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FAMILY and MEDICAL LEAVE POLICY (including Military Service Member Leave)

October 1, 2013

Employees may be eligible for unpaid, job-protected leave of up to 12 weeks in a 12-month period under the Oregon Family Leave Act (OFLA), the Washington Family Leave Act (WFLA), and/or the federal Family and Medical Leave Act (FMLA). In some cases, additional job-protected leave may also be available. For purposes of tracking family and medical leave, the Agency uses a 12-month “rolling forward” leave year.

Although the provisions of Oregon, Washington and federal laws differ, the Agency has adopted a single family and medical leave policy that complies with applicable federal and state laws and includes leave related to military service injury and qualifying exigencies. State and federal leave time run concurrently whenever both sets of laws apply to the leave taken.

It is important that employees contact the Human Resources Department if they are on leave or are anticipating leave for any covered reasons, including (1) their or a family members’ serious health condition; (2) pregnancy or childbirth; (3) caring or bonding with a child following birth, adoption, or placement as a foster-child; (4) caring for a child with a non-serious illness or injury necessitating home care; (5) caring for a family member who is a service member injured while serving on active military duty, including veterans who are undergoing medical treatment, recuperation or therapy for serious injury or illness that occurred any time during the five years preceding the date of treatment; (6) certain qualifying exigencies relating to a family member’s call-up to active military duty (see military leave entitlements below); (7) being the spouse of a member of the US military forces (including National Guard or military reserve forces) who has an impending call or order to active duty in a foreign country or is on impending leave from deployment; or (8) to deal with the death of a family member by attending the funeral or alternative to a funeral of the family member; making arrangements necessitated by the death of the family member; or grieving the death of a family member.¹

If it is determined that an employee’s condition does not qualify for leave under the family and medical leave laws, the employee may nevertheless be eligible for vacation, sick leave, paid-time off leave or other unpaid leave. Thus, any questions about absences should be directed to your Program Director or the Human Resources Department.

¹The OFLA entitlement for this type of leave for eligible Oregon employees becomes effective January 1, 2014. As part of the 12-week general annual OFLA leave entitlement, eligible employees may take up to two weeks of OFLA leave for this purpose upon the death of any family member within the 12-month leave year. This type of leave must be completed within 60 days of the date on which the eligible employee receives notice of the death of a family member.

1. Eligibility Requirements:

- Federal Family and Medical Leave Act (FMLA): Employees who have been employed with the Agency for 12 months total, who work at a location with at least 50 employees within a 75 mile radius, and who have worked at least 1,250 hours during the previous 12-month period.
- Washington Family Leave Act (WFLA): Employees who have been employed with the Agency for 12 months total, who work at a location in Washington with at least 50 employees within a 75 mile radius, and who have worked at least 1,250 hours during the previous 12-month period.
- Oregon Family Leave Act (OFLA): Employees working in Oregon and who have been employed with the Agency for the 180-day period immediately preceding their leave and have worked an average of 25 hours per week during that 180 day period. (The 25-hour requirement does not apply to leave for birth, adoption or foster placement of a child under age 18.)

Please contact the Human Resources Department for more information about eligibility.

2. Basic Leave Entitlements:

The family and medical leave laws generally require covered employers to provide up to 12 weeks of unpaid, job-protected leave to eligible employees for the following reasons:

- An employee's incapacity due to pregnancy, prenatal medical care or child birth;
- To care for the employee's child after birth, or placement for adoption or foster care (must be taken within 12 months of the child's birth or placement);
- To care for the employee's serious health condition that makes the employee unable to perform the employee's job;
- FMLA: To care for the employee's spouse, child (biological, step, adopted or foster), parent or person acting "in loco parentis" (such as a guardian or another relative caring for a child) who has a serious health condition;
- WFLA: To care for the employee's spouse, child under 18 years of age (biological, step, adopted or foster), child over 18 who is incapable of self-care due to a disability, parent or person acting "in loco parentis" (such as guardian or another relative caring for the child), or registered domestic partner.
- Washington Family Care Act (WFCA): To care for a sick child with a routine illness, a spouse, parent, parent-in-law or grandparent with a serious or emergency health condition, or an adult child with a disability. (WFCA leave is only available to the extent than an employee has available paid leave.)
- OFLA: To care for the employee's spouse, child (biological, step, adopted or foster), parent or person acting "in loco parentis" (such as guardian or another relative caring for the child), parent-in-law, grandparent or grandchild, or registered same-sex domestic partner, or parent or child of such partner, who has a serious health condition; or to care for the employee's child with an illness or injury necessitating home care, other than a serious health condition, for a minor child or an adult child substantially limited by a physical or mental impairment. Effective January 1, 2014, OFLA also allows up to two weeks of

leave to deal with the death of a family member by attending the funeral or alternative to a funeral of the family member, making arrangements necessitated by the death of a family member or grieving the death of a family member.

- Because of differences in eligibility and coverage standards between state and federal laws, in some cases, an eligible employee may be entitled to more than 12 weeks of leave in a 12-month leave year.
- State leave laws also permit more than 12 weeks of leave in a year in certain situations. Under OFLA, an eligible female employee who takes leave for a pregnancy-related disability may take up to an additional 12 weeks for any OFLA-qualifying purpose, and a male or female employee who uses a full 12 weeks of parental leave (for caring for or bonding with a new child) may use up to 12 additional weeks in the same leave year for sick child leave (to care for a child with a non-serious injury or illness requiring home care). Under Washington's pregnancy disability leave (PDL) regulation, an eligible female employee is entitled to pregnancy disability leave in addition to the 12 weeks of WFLA leave. Washington PDL runs concurrently with federal FMLA leave, but separately from WFLA leave.
- In some cases, when both spouses are employed by the Agency, the 12-weeks of leave may be limited to an aggregate of 12 weeks combined between them both for certain leave purpose, and in certain cases, the Agency may require that spouses or family members employed by the Agency stagger their leaves.
- Military Family Leave Entitlements:
Eligible employees with a spouse, same-sex and/or registered domestic partner, son, daughter, or parent who is a member of any branch of the U.S. military and is on active duty or called to active duty status in a foreign country may use their 12-week FMLA entitlement to address certain qualifying exigencies. Examples of qualifying exigencies include attending certain military events, arranging for alternative childcare, addressing certain financial and legal arrangements, attending certain counseling sessions, and attending post-deployment reintegration briefings. 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. Such care may include arranging for alternative care, providing care on an immediate need basis, admitting or transferring the parent to a care facility, or attending meetings with staff at a care facility.

FMLA leave also includes a special leave entitlement that permits eligible employees to take up to 26 weeks of leave to care for a covered injured or ill service member during a single 12-month period if the employee is the spouse, son, daughter, parent or next of kin of the service member. A covered service member is a current member of the Armed Forces, including a member of the National Guard or Reserves, who has a serious injury or illness incurred in the line of duty on active duty that may render the service member medically unfit to perform his or her duties for which the service member is undergoing medical treatment, recuperation, or therapy; or is in outpatient status; or is on the temporary disability retired list. A covered service member also includes

veterans who are undergoing medical treatment, and/or recuperating or in therapy for a serious injury or illness that occurred any time during the five years prior to the first date an eligible employee takes FMLA leave to care of the covered veteran. Military caregiver leave may also apply for leave taken to care for a service member who aggravates a prior injury or illness during his/her course of military service and to a former service member for an injury or illness that results from a condition the predates the individual's active duty but that was exacerbated by the military service.

The Washington Military Family Medical Leave Act (WMFLA) permits employees who, on average, perform 20 or more hours of work per week to take up to 15 days of protected leave if they are the spouse or registered domestic partner of a member of the armed forces of the United States, national guard, or reserves who has been notified of an impending call or order to active duty or has been deployed. This leave must be taken either prior to deployment or while the military spouse or partner is on leave from deployment. An employee who wishes to take leave in this situation must provide a copy of the official notice of impending call or order to active duty or of a leave from deployment within five business days of receiving such notice. An employee who takes leave in this situation also has the choice of either using paid time off (if available) or taking the leave as unpaid. The 15 days of WMFLA leave runs separately from the WFLA 12-week entitlement but may run concurrently with the FMLA 12-week qualifying exigency entitlement in certain cases.

The Oregon Military Family Leave Act (OMFLA) allows a spouse or registered same-sex domestic partner of a member of the U.S. Armed Forces, the National Guard, or the military reserve to take leave during a period of military conflict when the service member has been notified of: (a) an impending call or order to active duty; or (b) impending leave for deployment. Employees meeting this condition for leave and who have worked an average of 20 hours per week in the preceding 180-day period are entitled to 14 days of unpaid leave per deployment before deployment and/or during leave from deployment. All leave taken for this purpose will be counted toward the employee's 12-week OFLA entitlement. Employees intending to take leave for this purpose must provide notice of their intention within five business days of receiving official notice of an impending call or order to active duty or of a leave from deployment.

3. Definition of Serious Health Condition:

For purposes of the family and medical leave laws, a serious health condition is an illness, injury, impairment, or physical or mental condition that involves either an overnight stay in a medical care facility, or continuing treatment by a health care provider for a condition that either prevents the employee from performing the functions of the employee's job or prevents the qualified family member from participating in school or other daily activities. Serious health conditions include an illness, disease or condition that, in the medical judgment of the treating health care provider, poses an imminent danger of death, is terminal in prognosis with a reasonable possibility of death in the near future, or requires constant care or continuing treatment. Serious health conditions also include any period of disability due to pregnancy or period of absence for prenatal care.

Subject to certain conditions, the continuing treatment requirement may be met by a period of incapacity of more than 3 consecutive calendar days combined with at least two visits to a health care provider or one visit and a regimen of continuing treatment, or incapacity due to pregnancy, or incapacity due to a chronic condition. Other conditions may also meet the definition of continuing treatment.

4. Benefits and Protections:

During the use of FMLA and WFLA leave, the employer must maintain the employee's health coverage under any "group health plan" on the same terms as if the employee had continued to work. Employees are still responsible for paying their portion of premium, including any premiums related to spouse, partner or dependent coverage. OFLA does not require the employer to maintain health coverage during an approved family medical leave but does require the employee's health coverage be restored when they return to their regular position following leave. Employees who are not eligible for employer-provided continuation of health coverage may make arrangements to continue their coverage at their own expense.

Use of Family Medical leave cannot result in the loss of any employment benefit that accrued prior to the start of an employee's leave. However, the Agency reserves the right to alter, reduce or eliminate any pay practice, policy or benefit at any time, with or without notice, except for those provisions required by law.

At the end of the leave, normally the employee returns to his/her former position. If the former position does not exist for some business reason, the employee may return to an available equivalent position. An "equivalent position" is one with equivalent pay, benefits and hours but not necessarily the same work location or type of responsibilities. An employee's right to return to work also may be affected by any transfer, layoff or termination action that would have occurred for business reasons unrelated to the family leave absence.

5. Use of Leave:

An employee normally does not need to use family medical leave in one block of time with the exception of leave taken to care for a child after birth or following placement for adoption or foster care. Leave can normally be taken intermittently or on a reduced leave schedule when medically necessary. Employees must make reasonable efforts to schedule leave for planned medical treatment so as not to unduly disrupt the employer's operations. Leave due to qualifying exigencies may also be taken on an intermittent basis.

Employees are required to use any accumulated paid leave time (sick, floating holiday, vacation, or paid-time-off) prior to leave being unpaid unless to do so negatively impacts the employee's ability to receive short or long-term disability, insurance settlements, or other wage subsidies, including workers' compensation benefits.

No vacation, sick or paid-time-off leave will accrue during the otherwise unpaid portion of the leave

6. Employee Responsibilities:

Employees must provide 30 days advance notice of the need to take family medical leave when the need is foreseeable. When 30 days' notice is not possible, the employee must provide notice as soon as practicable and generally must comply with the Agency's normal paid leave policies and program's normal call-in policy/procedure.

Employees must provide timely and sufficient information for the employer to determine if the leave may qualify for family medical leave protection and the anticipated timing and duration of the leave. Sufficient information may include that the employee is unable to perform job functions, the family member is unable to perform daily activities, the need for hospitalization or continuing treatment by a health care provider, or circumstances supporting the need for military family leave. Employees also must inform the employer if the requested leave is for a reason for which family medical leave was previously taken or certified. Employees also may be required to provide timely certification from a health care provider and periodic recertification supporting the need for leave and/or certification of ability to return to work. If the leave is due to a military exigency, employees may be required to provide certification to support the request for leave.

7. Employer Responsibility:

Covered employers must inform employees requesting leave whether they are eligible under the family medical leave acts. If they are, the notice must specify any additional information required as well as the employees' rights and responsibilities. If they are not eligible, the employer must provide a reason for the ineligibility.

Covered employers must inform employees if leave will be designated as family medical leave act-protected and the amount of leave counted against the employee's leave entitlement. If the employer determines that the leave is not protected, the employer must notify the employee

8. Enforcement:

It is unlawful for any employer to (1) interfere with, restrain, or deny the exercise of any right provided under the family medical leave act(s) and/or (2) discharge or discriminate against any person for opposing any practice made unlawful by the family medical leave act(s) or for involvement in any proceeding under or relating to the family medical leave act(s).

Employees are encouraged to contact the Human Resources Department or the Executive Director if they have concerns related to family medical leave.

The federal Family and Medical Leave Act does not affect any federal or state law prohibiting discrimination, or supersede any state or local law or collective bargaining agreement which provides greater family or medical leave rights.