

MULTNOMAH COUNTY, OREGON

EXECUTIVE RULE NO. 0337

Amendments to Personnel Rule 2-60 Family and Medical Leave

- a. Under MCC 9.030 by Executive Rule 270, the Chair adopted the current personnel rules on September 9, 2002.
- b. It is necessary to amend and update the rule to incorporate changes to policy and for consistency and clarity.
- c. These rule changes have been reviewed by affected parties and their comments and suggestions appropriately considered and incorporated.

The following Personnel Rules are amended as follows, effective 12:01 a.m. on October 5, 2009:

(Language ~~stricken~~ is deleted; double underlined language is new.)

Rule 2-60

FAMILY AND MEDICAL LEAVE

§ 2-60-010 Purpose

The county provides leave to its employees so they can meet their family health and parental obligations, or for their own serious health conditions, or to allow them to spend time with spouses who serve during a military conflict, while maintaining their employment status.

§ 2-60-020 Eligibility Under State and Federal Law

County employees are granted entitlements for family and medical leave, in accordance with the provisions of:

(A) Federal Family and Medical Leave Act (FMLA) provides up to 12 weeks of authorized absence annually for employees who have worked for the county for at least 12 months (need not be consecutive) and have worked at least 1250 hours during the previous 12 months of employment, for the following conditions:

- (1) Birth of a child (including maternity and paternity leave);
- (2) Placement of a child with the employee for adoption or foster care;
- (3) To care for a spouse, son, daughter or parent who has a serious health condition (the county treats domestic partners the same as spouses under the FMLA);
- (4) The employee's serious health condition, as defined by the Act, that renders the employee unable to perform the essential job duties of their position;

(5) Any qualifying exigency arising out of the employee's spouse, child, or parent in the Armed Forces serving on active duty or receiving notification of an impending call or order to active duty in support of a contingency operations; and

(6) Employees who are the spouse, child, parent, or next of kin of a member of the Armed Forces who is undergoing medical treatment, recuperation, or therapy for a serious injury or illness incurred in the line of active duty.

(B) Oregon Family Leave Act (OFLA) provides up to 12 weeks of authorized absence annually for employees who have worked for the county for an average of 25 hours or more per week for at least 180 days (6 months) prior to the leave for the following conditions (the minimum work hours requirement is waived when the leave is for the care of a newborn, newly adopted or newly placed foster child):

(1) Birth of a child;

(2) To care for a newly adopted or newly placed foster child under age 18;

(3) To care for a spouse, child (including biological, adopted, foster, stepchild, the child of employee of same-gender domestic partner or a child with whom the employee is or was in a relationship of *in loco parentis*), parent (including custodial, non-custodial, biological, adoptive, foster parent), parent-in-law, parents of same-gender domestic partner, grandparent, grandchild or same-gender domestic partner who has a serious health condition (the county treats opposite sex domestic partners as spouses under OFLA) ;

(4) The employee's serious health condition, as defined by the Act, including pregnancy related disability or absence for prenatal care, which renders the employee unable to perform the duties of the employee's regular position;

(5) To care for the employee's child who has an illness or injury which requires home care but is not a serious health condition.

(C) Oregon Military Family Leave Act (OMFLA) provides up to 14 days of authorized unpaid leave for employees who work for the county for an average of at least 20 hours per week if during a period of conflict, an employee's spouse or domestic partner is:

(1) A member of the armed forces of the United States, the national guard, or the military reserve forces of the United States; and

(2) Has been notified of an impending call or order to active duty or has been deployed and is on leave deployment

§ 2-60-040 Calculation of Leave

(A) When leave is authorized under FMLA as well as OFLA and/or a collective bargaining agreement, the leave will be designated as FMLA qualifying and will simultaneously exhaust the FMLA, OFLA, and contractual leave entitlement.

(B) An employee's FMLA 12 week entitlement shall run concurrently with any employee absence resulting from a workers' compensation claim.

(C) The county uses a calendar year basis for purposes of determining an employee's FMLA or OFLA leave entitlement. Eligible employees may receive up to 12 weeks of FMLA/OFLA per calendar year (except as otherwise noted below).

(D) Under both FMLA and OFLA, all county employees are eligible for 12 weeks of leave. Part-time employees receive a pro-rated amount of leave, based on percentage of time worked. Part-time employees' leave is calculated by multiplying the assigned or average number of hours in a workweek by 12.

(E) A female employee giving birth to a child may take up to 36 weeks leave when applying all the provisions of family leave: 12 weeks of pregnancy disability; 12 weeks for serious health condition of self or family member, sick child or parental leave; and, if the full 12 weeks of parental leave have been exhausted, an additional 12 weeks of sick child leave.

(F) A male employee may take up to 24 weeks when applying all the provisions of family leave: 12 weeks for serious health condition of self or family members, sick child or parental leave, and 12 weeks of additional sick child leave if the full 12 weeks of parental leave have been used.

(G) Employees who take leave to care for an injured service member are entitled to up to 26 weeks of protected leave. Such leave is only available during a single 12-month period.

(H) When approved by the department HR unit, the length of intermittent leave is calculated by multiplying the average number of hours in a workweek by 12.

(I) If the employee takes intermittent or a reduced work schedule, only the actual number of hours of leave taken may be counted toward the total hours of leave allowed under the law. Intermittent leave may be taken in increments of one-quarter of an hour, and the employee must try to schedule the time to not unduly disrupt the county's operations.

(J) Leave authorized under OMFLA is included in (not in addition to) the leave authorized by OFLA, and eligible employees are entitled to 14 days of unpaid leave per deployment.

§ 2-60-050 Use of Accrued Leave

(A) County employees are required to charge FMLA/OFLA leave to accrued sick and vacation leave balances. Employees will determine the order in which paid leave is used. Once sick and vacation leave and personal and saved holidays have been exhausted, the employee will be placed on unpaid FMLA/OFLA leave or may, if eligible, use catastrophic leave donations in accordance with MCPR 2-55 in order to continue on paid leave.

(B) An employee may choose to use accrued compensatory time while on FMLA or OFLA leave although the county may not require its use for FMLA or OFLA leave. The use of compensatory time off may not be counted against the employee's FMLA or OFLA 12-week entitlement as stated in federal or state law or regulations.

(C) An employee using leave authorized by OMFLA may elect to substitute any accrued leave, rather than taking unpaid leave, for any leave authorized by the act.

§ 2-60-060 Notification to Employer and Required Medical Certification

(A) An employee will provide no less than 30 calendar days notice for a planned absence under the provisions of ~~this policy~~ FMLA/OFLA. In the event of a medical emergency or other unforeseeable event, the employee will contact the supervisor as soon as practicable.

(B) Employees requesting FMLA/OFLA leave under these rules must provide medical certification of the need for leave, whether due to their own serious health condition, or to care for a family member. Employees may be asked to provide medical certification on the next occurrence after taking three consecutive or separate days of sick child leave during a leave year. Employees may be required to provide periodic medical recertification and/or return to work certification upon request.

(C) An employee requesting leave under OMFLA must provide notice to his or her supervisor within 5 business days of receiving official notice of an impending call or order to active duty or of a leave for deployment.

§ 2-60-065 Intermittent Leave Use

(A) Employees are eligible to take intermittent leave if there is a medical need for leave. Employees needing intermittent leave must attempt to schedule their leave so as not to disrupt the operations of their work unit.

(B) Use of intermittent leave following the birth or placement of a child for adoption or foster care is contingent upon the approval of the supervisor and the department HR unit.

§ 2-60-070 Health Insurance

(A) The county will maintain the same level of health insurance coverage for an employee on FMLA leave as when the coverage was provided before the leave was taken.

(B) Employees who have selected to opt out from health insurance coverage will not be eligible to receive the opt-out payment during the time they are on unpaid leave.

(C) The county does not provide health insurance coverage for employees who have been on unpaid OFLA leave for over 30 days. At this time, employees will be provided the option of continuing health insurance coverage on a self-pay basis under COBRA.

(D) In some instances, the county may recover, as allowed by law, premiums paid to maintain health coverage for an employee who fails to return to work from FMLA leave.

§ 2-60-080 Reinstatement

(A) When an employee returns from family leave, the employee must request reinstatement promptly upon the expiration of leave. If an employee makes a timely request for reinstatement and complies with other requirements under state and federal regulations, the employee will be reinstated to their former position. If the employee cannot be reinstated to the former position because that position no longer exists, the employee will be reinstated to an available equivalent position in accordance with applicable laws, rules, and/or collective bargaining agreement. If no suitable position is available, the employee will be subject to the layoff provisions of these rules and/or any applicable collective bargaining agreement.

~~(B)~~ If the employee fails to report to work within ~~five~~5 calendar days after the end of leave, the employee will be considered to have resigned unless the employee has requested and obtained a leave extension prior to the end of the leave.

 ~~(C)~~ The county may deny reinstatement if:

 ~~1(A)~~ The employee fails to provide a medical release to return to work or a fitness-for-duty certificate following leave for the employee's own serious health condition, when the county asked for one at the time leave commenced;

 ~~2(B)~~ The employee tells the county he/she is not returning to work; or

 ~~3(C)~~ The employee fraudulently obtained the leave.

§ 2-60-100 Notification to Employee and Department Responsibilities

(A) Each department will develop and administer internal procedures for employees to request and receive, if eligible, FMLA, ~~and/or~~ OFLA, and OMFLA leaves. Procedures will include a process to ensure that supervisors promptly notify their HR departments of requests for medical leave, and that such requests are immediately submitted to the department HR unit for final review and approval/denial. Only department HR units have authority for final approval or denial of medical leave requests, and must consult with Central HR prior to denying any request for medical leave under these rules.

(B) Each department HR unit will, upon receipt of an employee's request for leave, provide the employee with a notice of eligibility to include:

(1) A designation of the benefits under FMLA, OFLA, OMFLA, labor contract and/or personnel rules as applicable to the request for leave, and a statement that leave taken will count against the applicable leave entitlements; and

(2) Medical certification requirements and the consequences for not providing such information as requested. The department must pay the cost of the medical verification not covered by insurance or other benefit plan; and

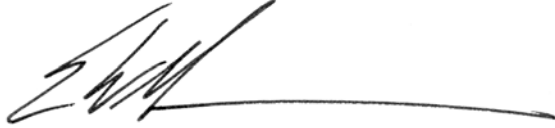
(3) Notification of the employee's leave balances, and the requirements for the employee to use accrued leave during the absence; and

(4) Notification that employer health care contributions will continue if the leave has been designated as FMLA. In this case, the employee will be advised of the requirement to reimburse the county for health plan premiums if the employee fails to return from leave, provided that such reimbursement conforms with the provisions of FMLA; and

(5) An explanation of the employee's reinstatement rights in accordance with these rules.

(C) Each department will ensure employees are informed of their rights under family and medical leave laws and rules by, at a minimum, posting official notices in accordance with federal and state requirements of the various leave laws.

Dated this 5th day of October 2009.

A handwritten signature in black ink, appearing to read 'Ted Wheeler', with a long horizontal line extending to the right.

Ted Wheeler, Multnomah County Chair

REVIEWED:

Agnes Sowle, County Attorney
for Multnomah County, Oregon

A handwritten signature in black ink, appearing to read 'Agnes Sowle', written in a cursive style.