the health of the employee.
(7) For purposes authorized under ORS chapter 657B, including during periods of time the absence for which paid sick leave is taken also qualifies as family or medical leave taken pursuant to ORS chapter 657B.

STATUTORY/OTHER AUTHORITY: ORS 651.060, ORS 653.601-653.661

STATUTES/OTHER IMPLEMENTED: ORS 653.601-653.661

AMEND: 839-007-0045

RULE TITLE: Verification and Certification for Sick Time Use

NOTICE FILED DATE: 05/08/2024

RULE SUMMARY: Amends Sick Leave-related rule to conform to OFLA-related amendments in chapter 20, Oregon Laws 2024.

RULE TEXT:

(1) If an employee uses sick time for more than three consecutive scheduled workdays:

(a) For a purpose provided in ORS 653.616(1) or (2) or ORS 659A.159(1)(a) or 659A.162 the employer may require the employee to provide verification within 15 calendar days from a health care provider of the need for the sick time.

(b) For purposes of ORS 653.616(4) for use of sick time for a purpose specified in ORS 659A.272 relating to domestic violence, harassment, sexual assault, bias or stalking, the employer may require the employee to provide certification of the need for leave as provided in ORS 659A.280.

(2) "Three consecutive scheduled workdays" means three consecutive scheduled workdays, not including scheduled days off. For example, if an employee is scheduled to work Monday, Wednesday, and Friday only, and the employee uses sick time for all three days, the employee has used sick time for three consecutive scheduled workdays.

(3) If an employee commences sick time without providing prior notice required by the employer under OAR 839-007-0040:

(a) Medical verification shall be provided to the employer within 15 calendar days after the employer requests the verification; or

(b) Certification as specified in ORS 659A.280 for the purposes of ORS 659A.272 relating to domestic violence, harassment, sexual assault, bias or stalking shall be provided to the employer within a reasonable time after the employee receives the request for certification.

(4) If the need for sick time is foreseeable and projected to last more than three scheduled workdays and an employee is required to provide notice under ORS 653.621 and OAR 839-007-0040, the employer may require that verification or certification be provided before the sick time commences or as soon as otherwise practicable.

(5) An employer must pay any reasonable costs for providing any medical verification or certification required, including lost wages, that are not paid under a health benefit plan in which the employee is enrolled.

(6) An employer may not require that any verification or certification required explain the nature of the illness or details related to the domestic violence, sexual assault, harassment, or stalking that necessitates the use of sick time.

(7) If an employer obtains health information about an employee or an employee's family member, such information shall be treated as confidential to the extent provided by law.

(8) If an employee fails to provide verification or certification as required by ORS 653.626 and these rules, the employer is not required to pay for the use of sick time for the absence taken until the employee provides verification or certification verifying that the absence was for a qualifying reason as defined by ORS 653.616 and these rules. The employer may discipline the employee for violating policies and procedures but not for using sick time.

(9) If an employer reasonably suspects that an employee is abusing sick time, including engaging in a pattern of abuse, the employer may require verification from a health care provider of the need of the employee to use sick time, regardless of whether the employee has used sick time for more than three consecutive days. As used in this section, "pattern of abuse" includes, but is not limited to, repeated use of unscheduled sick time on or adjacent to weekends, holidays, vacation days or paydays.

(10) When an employee uses sick time to care for, or to deal with the death of, an individual related by blood or affinity whose close association with the eligible employee is the equivalent of a family relationship, the employer may require the employee to attest in writing that the employee and the person cared for have a significant personal bond that, when examined under the totality of the circumstances, is like a family relationship. An employer that requires a written attestation must provide an attestation form to the employee. The form need not be notarized, must be in the language typically used by the employer to communicate with the employee and may include the following provisions:

I, (full name) _____, share a significant bond with (name of other person)_____ and they are like a family member to me.

Any facts about your relationship can make it like a family. Common examples include:
(a) Shared personal financial responsibility, including shared leases, common ownership of real or personal property, joint liability for bills or beneficiary designations;
(b) Emergency contact designation of the employee by the other individual in the relationship or the emergency contact designation of the other individual in the relationship by the employee;
(c) The expectation to provide care because of the relationship or the prior provision of care;
(d) Cohabitation and its duration and purpose;
(e) Geographic proximity; and
(f) Other factors that demonstrate the existence of a family-like relationship.

STATUTORY/OTHER AUTHORITY: ORS 653.601-653.661, ORS 651.060

STATUTES/OTHER IMPLEMENTED: ORS 653.601-653.661

REPEAL: 839-009-0200

RULE TITLE: Oregon Family Leave Act (OFLA): Purpose and Scope

NOTICE FILED DATE: 05/08/2024

RULE SUMMARY: Repeals rule describing purpose and scope of OFLA rules.

RULE TEXT:

(1) The Civil Rights Division of the Bureau of Labor and Industries enforces the Oregon Family Leave Act (OFLA), ORS 659A.150 to 659A.186, which provides for OFLA leave and prohibits discrimination against employees using OFLA leave. These rules implement and interpret the Oregon Family Leave Act.

(2) These rules apply to complaints and inquiries received under ORS 659A.150 to 659A.186 and under these rules.

STATUTORY/OTHER AUTHORITY: ORS 659A.805

STATUTES/OTHER IMPLEMENTED: ORS 659A.150 - 659A.186

AMEND: 839-009-0210

RULE TITLE: OFLA: Definitions

NOTICE FILED DATE: 05/08/2024

RULE SUMMARY: Amends OFLA definitions to implement chapter 20, Oregon Laws 2024.

RULE TEXT:

As used in this Division 9:

(1) “Alternate duty" means work assigned to an employee that may consist of:

(a) The employee's same duties worked on a different schedule; or

(b) Different duties worked on the same or different schedule.

(2)(a) “Affinity” means a relationship for which there is a significant personal bond that, when examined under the totality of the circumstances, is like a family relationship.

(b) The bond described in subsection (a) of this section may be demonstrated by, but is not limited to the following factors, with no single factor being determinative:

(A) Shared personal financial responsibility, including shared leases, common ownership of real or personal property, joint liability for bills or beneficiary designations;

(B) Emergency contact designation of the employee by the other individual in the relationship or the emergency contact designation of the other individual in the relationship by the employee;

(C) The expectation to provide care because of the relationship or the prior provision of care;

(D) Cohabitation and its duration and purpose;

(E) Geographic proximity; and

(F) Any other factor that demonstrates the existence of a family-like relationship.

(3) "Child," means the eligible employee’s biological, adopted, foster or stepchild, the child of the employee's spouse or domestic partner or a child with whom the employee is or was in a relationship of in loco parentis. For purposes of child placement leave and sick child leave only, the child must be:

(a) Under the age of 18; or

(b) An adult dependent child substantially limited by a physical or mental impairment as defined by ORS 659A.104 (1)(a), (3), and (4).

(4) “Child care provider” for the purpose of sick child leave during a statewide public health emergency declared by a public health official means a place of care or person who cares for a child.

(a) A person who cares for a child includes but is not limited to individuals paid to provide child care, for example nannies, au pairs, and babysitters or individuals who provide child care at no cost and without a license on a regular basis, for example, grandparents, aunts, uncles, or neighbors.

(b) Place of care is a physical location in which care is provided for a child including but not limited to day care facilities, preschools, before and after school care programs, schools, homes, summer camps, summer enrichment programs, and respite care programs. The physical location does not have to be solely dedicated to such care.

(5) "Closure" for the purpose of sick child leave during a statewide public health emergency declared by a public health official means a closure that is ongoing, intermittent, or recurring and restricts physical access to the child’s school or child care provider.

(6) "Covered employer" means any employer employing 25 or more persons in the state of Oregon for each working day during each of 20 or more calendar work weeks in the year in which the leave is to be taken or in the year immediately preceding the year in which the leave is to be taken.

(7)(a) "Eligible employee" means an employee described in ORS 659A.156 who is employed in the State of Oregon on the date OFLA leave begins.

(b) To determine the number of days an employee has worked, the employer must count the number of days an employee is maintained on the payroll, including all time paid or unpaid. If an employee continues to be employed by a successor in interest to the original employer, the number of days worked are counted as continuous employment by a

single employer.
(c) To determine an employee's average hours of work per week, the employer must count actual hours worked using guidelines set out pursuant to the federal Fair Labor Standards Act.
(d) For eligibility of employees reemployed following a period of uniformed service:
(A) The federal Uniformed Services Employment and Reemployment Act, 38 USC §43 (USERRA) provides that an employee reemployed following a period of uniformed service is entitled to the seniority and seniority-based rights and benefits that the employee had on the date the uniformed service began, plus any seniority and seniority-based rights and benefits that the employee would have attained if the employee had remained continuously employed. U.S. Department of Labor regulation 20 CFR §1002.210 provides that in determining entitlement to seniority and seniority-based rights and benefits, the period of absence from employment due to or necessitated by uniformed service is not considered a break in employment. The rights and benefits protected by USERRA upon reemployment include those provided by the employer and those required by statute. Under USERRA, a reemployed service member would be eligible for leave under OFLA if the number of days and the number of hours of work for which the service member was employed by the civilian employer, together with the number of days and number of hours of work for which the service member would have been employed by the civilian employer during the period of uniformed service, meet OFLA's eligibility requirements. In the event that a service member is denied OFLA leave for failing to satisfy the OFLA days and hours of work requirement due to absence from employment necessitated by uniformed service, the service member may have a cause of action under USERRA but not under OFLA.
NOTE: USERRA also applies to leave under the federal Family and Medical Leave Act of 1993, 29 USC §2601-2654 (FMLA).
(B) ORS 659A.082–659A.088 provides that an employee reemployed following a period of uniformed service is entitled to the seniority and seniority-based rights and benefits that the employee had on the date the uniformed service began, plus any seniority and seniority-based rights and benefits that the employee would have attained if the employee had remained continuously employed. In determining entitlement to seniority and seniority-based rights and benefits, the period of absence from employment due to or necessitated by uniformed service is not considered a break in employment. If a reemployed service member was eligible for leave under OFLA prior to the date uniformed service began, OFLA's eligibility requirements are considered met.
(e) For the purpose of qualifying as an eligible employee, the employee need not work solely in the state of Oregon.
(8) "Family member" means an individual related to an eligible employee by affinity or an individual who is an eligible employee's:
(a) Spouse or domestic partner;
(b) Child or the child's spouse or domestic partner;
(c) Parent or the parent's spouse or domestic partner;
(d) Sibling or stepsibling or the sibling's or stepsibling's spouse or domestic partner;
(e) Grandparent or the grandparent's spouse or domestic partner; or
(f) Grandchild or the grandchild's spouse or domestic partner.
(9) "FMLA" is the federal Family and Medical Leave Act, 29 USC §2601.
(10) "Foreseeable leave" means OFLA leave that is not "unforeseeable leave."
(11) "Foster child" means a child, not adopted, but being reared as a result of legal process, by a person other than the child's biological parent.
(12) "Gender" means an individual's assigned sex at birth, gender identity, or gender expression.
(13) "Gender expression" means the manner in which an individual's gender identity is expressed, including, but not limited to, through dress, appearance, manner, speech, or lifestyle, whether or not that expression is different from that traditionally associated with the individual's assigned sex at birth.
(14) "Gender identity" has the meaning given that term in ORS 174.100
(15) "Health care provider" has the meaning given that term in ORS 659A.150.
(16) "In loco parentis" means in the place of a parent, having financial or day-to-day responsibility for the care of a child.

A legal or biological relationship is not required.
(17) "Intermittent leave" means leave taken in multiple blocks of time and/or requiring an altered or reduced work schedule including but not limited to sick child leave taken requiring an altered or reduced work schedule because the intermittent or recurring closure of a child's school or child care provider due to a statewide public health emergency declared by a public health official.
(18) "OFLA" is the Oregon Family Leave Act, ORS 659A.150 to 659A.186.
(19)(a) "OFLA leave" means a leave of absence for purposes described in ORS 659A.150 to 659A.186 or OAR 839-009-0230.
(b) "OFLA leave" does not include leave taken by an eligible employee who is unable to work because of a disabling compensable injury, as defined in ORS 656.005, unless the leave qualifies as OFLA leave to which the employee is otherwise entitled and the employee refuses a bona fide offer from the employer of light duty or modified employment that is suitable prior to becoming medically stationary under ORS 659A.043 or 659A.046.
(20) "Parent" means:
(a) An eligible employee's biological parent, adoptive parent, stepparent or current or former foster parent or a person who was or is the eligible employee's legal guardian or with whom the eligible employee was or is in a relationship of in loco parentis; or
(b) The parent of the eligible employee's spouse or domestic partner who meets a description in subsection (a) of this section.
(21) "Public health emergency" has the meaning given that term in ORS 659A.150.
(22) "Spouse" includes:
(a) Individuals in a marriage recognized under state law in the state in which the marriage was entered into;
(b) Individuals in a marriage validly performed in a foreign jurisdiction;
(c) Individuals in a common law marriage that was entered into in a state that recognizes such marriages; and
(d) Individuals who have lawfully established a civil union, domestic partnership or similar relationship under the laws of any state. Individuals described in this subsection are not required to obtain a marriage license, establish a record of marriage or solemnize their relationship.
(23) "Unforeseeable leave" means OFLA bereavement leave, child placement leave, pregnancy disability leave or leave taken as a result of an unexpected illness, injury or condition of a child of the employee that requires home care.

STATUTORY/OTHER AUTHORITY: ORS 659A.805, ORS 651.060

STATUTES/OTHER IMPLEMENTED: ORS 659A.150 - 659A.186, ORS 659A.043, ORS 659A.046

ADOPT: 839-009-0215

RULE TITLE: OFLA: Leave Previously Protected by OFLA

NOTICE FILED DATE: 05/08/2024

RULE SUMMARY: Adopts OFLA rule to address transition of job protections from OFLA to Paid Leave Oregon.

RULE TEXT:

(1) As used in this rule, “leave previously protected by OFLA” means leave:

(a) To which an eligible employee would be entitled under ORS 659A.150 to 659A.186 on June 30, 2024; and

(b) To which an eligible employee would not be entitled under ORS 659A.150 to 659A.186, on July 1, 2024.

(2) A covered employer may rescind a designation or approval of leave previously protected by OFLA that is scheduled to occur on or after July 1, 2024.

(3) A covered employer who has designated or approved leave previously protected by OFLA that is scheduled to occur on or after July 1, 2024:

(a) Must, as soon as practicable, notify the employee in writing, in the language the employer typically uses to communicate with the employee, that the leave is not protected by OFLA on and after July 1, 2024; and

(b) May not retaliate or in any way discriminate against the employee with respect to hire or tenure or any other term or condition of employment because the employee has inquired about the provisions of OFLA, submitted a request for OFLA leave, or invoked any provision of OFLA.

(4) A covered employer must provide written information to an employee that informs the employee of the ability to apply for benefits under ORS chapter 657B, including contact information for Paid Leave Oregon or the administrator of the employer’s equivalent plan:

(a) Concurrently if the employer rescinds the employee’s previous OFLA designation or approval, as described in section (2) of this rule; and

(b) As soon as practicable but within 14 calendar days of the employee providing the employer with information that, before July 1, 2024, would have been sufficient for the employer to provisionally designate the leave as leave previously protected by OFLA.

(5) A covered employer may comply with section (4) of this rule by providing the employee with the notice made available by the Director of the Employment Department described in ORS 657B.440, in the language the employer typically uses to communicate with the employee.

(6) This rule does not relieve an employer from the obligation to comply with other laws, including the Family and Medical Leave Act, the Americans with Disabilities Act, ORS 659A.103 to 659A.146 and 659A.147 and ORS 653.601 to 653.661, when the employer is notified of the employee’s need for leave that was previously protected by OFLA.

STATUTORY/OTHER AUTHORITY: ORS 651.060, ORS 659A.805, Section 22, chapter 20, Oregon Laws 2024

STATUTES/OTHER IMPLEMENTED: ORS 659A.150 to 659A.186, Section 22, chapter 20, Oregon Laws 2024

AMEND: 839-009-0220

RULE TITLE: OFLA: Relationship to Other Laws

NOTICE FILED DATE: 05/08/2024

RULE SUMMARY: Amends rule to clarify relationship between OFLA and other laws.

RULE TEXT:

(1) Leave taken under FMLA counts as OFLA leave provided the employee is also eligible for OFLA leave.

(2) Provisions of OFLA will be construed to the extent possible in a manner that is consistent with any similar provisions of FMLA; however, employers subject to both OFLA and FMLA must apply in a given leave situation the provision that is more beneficial to the employee's circumstances.

(3) An employer may not impair, by agreement or otherwise, the right of an employee on OFLA leave to utilize sick leave under the provisions of ORS 653.601 to 653.661.

(4) The provisions of ORS 657B.060 and 657B.070 apply during periods of time that include but are not limited to the application period described in OAR 471-070-1100.

(5) A decision by the Director of the Employment Department, or a decision under an equivalent plan described in ORS 657B.210 to 657B.260, to deny family or medical leave under ORS chapter 657B is not a defense to the unlawful practice described in ORS 659A.183. A covered employer has an independent obligation to determine whether to deny or grant OFLA leave in accordance with ORS 659A.150 to 659A.186 and these rules.

STATUTORY/OTHER AUTHORITY: ORS 651.060, ORS 659A.805

STATUTES/OTHER IMPLEMENTED: ORS 659A.805, ORS 659A.150 - 659A.186

AMEND: 839-009-0230

RULE TITLE: OFLA: Purposes for Taking Leave

NOTICE FILED DATE: 05/08/2024

RULE SUMMARY: Amends rule to conform administrative description of OFLA leave purposes to those described in chapter 20, Oregon Laws 2024.

RULE TEXT:
Eligible employees may take OFLA leave for the purposes referred to as child placement leave, pregnancy disability leave, sick child leave, and bereavement leave.
(1) Child placement leave is leave taken under OFLA before January 1, 2025, to effectuate the legal process required for placement of a foster child or the adoption of a child.
(2) Pregnancy disability leave is leave taken by an employee for their own disability related to pregnancy, including pregnancy termination or childbirth, whether the disability occurs before, during or after the birth of the child, or for prenatal care, including fertility or infertility treatment.
(3) Sick child leave is leave taken to care for an employee's child suffering from an illness, injury, or condition that requires home care.
(a) Sick child leave includes leave to care for an employee's child whose school or child care provider has been closed in conjunction with a statewide public health emergency declared by a public health official.
(b) An employer is not required to grant OFLA leave for routine medical or dental appointments.
(4) Bereavement leave is leave taken to deal with the death of a family member and includes leave taken to attend the funeral or alternative to a funeral of the family member, to make arrangements necessitated by the death of the family member, or to grieve the death of the family member.

STATUTORY/OTHER AUTHORITY: ORS 659A.805, ORS 651.060

STATUTES/OTHER IMPLEMENTED: ORS 659A.150 - 659A.186

AMEND: 839-009-0235

RULE TITLE: OFLA: Leave Year

NOTICE FILED DATE: 05/08/2024

RULE SUMMARY: Amends rule to conform OFLA leave year to ORS 659A.164 and chapter 20, Oregon Laws 2024.

RULE TEXT:

(1) For purposes of this Division 9, “OFLA leave year” has the meaning given the phrase “one-year period” in ORS 659A.164.

(2) If a covered employer transitions from any other leave year applicable to OFLA to an OFLA leave year, all eligible employees of the covered employer must be provided with the full benefit of leave entitlement described in ORS 659A.150 to 659A.186 at the beginning of the new OFLA leave year.

STATUTORY/OTHER AUTHORITY: ORS 651.060, ORS 659A.164, ORS 659A.805

STATUTES/OTHER IMPLEMENTED: ORS 659A.164

AMEND: 839-009-0240

RULE TITLE: OFLA: Length of Leave and Other Conditions of OFLA Leave

NOTICE FILED DATE: 05/08/2024

RULE SUMMARY: Amends OFLA rule to conform to chapter 20, Oregon Laws 2024.

RULE TEXT:

(1)(a) An eligible employee is entitled to up to a total of 12 weeks of OFLA leave, for sick child leave and bereavement leave, within an OFLA leave year.

(b) Notwithstanding subsection (a) of this section, an eligible employee is entitled to a total of two weeks of bereavement leave upon the death of each family member of the employee within an OFLA leave year, except that the eligible employee may not take more than four weeks of bereavement leave within an OFLA leave year.

(2) In addition to the 12 weeks of leave described in section (1) of this rule, an eligible employee may take a total of 12 weeks of OFLA pregnancy disability leave within the same OFLA leave year. The employee may use all or part of the 12 weeks of leave described in section (1) of this rule and all or part of the 12 weeks of OFLA pregnancy disability leave in any order. The employee need not exhaust either type of leave in order to use the other.

(3) In addition to the 24 weeks of leave authorized by sections (1) and (2) of this rule, an eligible employee is entitled to a total of two weeks of child placement leave within an OFLA leave year. This section (3) of this rule does not apply on or after January 1, 2025.

(4) The adoption or foster placement of multiple children at one time entitles the employee to take only one two-week period of child placement leave. This section (4) of this rule does not apply on or after January 1, 2025.

(5) A covered employer need not grant sick child leave to an eligible employee if another family member of the child is willing and able to care for the child.

(6) A covered employer may not reduce the amount of OFLA leave available to an eligible employee under this section by any period the employee is unable to work because of a disabling compensable injury as defined in ORS 656.005.

(a) If an employee uses OFLA pregnancy disability leave for a workplace injury pending acceptance of a workers' compensation claim, upon acceptance of the claim any OFLA pregnancy disability leave used for the workplace injury must be restored to the employee. If the claim is denied, OFLA pregnancy disability leave will be deducted from the employee's entitlement.

(b) If a worker's compensation claim is first denied and then accepted, the employer must restore any OFLA pregnancy disability leave taken for the condition covered by worker's compensation in the leave year in which the worker's compensation claim is accepted.

(c) Notwithstanding this rule, the employer may reduce the amount of OFLA leave available to an eligible employee under this section by any period the employee is unable to work because of a disabling compensable injury as defined in ORS 656.005 after the employee has refused a suitable offer of light duty or modified employment under ORS 659A.043 (3)(a)(D) or 659A.046(3)(d).

(d) An employee unable to work for an employer because of a disabling compensable injury arising out of and in the course of employment for that employer, but who is also employed by and able to work for another employer, may be eligible and qualify to use OFLA leave under the other employer.

(7) For the purpose of intermittent leave, OFLA leave entitlement is calculated for an employee by multiplying the number of hours in the employee's normal work week by the number of weeks for which the employee is eligible for each category of OFLA.

(a) If an employee's schedule varies from week to week, a weekly average of the hours worked over the 12 months worked prior to the beginning of the leave period must be used for calculating the employee's normal work week.

(b) If an employee takes intermittent or reduced work schedule OFLA leave, only the actual number of hours of leave taken may be counted toward the OFLA leave to which the employee is entitled.

(8) When an employee requests OFLA leave, or when a covered employer acquires knowledge that an employee's leave may be for a purpose that constitutes OFLA leave, the employer must notify the employee of the employee's eligibility

to take OFLA leave within five business days, absent extenuating circumstances. Whether an employee is an “eligible employee” as defined in OAR 839-009-0210 is determined, and notice must be provided, at the commencement of the first instance of each purpose for leave listed in OAR 839-009-0240 during the OFLA leave year. If an employee is an “eligible employee” as defined in OAR 839-009-0210 for a purpose listed in OAR 839-009-0240, the employee’s eligibility for that purpose does not change during the applicable 12-month period. In addition:
(a) An eligible employee taking, in any order, some or all of 12 weeks of OFLA pregnancy disability leave and some or all of 12 weeks of OFLA leave for any other purpose, need not requalify under OAR 839-009-0210 each time the employee takes OFLA leave within the same leave year.
(b) An employee who has taken two weeks of OFLA child placement leave, need not requalify under OAR 839-009-0210 for up to an additional 12 weeks of leave within the same leave year when used for the purposes of OFLA sick child leave.
(c) An employee unable to work because of a disabling compensable injury as defined in ORS 656.005 need not requalify under OAR 839-009-0210 in order to use OFLA leave following a period the employee is off work due to the compensable injury.
(9) When an employer is authorized by law to request additional information, other than information that constitutes medical verification, to verify whether leave is OFLA qualifying, the employer may provide the employee with a written request for information. The written request must be provided within five business days after the date on which the employee requests OFLA leave, or on which the employer acquires knowledge that an employee's leave may be for an OFLA-qualifying reason. Absent extenuating circumstances, the employer must notify the employee whether or not the employee is eligible and qualifies to take OFLA leave within five business days of receiving the requested information. If an employer determines that an employee does not qualify for OFLA leave for the reason requested, the employer must notify the employee in writing that the employee does not qualify.
(10) When the written notice described in section (8) or (9) of this rule indicates that the employee does not qualify for OFLA leave, the notice must state that the employee is ineligible or that the reason for requested leave does not qualify for OFLA leave and at least one reason why the employee is not eligible or the reason does not qualify for leave.
(11) An exempt employee is a salaried executive, administrative or professional employee under the federal Fair Labor Standards Act or the state minimum wage and overtime laws.
(a) When OFLA leave is also covered by FMLA and the employee takes intermittent leave in blocks of less than one day, if done in accordance with 29 CFR § 825.206, the employer may reduce the employee's salary for the part-day absence without the loss of the employee's exempt status in accordance with OAR 839-020-0004(32).
(b) When OFLA leave is not covered by FMLA, and the employee takes intermittent leave in blocks of less than one day, an employer will jeopardize the employee's exempt status if the employer reduces the employee's salary for the part-day absence.
(12) ORS 659A.150 to 659A.186 and these rules do not limit any right of an employee to similar leave to which the employee may be entitled under any agreement between the employer and the employee, collective bargaining agreement or employer policy.
(13) When an eligible employee takes bereavement leave under ORS 659A.150 to 659A.186 to deal with the death of an individual related by blood or affinity whose close association with the eligible employee is the equivalent of a family relationship, the employer may require the employee to attest in writing that the employee and the other person have a significant personal bond that, when examined under the totality of the circumstances, is like a family relationship. An employer that requires a written attestation must provide an attestation form to the employee. The form need not be notarized, must be in the language typically used by the employer to communicate with the employee and may include the following provisions:

I, (full name) _____, share a significant bond with (name of other person)_____ and they are like a family member to me.
Any facts about your relationship can make it like a family. Common examples include:

(a) Shared personal financial responsibility, including shared leases, common ownership of real or personal property, joint liability for bills or beneficiary designations;
(b) Emergency contact designation of the employee by the other individual in the relationship or the emergency contact designation of the other individual in the relationship by the employee;
(c) The expectation to provide care because of the relationship or the prior provision of care;
(d) Cohabitation and its duration and purpose;
(e) Geographic proximity; and
(f) Other factors that demonstrate the existence of a family-like relationship.

STATUTORY/OTHER AUTHORITY: ORS 659A.805, ORS 651.060

STATUTES/OTHER IMPLEMENTED: ORS 659A.150 - 659A.186, ORS 659A.043, ORS 659A.046

AMEND: 839-009-0245

RULE TITLE: OFLA: Intermittent Leave and Alternate Duty

NOTICE FILED DATE: 05/08/2024

RULE SUMMARY: Amends OFLA rule to conform to chapter 20, Oregon Laws 2024.

RULE TEXT:

(1) An employer may transfer an employee on intermittent OFLA leave or a reduced work schedule into an alternate position with the same or different duties to accommodate the leave, provided the following exist:

(a) The employee accepts the transfer position voluntarily and without coercion;

(b) The transfer is temporary, lasts no longer than necessary to accommodate the leave and has equivalent pay and benefits;

(c) The transfer is compliant with applicable collective bargaining agreements, as well as with state and federal law, including ORS 659A.146 and 659A.147 and all the employee protections found in FMLA regulations 29 CFR Part 825;

(d) Transfer to an alternate position is used only when there is no other reasonable option available that would allow the employee to use intermittent leave or reduced work schedule; and

(e) The transfer is not used to discourage the employee from taking intermittent or reduced work schedule leave, or to create a hardship for the employee.

(2) An employee transferred, as provided in section (1) of this rule, to an alternate position for the purpose of a reduced work schedule must be returned to the employee's former position when the employee notifies the employer that the employee is ready to return to the former position at the end of the alternate duty leave.

(3) OFLA leave time for an employee on intermittent leave or a reduced work schedule is the difference between the number of hours the employee normally works and the number of hours the employee actually works during the intermittent leave or reduced work schedule. When it is physically impossible for an employee using intermittent leave or working a reduced leave schedule to commence or end work during a shift, the entire period of work from which the employee is forced to be absent is designated as OFLA leave and counts against the employee's OFLA entitlement.

(4) Days in which the employer's business is not in operation are not counted toward intermittent or reduced work schedule OFLA leave.

(5) An employer may transfer an employee to an alternate position that accommodates OFLA pregnancy disability leave provided:

(a) The employee accepts the position voluntarily and without coercion;

(b) The transfer is temporary, lasts no longer than necessary and has equivalent pay and benefits;

(c) The transfer is compliant with applicable collective bargaining agreements, as well as with state and federal law, including ORS 659A.146 and 659A.147 and all the employee protections found in FMLA regulations 29 CFR Part 825; and

(d) The transfer is not used to discourage the employee from taking OFLA leave or to create a hardship for the employee.

(6) An employee is not on OFLA leave if the employee has been transferred — as provided in section (5) of this rule — to an alternate position for the purpose of alternate work duties that the employee is able to perform within the limitations of the employee's pregnancy disability, but not requiring a reduced work week. An employee working in an alternate position retains the right to return to the employee's original position at any time during the employee's OFLA leave. This section (6) does not impair the right of an employee to a reasonable accommodation or the application of any other state or federal law.

(7) An alternate position may result in the employee working fewer hours than the employee worked in the original position. The employee's OFLA leave is the difference between the number of hours the employee worked in the original position and the number of hours the employee actually works in the alternate position.

STATUTORY/OTHER AUTHORITY: ORS 651.060, ORS 659A.162, ORS 659A.805

STATUTES/OTHER IMPLEMENTED: ORS 659A.150 to 659A.186

AMEND: 839-009-0250

RULE TITLE: OFLA: Notice by Employee; Designation by Employer; Notice by Employer Regarding Eligibility or Qualification

NOTICE FILED DATE: 05/08/2024

RULE SUMMARY: Amends OFLA rule to conform to chapter 20, Oregon Laws 2024.

RULE TEXT:

(1) Except as otherwise described in this rule, a covered employer may require an eligible employee to give 30 days' written notice of the need for foreseeable leave, including an explanation of the need for leave, before starting sick child leave. The employee is not required to specify that the request is for OFLA leave.

(2) When an employee is unable to give the employer 30 days' notice of the need for sick child leave but has some advance notice of the need for the leave, the employee must give the employer as much advance notice as is practicable.

(3) An employee able to give advance notice of the need to take sick child leave must follow the employer's known, reasonable and customary procedures for requesting any kind of leave, absent unusual circumstances.

(4) When taking OFLA leave in an unforeseeable situation, an employee must give oral or written notice within 24 hours before or after commencement of the leave. This notice may be given by any other person on behalf of an employee taking unforeseeable OFLA leave. The employer may require written notice by the employee within three days of the employee's return to work.

(5)(a) Except as otherwise provided in OAR 839-009-0260 and subsection (e) of this section, an employer may request additional information to determine that a requested leave qualifies for designation as OFLA leave.

(b) The employer may provisionally designate an absence as OFLA leave until sufficient information is received to make a determination. An employee who calls in "sick" without providing further information will not be considered to have provided sufficient notice to trigger an employer's obligations under OFLA, unless the employer has reason to know the employee is attempting to invoke protected leave or the employer acquires knowledge that an employee's leave may be for an OFLA-qualifying reason.

(c) An employee on OFLA leave who needs to take more leave than originally authorized must give the employer reasonable notice prior to the end of the authorized leave, following the employer's known, reasonable and customary procedures for requesting any kind of leave. However, when an authorized period of OFLA leave has ended and an employee does not return to work, an employer having reason to believe the continuing absence may qualify as OFLA leave must request additional information, and may not treat a continuing absence as unauthorized unless requested information is not provided or does not support OFLA qualification.

(d) An eligible employee may receive notice of the death of a family member by any means and from any source.

(e) An employer may not request additional information to verify bereavement leave, except the employer may require the use of an attestation form described in OAR 839-011-0240 when the family member is related by affinity.

(6) When an employee fails to give notice of foreseeable leave as required by sections (1) and (2), and (3):

(a) If the leave qualifies under OFLA only and not under FMLA, the employer may reduce the total period of unused OFLA leave by an amount no greater than the number of days of leave the employee has taken without providing timely notice of leave. This reduction of leave may not exceed three weeks in a one-year leave period; and the employer may subject the employee to disciplinary action under a uniformly applied policy or practice of the employer.

(b) If the leave qualifies under FMLA only, FMLA regulations apply.

(c) If the leave qualifies under both OFLA and FMLA the employer may:

(A) Delay FMLA coverage until up to 30 days after notice was received as permitted by the FMLA regulations at 29 CFR §825.304 (this applies only to leave to which the employee is entitled under FMLA);

(B) Reduce the total period of unused OFLA leave by an amount no greater than the number of days of leave the employee has taken without providing timely notice of leave. This reduction of leave may not exceed three weeks in a one-year leave period. This applies only to leave to which the employee is entitled under OFLA; and

(C) In addition to actions permitted under (A) and (B), the employer may also take appropriate action under its internal

rules and procedures for failure to follow its usual and customary notification rules, absent unusual circumstances, as long as the actions are taken in a manner that does not discriminate against employees taking OFLA or FMLA leave.
(d) A reduction of OFLA leave under (6)(a) or (6)(c) of this rule may not limit OFLA bereavement leave.
(7) An employer may not reduce an employee's available OFLA leave or take disciplinary action under (6)(a) or (c) of this rule unless the employer has posted the required Bureau of Labor and Industries Family Leave Act notice or the employer can otherwise establish that the employee had actual knowledge of the notice requirement.
(8) An employee who has refused a suitable offer of light duty or modified employment under ORS 659A.043 or 659A.046 and who otherwise is entitled to OFLA leave:
(a) Automatically commences a period of OFLA leave upon refusing the offer of employment; and
(b) Need not give notice to the employer that would otherwise be required that the employee is commencing a period of leave.
(9) A covered employer may provide an OFLA leave request form.

STATUTORY/OTHER AUTHORITY: ORS 651.060, ORS 659A.805

STATUTES/OTHER IMPLEMENTED: ORS 659A.150–659A.186, ORS 659A.043, ORS 659A.046

AMEND: 839-009-0260

RULE TITLE: OFLA: Medical Verification and Scheduling of Treatment

NOTICE FILED DATE: 05/08/2024

RULE SUMMARY: Amends OFLA rule to conform to chapter 20, Oregon Laws 2024.

RULE TEXT:

(1) An employer may require an employee to provide medical verification of the need for OFLA leave, except that:

(a) An employer may not require medical verification for child placement leave, for bereavement leave or for the need for sick child leave due to the closure of a child's school or child care provider as a result of a public health emergency.

(b) Unless the employee is taking sick leave under ORS 653.601 to 653.661 concurrently with OFLA leave, an employer may request medical verification for sick child leave only after the employee has taken sick child leave on all or any part of three separate days during a leave year for a purpose other than to care for a child who requires home care due to the closure of the child's school or child care provider as the result of a public health emergency The opinion of the health care provider is binding, and the employer may not require the employee to obtain a second opinion.

(2) All requests for medical verification must be in writing and must state the consequences for failure to provide the requested medical verification.

(3)(a) The employer must pay the cost of any requested medical verification.

(b) Notwithstanding subsection (a) of this section, the costs of medical verification for pregnancy disability leave may be paid:

(A) From health and welfare fringe benefit moneys contributed entirely by the employer; or

(B) By the employee if the medical verification is a component of a medical examination or health certificate required pursuant to a collective bargaining agreement, state or federal statute or city or county ordinance.

(4) When an employee is required to give advance written notice of foreseeable leave, the employer may also require the employee to provide medical verification of the need for OFLA leave before the leave starts.

(5) When an employee commences unforeseeable OFLA leave without prior notice, the employee must provide medical verification within 15 days of the employer's request for verification.

(6) If an employer determines that a medical verification provided by an employee is incomplete or insufficient, the employer must provide written notice that states the verification is incomplete or insufficient and the additional information needed to make it complete or sufficient and must afford the employee a reasonable period of time to correct the deficiency.

(7) When an employee fails to respond to reasonable employer requests for medical verification of the employee's eligibility for foreseeable leave to determine whether the leave is OFLA qualifying, the employer may deny use of OFLA leave until complete or sufficient medical verification is received.

(8) An employer may not delay the use of OFLA leave when medical verification is not received before the commencement of unforeseeable leave. The employer may designate the leave as provisionally approved, subject to medical verification.

(9) If an employee submits medical verification signed by a health care provider, the employer may not directly request additional information from the employee or family member's health care provider. However, with permission from the employee or family member, a health care provider representing the employer may contact the employee or family member's health care provider to clarify or authenticate the medical verification.

(10) Except as provided in ORS 659A.171(4), an employer may not request medical verification for leave after the employee has qualified for that leave. An employer may not require an employee to obtain a second or third opinion.

STATUTORY/OTHER AUTHORITY: ORS 651.060, ORS 659A.805

STATUTES/OTHER IMPLEMENTED: ORS 659A.150 - 659A.186

AMEND: 839-009-0265

RULE TITLE: OFLA: Medical Verification in Languages Other than English

NOTICE FILED DATE: 05/08/2024

RULE SUMMARY: Amends OFLA rule to conform to chapter 20, Oregon Laws 2024.

RULE TEXT:

(1) In circumstances in which an employee or family member needs to obtain medical verification in a foreign country, the employer shall accept a medical verification from a health care provider who practices in that country.

(2) When a medical verification by a health care provider is in a language other than English, the employer may request that the employee provide a written translation of the verification.

(a) The employee's request for OFLA leave may not be denied on the basis of failure of a good faith effort to obtain translation of a medical verification.

(b) The employer may not deny the employee access to translation resources available to the employer (for instance, bilingual personnel or computer programs).

(c) The employer must request the translation as soon as is practicable upon learning that an employee's circumstances may result in a medical verification being issued in a language other than English.

STATUTORY/OTHER AUTHORITY: ORS 651.060, ORS 659A.805

STATUTES/OTHER IMPLEMENTED: ORS 659A.150 - 659A.186

AMEND: 839-009-0270

RULE TITLE: OFLA: Job Protection

NOTICE FILED DATE: 05/08/2024

RULE SUMMARY: Amends OFLA rule to conform to chapter 20, Oregon Laws 2024.

RULE TEXT:

(1) An employer must restore an employee returning from OFLA leave, including intermittent and alternate duty leave, to the employee's former position if the job still exists, even if it has been filled during the employee's OFLA leave. The former position is the position held by the employee at the time OFLA leave began, regardless of whether the job has been renamed or reclassified. (For example, a delivery driver must be returned to the same route, at the same rate of pay and benefits, driving the same truck, delivering the same goods, on the same shift and working from the same location as when the driver started OFLA leave.)

(2) Any worker hired during an eligible employee's leave to perform the same work that the eligible employee performed before the leave was taken is a replacement worker. When the eligible employee notifies the employer that the employee is ready to return to work, the employer must give that employee the opportunity to work any hours that the replacement worker would otherwise have been scheduled to work.

(3) The employee is not entitled to return to the former position if the employee would have been bumped if OFLA leave had not been taken.

(4) If the position held by the employee at the time OFLA leave began has in fact been eliminated and not merely renamed or reclassified, the employer must restore the employee to any available, equivalent position.

(a) An available position is a position that is vacant or not permanently filled.

(b) An equivalent position is a position that is the same as the former position in as many aspects as possible. If an equivalent position is not available at the employee's former job site, the employee may be restored to an equivalent position within 50 miles of the former job site.

(5) Unless the terms of a collective bargaining agreement, other agreement or the employer's policy provide otherwise:

(a) An employee on OFLA leave does not accrue seniority, production bonuses or other non-health-related benefits that would accrue while the employee is working;

(b) Benefits an employee was entitled to prior to starting OFLA leave must be restored in full upon the employee’s return to work. The benefits do not have to be restored, however, if such benefits have been eliminated or changed for similarly situated employees;

(c) An employee has no greater right to a job or other employment benefits than if the employee had not taken OFLA leave; and

(d) An employee is subject to layoff the same as similarly situated employees not taking OFLA leave.

(6) During any OFLA leave, an employer must maintain the employee's coverage under any group health plan on the same conditions as coverage would have been provided if the employee had been continuously employed during the entire leave period.

(a) An employer continuing health or other insurance coverage for an employee on OFLA leave may require that the employee pay only the same share of health or other insurance premium during the leave that the employee paid prior to the leave.

(b) If an employee cannot or will not pay such costs, the employer may elect to discontinue benefit coverage, unless to do so would render the employer unable to restore the employee to full benefit coverage. If coverage lapses because an employee has not made required premium payments, upon the employee's return from OFLA leave the employer must still restore the employee to coverage/benefits equivalent to those the employee would have had if leave had not been taken and the premium payment(s) had not been missed, including family or dependent coverage. In such case, an employee may not be required to meet any qualification requirements imposed by the plan, including any new preexisting condition waiting period, to wait for an open season, or to pass a medical examination to obtain reinstatement of coverage. If an employer terminates an employee's insurance in accordance with this section and fails

to restore the employee's health insurance as required by this section upon the employee's return, the employer may be liable for benefits lost by reason of the violation, for other actual monetary losses sustained as a direct result of the violation, and for appropriate equitable relief tailored to the harm suffered.
(c) If the employer pays (directly or indirectly, voluntarily or as required by state or federal statute) any part of the employee's share of health or other insurance premium while an employee is on OFLA leave, the employer may deduct up to 10 percent of the employee's gross pay each pay period after the employee returns to work until the amount is repaid.
(d) If an employee fails to return to work — unless the failure to return to work is because of a serious health condition under ORS Chapter 657B or another circumstance beyond the employee's control — the employer may recover the employee's share of benefits paid by the employer. The employer may use any legal means to collect the amount owed for the employee's share of benefits paid by the employer, including deducting the amount from the employee's final paycheck.
(7) An employer may require an employee to follow the employer's established leave policy regarding periodic reporting to the employer of the employee's current status.
(8) Where required by ORS 659A.112 to 659A.139 and ORS 659A.146 to 659A.148 or other law, employers must consider reasonable accommodations in determining whether an employee is able to resume work.
(9)(a) If an employee gives unequivocal notice of intent not to return to work from OFLA leave:
(b) The employee is entitled to complete the approved OFLA leave, providing that the original need for OFLA leave still exists. The employee remains entitled to all the rights and protections under OFLA, including but not limited to, the use of vacation, sick leave and health benefits pursuant to OAR 839-009-0270 and 839-009-0280, except that:
(A) The employer's obligations under OFLA to restore the employee's position and to restore benefits upon the completion of leave cease, except as required by federal COBRA law, 29 USC 1161 et seq.; and
(B) The employer is not required to hold a position vacant or available for the employee who gives unequivocal notice of intent not to return.
(10) An employer may not use the provisions of this section as a subterfuge to avoid the employer's responsibilities under OFLA.

STATUTORY/OTHER AUTHORITY: ORS 651.060, ORS 659A.805

STATUTES/OTHER IMPLEMENTED: ORS 659A.150 - 659A.186

AMEND: 839-009-0280

RULE TITLE: OFLA: Use of Accrued Leave

NOTICE FILED DATE: 05/08/2024

RULE SUMMARY: Amends OFLA rule to conform to Oregon law, including chapter 20, Oregon Laws 2024.

RULE TEXT:

(1) Except as provided in this rule or the terms of a collective bargaining agreement, an agreement between the eligible employee and the covered employer, or an employer policy, OFLA leave is not required to be granted with pay.

(2) An employee eligible to take OFLA leave is entitled to use accrued paid sick leave, personal leave, vacation leave or any other paid leave that is offered in lieu of sick or vacation leave, during the period of OFLA leave. As used in this rule, accrued paid sick leave does not include disability insurance, disability benefits or benefits provided under ORS chapter 657B.

(3) An employer may require an employee to use accrued paid leave during OFLA leave that would otherwise be unpaid, and may determine the order in which paid leave is to be used if to do so is consistent with a collective bargaining agreement or other written agreement between the eligible employee and the covered employer or an employer policy. The employer may exercise these prerogatives only if:

(a) Prior to the commencement of OFLA leave, the employer provides written notice to the employee that accrued paid leave is to be used during OFLA leave; or

(b) Within five business days of the employee's notice of unforeseeable leave, the employer provides written notice to the employee.

(4) An eligible employee or covered employer may choose to have the employee's OFLA leave run concurrently with a type of paid or unpaid leave provided by the employer and is not referenced in these rules, as provided or allowed under an employer policy, except that a covered employer may not reduce the amount of OFLA leave available to an eligible employee by any period the employee is unable to work because of a disabling compensable injury which entitles the employee to compensation from the covered employer.

STATUTORY/OTHER AUTHORITY: ORS 651.060, ORS 659A.805

STATUTES/OTHER IMPLEMENTED: ORS 659A.150 – 659A.186

REPEAL: 839-009-0290

RULE TITLE: OFLA: Special Rules for Public School Teachers

NOTICE FILED DATE: 05/08/2024

RULE SUMMARY: Repeals OFLA rule applicable to teachers.

RULE TEXT:

(1) The provisions of this section apply only to employees of a school district, employed principally as instructors in public kindergartens, elementary schools, secondary schools or education service districts.

(2) If a public school teacher requests foreseeable OFLA leave for a serious health condition of the employee or the employee's family member, and the teacher will be absent more than 20 percent of the total number of working days in the period during which the leave would occur, the employer may require the teacher to elect one of the following options:

(a) To take OFLA leave for one uninterrupted period of time to complete medical treatment. (School holidays and school vacation days are not counted as OFLA leave); or

(b) To transfer temporarily into an available alternative position that better accommodates periodic absences.

(3) If a teacher begins OFLA leave more than five weeks before the end of the academic term because of the teacher's own serious health condition, the employer may require the teacher to remain on leave until the end of the term if:

(a) The OFLA leave is at least three weeks long; and

(b) The teacher's return to work would occur within three weeks of the end of the term.

(4) If a teacher begins OFLA leave within five weeks of the end of the academic term for parental leave or the serious health condition of a family member, the employer may require the teacher to remain on OFLA leave through the end of the term if:

(a) The leave is at least two weeks long; and

(b) The teacher's return would occur within the last two weeks of the term.

(5) If a teacher begins OFLA leave within three weeks of the end of the academic term for parental leave or to care for a family member with a serious health condition and the leave is greater than five working days, the employer may require the teacher to remain on family leave until the end of the term.

(6) If a teacher takes OFLA leave to the end of the school year and continues the leave at the beginning of the next school term, the leave is consecutive rather than intermittent leave.

(a) The period between the end of the school term and the beginning of the next school term, when a teacher would not have been required to report for duty, is not counted against the teacher's OFLA leave entitlement.

(b) A teacher on OFLA leave at the end of the school term must be provided with the same benefits during the period between school terms that the teacher would normally receive if no OFLA leave were taken.

(7) Full-time employees covered by this rule, and who have been maintained on the payroll by a school district during 180 consecutive calendar days, are thereafter deemed to have been employed by that school district for an average of at least 25 hours per week during the 180 days immediately preceding the date any OFLA leave begins.

(8) If a teacher is required by the employer to remain on leave to the end of the academic term, only the period of leave the teacher requested can be charged against the teacher's OFLA leave entitlement.

(9) Nothing in these rules prohibits the employer from allowing the teacher to work as a substitute or in some other paid capacity during the weeks prior to the end of term under subsection (4) or (5) of this rule.

STATUTORY/OTHER AUTHORITY: ORS 659A.805

STATUTES/OTHER IMPLEMENTED: ORS 659A.150 - 659A.186

AMEND: 839-009-0300

RULE TITLE: OFLA: Postings

NOTICE FILED DATE: 05/08/2024

RULE SUMMARY: Amends OFLA rule to conform to ORS chapter 659A.

RULE TEXT:

(1) Each covered employer must display the Bureau of Labor and Industries Family Leave Act notice. The notice must be displayed in each building or worksite in an area that is accessible to and regularly frequented by employees. Failure to post the Family Leave Act notice is an unlawful practice as provided in ORS 659A.001.

(2) Electronic posting of the Family Leave Act notice is not sufficient to satisfy posting requirements, but may supplement worksite posting.

STATUTORY/OTHER AUTHORITY: ORS 651.060, ORS 659A.805

STATUTES/OTHER IMPLEMENTED: ORS 659A.150 - 659A.186

AMEND: 839-014-0630

RULE TITLE: Waiver from Telephone Requirement

NOTICE FILED DATE: 05/08/2024

RULE SUMMARY: Amends rule to correct erroneous citation.

RULE TEXT:

(1) An employer may request a waiver from the requirements of ORS 659A.253(3) and these rules. Prior to the granting of any request for waiver the employer must demonstrate to the Commissioner that:

(a) Compliance with the statute and rules would constitute an unreasonable hardship for the employer; and

(b) The employer meets any and all requirements of the Division for an emergency medical plan.

(2) Persons desiring a waiver, may apply to the Commissioner on a form prepared by the Bureau. The completed waiver application form shall be submitted to the Wage and Hour Division, Farm Labor Unit, 3865 Wolverine Street, N.E., Bldg. E-1, Salem, OR 97305.

(3) Persons desiring to obtain a waiver must submit, with the application, a copy of the emergency medical plan, which meets the requirements of the rules of the Division.

(4) In determining what circumstances constitute an unreasonable hardship the Commissioner shall consider the following:

(a) Any circumstances presented by the employer in support of the application;

(b) The number of employees occupying the housing;

(c) The location of the housing;

(d) The length of time the housing is intended to be occupied;

(e) Any other relevant information.

(5) In considering the request for the waiver the Commissioner shall consider:

(a) The history of the employer in complying with the emergency medical plan;

(b) Any other relevant information.

(6) The Commissioner may grant the waiver request when the Commissioner determines that the provisions of section (1) of this rule are met. The Commissioner may specify any conditions on approval of the request. If the request is denied, the Commissioner shall state each reason for the denial.

STATUTORY/OTHER AUTHORITY: ORS 651.060, ORS 659A.262, ORS 659A.253

STATUTES/OTHER IMPLEMENTED: ORS 659A.253