

MEMORANDUM OF AGREEMENT

Paid Leave Oregon

I. Parties to the Agreement

The parties to this Memorandum of Agreement (hereinafter referred to as “MoA”) are Multnomah County, Oregon (hereinafter referred to as “County”), and Multnomah County Employees Union, Local 88, AFL-CIO (hereinafter referred to as “Union”).

II. Background

- A. In the 2019 legislative session, the State of Oregon passed the Paid Family Medical Leave Act, or Paid Leave Oregon (PLO). Payment of the benefit to eligible workers will begin on September 3, 2023. The benefit amount differs by income level, and is funded by pre-tax payroll deduction.
- B. The Union and the County are parties to five Collective Bargaining Agreements (CBAs) with a term covering Physicians & Psychiatrists (Local 88-2), Dentists (Local 88-5), Pharmacists (Local 88-4), JCSS (Local 88-6) and the General Unit (Local 88-0).
- C. The terms of each CBA allow for either party, upon written notice, to exercise a reopener of the CBA, for the purpose of addressing the impacts, effects and/or changes to the Paid Leave Oregon program. On May 31, 2023, the Union provided notice of its intent to bargain under this provision.

Now, therefore, the parties mutually agree as follows:

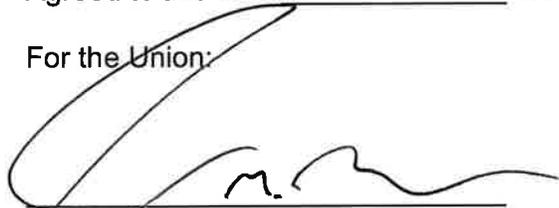
III. Terms of Agreement

- 1. The parties have agreed to modify Multnomah County Personnel Rule 2-60 as attached to this agreement as Exhibit A.
- 2. Eligible employees without banked accruals or comp time may apply for the County’s Catastrophic Leave Program, to allow them to stay in paid status while pending Paid Leave benefit approval from the State. Once employees are approved for Paid Leave Oregon benefits, Catastrophic Leave will no longer be allowed. Catastrophic Leave may not be used to supplement PLO benefits.
- 3. Employees receiving PLO benefits are considered to be in paid status and will continue to accrue all applicable leave.

4. The parties understand that the administration of this benefit by the State may result in occasional and unintended payment to employees that exceeds 100% of wages. The County will make no effort to recover excess payment, nor will employees be allowed to return accruals used during this period.
5. If the County comes to an agreement with a different bargaining unit or employee group which provides a greater benefit than outlined in this MoA, then that greater benefit shall apply to Physicians & Psychiatrists (Local 88-2), Dentists (Local 88-5), Pharmacists (Local 88-4), Juvenile Custody Services Specialists (88-6), and the General Unit (Local 88-0) as well.
6. This Memorandum of Agreement shall apply to employees represented by Physicians & Psychiatrists (Local 88-2), Dentists (Local 88-5), Pharmacists (Local 88-4), Juvenile Custody Services Specialists (88-6), and the General Unit (Local 88-0), and any dispute as to the interpretation or enforcement of this agreement will be subject to the grievance procedure set forth in the applicable CBA.
7. Beginning one (1) year after ratification of this agreement, either party may, upon written notice, reopen this agreement to address and correct issues which have arisen in the administration of Paid Leave Oregon. If reopened, the parties will impact bargain for up to 90 days as required under PECBA.

Agreed to this date 18th of April, 2024.

For the Union:



Jordan Muehe
Council Representative
Oregon AFSCME Local 88

For the County:



Maureen Weber
Labor Relations Manager
Multnomah County

EXHIBIT A

Rule # 2-60

Family, ~~and~~ Medical, and Other Protected Leave under State and Federal Law

§§:

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§ 2-60-010 Purpose

The eCounty 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 prepare for a close family member's active duty service, to spend time with spouses who are on active duty, or to provide care to a close qualified service member, while maintaining their employment status.

§ 2-60-020 Definitions

Active Duty: For purposes of military FMLA ([29 U.S.C. §2601 28 et seq.](#), as amended by National Defense Authorization Act for Fiscal Year 2010), a federal call or order to active duty under a provision of law referred to in Section 101(a)(13)(B) of [Title 10, United States Code](#). For purposes of OMFL, a period of military conflict meaning: a period of war; declared by the U.S. Congress, and declared by the executive order of the President of the U.S. or in which a reserve component of the Armed Forces of the U.S. is ordered to duty pursuant to [Title 32 of the United States Code](#), or Sections 12301 or 12302 of [Title 10 of the United States Code](#).

Next of Kin: For purposes of military FMLA, the nearest blood relative of a covered service member (other than the spouse, son, daughter or parent), in the following priority order:

- A. A blood relative designated in writing by the service member, as his or her nearest blood relative.
- B. Blood relatives who have been granted legal custody of the service member, as his or her nearest blood relative.

- C. Brothers and sisters.
- D. Grandparents.
- E. Aunts and uncles.
- F. First cousins.

Parent: For purposes of military FMLA, the biological or adoptive mother or father of an employee or an individual who stood *in loco parentis* (in place of a parent) when the employee was a child.

Son or Daughter: For purposes of military FMLA, the biological, adopted, foster or stepchild, a legal ward, or a child of an employee standing *in loco parentis*. There is no age limit under the definition of son or daughter for FMLA Qualifying Exigency leave.

Spouse: For purposes of military FMLA, the **eC**ounty considers the employee's husband, wife or domestic partner as spouse.

Qualifying Exigency: For purposes of military FMLA, the following circumstances are considered qualifying exigencies (additional detail contained in [29 CFR 825.126](#)):

- A. Short-notice deployment: Notice that a covered military member will be deployed within seven (7) days or less. An employee may take a maximum of seven **(7)** days of FMLA Qualifying Exigency leave to address any issue arising from an impending call to duty (deployment) received by a covered military member. The employee must begin the leave within seven (7) days of the deployment notice received by the military member.
- B. Military events and activities related to deployment.
- C. Arranging for alternative childcare or schools or providing care on an urgent, immediate need basis because of the deployment.
- D. Attending meetings with the school or daycare staff when the meetings are necessary due to circumstances arising from the deployment.
- E. Making financial and legal arrangements related to the service member's deployment.
- F. Receiving counseling for the employee, the employee with the service member, or facilitating counseling for the **child** ~~son or daughter~~ of the employee and service member.
- G. Rest and recuperation up to fifteen (15) days.
- H. Post-deployment activities sponsored by the military (limited to a period of ninety (90) days following the termination of the service member's active duty status).
- I. Activities relating to the death of the service member.

- J. Other deployment-related activities as agreed by the eCounty and the employee.
- K. Parental care necessitated by the covered active duty of the military member for the military member's parent who is incapable of self-care.

§ 2-60-030 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)

The federal [Family and Medical Leave Act](#) (FMLA)(29 USC §§ 2601, *et seq.*) provides up to twelve (12) weeks of authorized absence annually for employees who have worked for the eCounty for at least twelve (12) months (need not be consecutive) and have worked at least 1250 hours during the previous twelve (12) months of employment, for the following conditions:

1. Birth of a child (including maternity and paternity leave);
2. Placement of a child, under the age of eighteen (18), with the employee for adoption or foster care;
3. To care for a spouse, child, son, daughter or parent who has a serious health condition (the eCounty 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, son, daughter, or parent in the regular Armed Forces, Reserves or National Guard serving on active duty or receiving notification of an impending call or order to active duty in a foreign country. The eCounty may require an employee to provide a FMLA Qualifying Exigency certificate to verify the need for FMLA Qualifying Exigency leave. The County will provide the employee with a A copy of the Department of Labor's FMLA Qualifying Exigency Certificate form if one is required is attached to this rule.
6. Caregiving leave for employees who are the spouse, domestic partner, child, son, daughter, parent, or next of kin of a member of the Armed Forces or a covered veteran (discharged or released under conditions other than dishonorable) who is undergoing medical treatment, recuperation, or therapy for a serious injury or illness incurred or aggravated in the line of active duty, so long as the service member's qualified injury or illness precedes their treatment by no more than five (5) years. ~~This leave is available for employees who have~~

~~worked for the county for at least twelve (12) months (need not be consecutive) and have worked at least 1250 hours during the previous twelve (12) months of employment.~~ Caregiver leave provides employees with fourteen (14) additional weeks of FMLA leave that is in addition to the employee's regular twelve (12) week entitlement under FMLA or OFLA.

B. **Oregon Family Leave Act (OFLA)**

The Oregon Family Leave Act (OFLA)([ORS 659A.150 through 659A.186](#)). provides up to twelve (12) weeks of authorized **absence leave** annually for employees who have worked for the ~~e~~CCounty for an average of **at least** twenty-five (25) hours ~~or more~~ per week **during for at least the one hundred eighty (180) calendar days (six (6) months) prior to the immediately preceding the date leave begins** 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~~ **parental leave**):

1. **Parental leave for the B**irth of a child;
2. ~~To care for a newly adopted or newly placed foster child~~ **Placement of a child** under age eighteen (18) **with the employee for adoption or foster care**;
3. To care for a **family member. For purposes of OFLA, "family member" is defined as:**
 - a) ~~s~~**Spouse of a covered individual,**
 - b) **A child of a covered individual** (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*), **or the child's spouse or domestic partner;**
 - c) **A parent of a covered individual** (including custodial, non-custodial, biological, adoptive, foster parent), **or the parent's spouse or domestic partner;**
 - d) **A parent-in-law; or parents of same-gender domestic partner;**
 - e) **A sibling or step-sibling of a covered individual or the sibling's or step-sibling's spouse or domestic partner;**
 - f) **A grandparent of a covered individual or the grandparent's spouse or domestic partner;**
 - g) **A grandchild of a covered individual or the grandchild's spouse or same-gender domestic partner who has a serious health condition (the county treats opposite sex domestic partners as spouses under OFLA) ;**

h) The domestic partner of a covered individual; or

i) Any individual related by blood or affinity whose close association with a covered individual is the equivalent of a family relationship.

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 (**"OFLA Sick Child"**); or
6. To attend the funeral or alternative to a funeral of a family member; to make arrangements necessitated by the death of a family member, or to grieve the death of a family member ("OFLA Bereavement Leave"). Covered family members are listed in subsection (B)(3). Up to two (2) weeks may be taken in the sixty (60) day period following notice of death of a family member.

Additional OFLA leave may be available to recover from pregnancy disability and childbirth, and additional OFLA Sick Child leave may be available if all twelve (12) weeks of parental leave are used.

C. Oregon Military Family Leave Act (OMFLA)

Oregon Military Family Leave Act (OMFLA) provides up to fourteen (14) days of authorized unpaid leave for employees who work for the **County** for an average of at least twenty (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 actually been deployed.

County employees are required to charge OMFLA leave to accrued paid time such as sick leave; vacation, floating, personal, and saved holidays; and compensatory time balances. Employees will determine the order in which paid leave is used. Once paid leave is exhausted, the employee may take leave unpaid.

D. Paid Leave Oregon (PLO)

Paid Leave Oregon (PLO) is a mandatory statewide insurance program under OAR 471 that provides paid family and medical leave to eligible employees who work in Oregon state. The program is administered by the State of Oregon Employment Department (OED), not the County, and is subject to change.

1. Eligible Employees:
Oregon employees who have earned at least \$1,000 in wages during the base or alternate base year.

2. Qualifying Event(s):
Leave events can be either medical or family-related.

(A) Medical Leave: Medical leave is any leave taken by an employee from work due to the employee's own serious health condition. Serious health condition means an illness, injury, impairment, or physical or mental condition that involves inpatient care in a hospital, hospice, or residential medical care facility, including any period of incapacity; or continuing treatment by a healthcare provider for:

(1) An illness or injury that incapacitated the employee for three (3) or more consecutive days;

(2) A chronic serious health condition. The healthcare provider will determine whether the illness or injury meets the definition of a "serious health condition";

(3) Incapacity during pregnancy or for prenatal care;

(4) Treatment for substance abuse; or

(5) Any period of absence from work to receive treatments and recover, like for radiation, chemotherapy or dialysis.

(B) Parental Leave: To care for and bond with a child during the first year after the child's birth or during the first year after the placement of the child through foster care or adoption younger than age eighteen (18).

(C) Family Leave: To care for any of the following family members with a serious health condition:

(1) Spouses and domestic partners

(2) Children (biological, adopted, foster or stepchild)

(3) Parents and legal guardians (or spouse's parents)

(4) Grandchildren

(5) Siblings

(6) Grandparents (or spouse's grandparents)

(7) Children-in-law

(8) Caring for someone who has an expectation to rely on you for

care - whether you live together or not

(D) Safe Leave: Leave due to the employee or their minor child experiencing domestic violence, sexual assault, harassment or stalking.

3. PLO Benefits

(A) Up to twelve (12) weeks per benefit year of paid leave (up to two (2) additional weeks if pregnancy-related, including lactation)

(B) Up to four (4) additional weeks of unpaid leave if employee is eligible for OFLA and reason is OFLA-qualifying

(C) Job protection if employed more than ninety (90) days:

(1) Continued health care benefits during period of leave

(2) No loss of seniority or pension

4. Payments During Qualified Leaves

(A) Paid Leave Oregon - Weekly Benefits

(1) For employees earning 65% or less of the State Average Weekly Wage (SAWW): 100% of the employee's average weekly wage

(2) For employees earning more than 65% of the SAWW: 65% of the SAWW plus 50% of the employee's average weekly wage that is more than 65% of the SAWW

5. Supplemental County Benefits:

(A) Employees may choose to use accrued paid time off, as described in the section below, to supplement or "top up" the benefits they receive as partial wage replacement from the Oregon Employment Division while on a Paid Leave Oregon eligible leave. The County will require verification from the employee that they have been approved to receive benefits for Paid Leave Oregon before approving leave as a supplemental benefit. Such verification must include sufficient details to coordinate the corresponding payments. Supplementation will be based on an employee's regular rate of pay, including any regularly assigned premiums that are part of the employee's regular rate of pay.

(B) Employees are not required to use supplementation.

6. Rules Concerning County Supplemental Payments

(A) Sick Leave, Vacation, Holiday Leave(s), Professional Recognition Leave, Paid Parental Leave, or Compensatory Time may be used at the discretion of the employee to supplement benefits.

(B) Time may be sequenced at the employee's option, until accruals are exhausted.

(C) Short-Term Disability benefits will not be authorized for use as supplemental benefits in conjunction with Paid Leave Oregon.

(D) Catastrophic Leave Donations will not be authorized for use as supplemental benefits in conjunction with Paid Leave Oregon.

(E) Employees are deemed by the Oregon Employment Department as ineligible for Paid Leave Oregon if they are eligible to receive Workers' Compensation or Unemployment Insurance Benefits.

7. Contribution of Paid Leave Oregon Benefit

Contributions (payroll taxes) for benefits are established by law and are subject to adjustment up or down by the State of Oregon.

(A) Contribution Amounts: Total contribution charged and the split between employee and employer will be in accordance with Oregon State law, unless otherwise covered by a collective bargaining agreement..

(B) Deductions: Employees will pay their share of contribution through payroll deduction. The County shall pay any remaining share as required by law.

8. Timing of County Supplemental Payments

(A) The employee must complete the necessary forms and provide all documentation as required by the Human Resources Department to process the supplemental benefits request. Failure to submit the necessary documentation in a timely manner, may result in denial of supplemental benefit payments.

(B) Payment from the State of Oregon to County employees are not controlled by Multnomah County, and that there may be waiting periods during which the employee may not receive pay, or receive delayed (retroactive) payment.

(C) The County is committed to making every reasonable effort to ensure supplemental pay is issued once the employee provides a copy of their actual gross weekly benefit amount received from Paid Leave Oregon. In the event of a delay, the supplemental pay will be issued on a retroactive basis.

(D) Use of accrued leave for supplemental pay is voluntary and may not be returned or “sold back.”

9. Notification to County: If the need for leave is foreseeable, the employee will provide the County with no less than thirty (30) days notice before Paid Leave Oregon is to begin. In an emergency, employees must notify the County within twenty-four (24) hours and give them written notice within three (3) days of starting leave.

10. Program Administration and Coordination with Other Policies

(A) Paid Leave Oregon may run concurrently with leave under FMLA/OFLA if the leave is FMLA/OFLA qualifying.

(B) All supplemental benefits provided by the County shall run concurrently with FMLA/OFLA.

(C) County employees localized in Washington do not qualify for OFLA and/or Paid Leave Oregon benefits.

(D) County employees who are co-parents with another County employee, will each have an individual right to Paid Leave Oregon and use of supplemental benefits for this purpose.

(E) If a County holiday occurs while the employee is on a qualified leave under Paid Leave Oregon, the employee may, but is not required to, use accrued holiday pay instead of the employee’s Paid Leave Oregon benefits.

(F) The County retains the right to communicate statutory changes to the program to employees as needed. The County will provide notice of such statutory changes to bargaining units and complete bargaining obligations as required by law.

(G) County employees who are eligible to receive Paid Leave Oregon benefits are not eligible for catastrophic leave donations, even if they don’t apply for Paid Leave Oregon.

H) Employees who are receiving PLO benefits, regardless of any supplemental payment, are considered in paid status and will continue to accrue applicable seniority, sick, vacation, holiday, and personal leave, and will continue receiving all collective bargaining agreement benefits, regardless of whether the employee uses accrued leave to supplement (“top off”) their PLO benefit.

E. Washington Paid Family and Medical Leave

Washington Paid Family and Medical Leave (WA PFML) is a mandatory statewide insurance program that provides paid family and medical leave to eligible employees who work in Washington state. The program is administered by the State of Washington’s Employment Security Department (ESD), not the County, and is subject to change.

1. Eligibility

Employee eligibility for leave and benefits (including on-call, temporary and limited duration employees) is established by Washington law. WA PFML may be run currently with FMLA. Employees may receive WA PFML benefits if they meet Washington ESD’s eligibility criteria and experience a qualifying event. Eligibility requirements are as follows but are subject to change by the state program:

(A) Hours Worked: Employees must have worked at least eight hundred twenty (820) hours in the State of Washington (for either the County or other employers) and be “localized employees” working more than fifty percent (50%) time based in the State of Washington during the “qualifying period.” The “qualifying period” is the first four (4) of the last five (5) completed calendar quarters or the last four (4) completed calendar quarters immediately preceding the application for leave. Prior County employment in the State of Washington may qualify employees for this benefit.

(B) Qualifying Event(s): Leave events can be either medical or family-related.

(1) Medical Leave: Medical leave is any leave taken by an employee from work due to the employee’s own serious health condition. Serious health condition means an illness, injury, impairment, or physical or mental condition that involves inpatient care in a hospital, hospice, or residential medical care facility, including any period of incapacity; or continuing treatment by a healthcare provider for:

- (a) An illness or injury that incapacitated the employee for three (3) or more consecutive days.
 - (b) A chronic serious health condition. The healthcare provider will determine whether the illness or injury meets the definition of a “serious health condition.”
 - (c) Incapacity during pregnancy or for prenatal care.
 - (d) Treatment for substance abuse.
 - (e) Any period of absence from work to receive treatments and recover, like for radiation, chemotherapy or dialysis.
 - (f) Certain military-connected events.
- (2) Parental Leave: To care for and bond with a child during the first year after the child’s birth or during the first year after the placement of the child through foster care or adoption younger than eighteen (18).
- (3) Family Leave: To care for any of the following family members with a serious health condition:
- (a) Spouses and domestic partners
 - (b) Children (biological, adopted, foster or stepchild)
 - (c) Parents and legal guardians (or spouse’s parents)
 - (d) Siblings
 - (e) Grandchildren
 - (g) Grandparents (or spouse’s grandparents)
 - (h) Children-in-law
 - (j) Someone who has an expectation to rely on the employee for care, whether they live together or not
- (4) Military Leave: Any qualifying exigency arising from the foreign deployment of the employee’s spouse, child, parent, or next of kin with the Armed Forces, or to care for a service member with a

serious injury or illness as permitted under the federal Family and Medical Leave Act.

2. WA PFML Payments During Qualified Leaves

(A) WA PFML Weekly Benefits: The weekly WA PFML benefit amount is calculated by Washington ESD and will depend on how much the employee earned during their “qualifying period.” Payable benefits will be provided by Washington ESD.

(B) Minimum WA PFML Claim Duration: The minimum claim duration payment is for eight (8) consecutive hours of leave.

(C) Maximum WA PFML Claim Duration: Qualified Washington workers are eligible for:

(1) Up to twelve (12) weeks of continuous or intermittent paid family or medical leave.

(2) Up to sixteen (16) weeks of continuous or intermittent leave when family and medical leave are used in combination (e.g., birth parent pregnancy and parental leave).

(3) An additional two (2) weeks of continuous or intermittent leave is available as a result of pregnancy complications

3. Supplemental County Benefits

(A) Leave Accruals

(1) Employees may choose to use accrued paid time off as described below to supplement or “top up” the benefits they receive as partial wage replacement from the WA ESD while on a WA PFML eligible leave. The County will require verification from the employee that they have been approved to receive benefits for WA PFML before approving leave as a supplemental benefit. Such verification must include sufficient detail to coordinate the corresponding payments. Supplementation will be based on an employee's regular rate of pay, including any allowance premiums that are part of an employee's regular rate of pay.

(2) Employees are not required to use supplementation.

(B) Rules Concerning County Supplemental Payments

(1) Sick Leave, Vacation, Holiday Leave(s), Professional Recognition Leave, Paid Parental Leave, or Compensatory Time may be used at the discretion of the employee to supplement benefits.

(2) Time may be sequenced at the employee's option, until accruals are exhausted.

(3) Employees will not receive "top up" pay from the County if their WA PFML benefits are equal to, or greater than 100% of their regular rate of pay, which includes regularly assigned premiums unless otherwise revised by WA PFML statutes.

(4) Short-Term Disability benefits will not be authorized for use as supplemental benefits in conjunction with WA PFML.

(5) Catastrophic Leave donations will not be authorized for use as supplemental benefits in conjunction with WA PFML.

4. Contribution of WA PFML

Contribution (payroll taxes) for benefits are established by law and are subject to adjustment up or down by the State of Washington.

(1) Contribution Amounts: Total contribution charged and the split between employee and employer will be in accordance with Washington State law.

(2) Deductions: Employees will pay their share of contribution through payroll deduction. The County shall pay any remaining share as required by law.

5. Timing of County Supplemental Payments

(A) The employee must complete the necessary forms and provide all documentation as required by the Human Resources Department to process the supplemental benefits request. Failure to submit the necessary documentation in a timely manner, may result in denial of supplemental benefit payments.

(B) Benefits from the State of Washington to County employees are not controlled by Multnomah County, and that there may be waiting periods during which the employee may not receive pay, or receive delayed (retroactive) payment.

(C) The County is committed to making every reasonable effort to ensure supplemental pay is issued once the employee provides a copy of their actual gross weekly benefit amount received from WA PFML. In the event of a delay, the supplemental pay will be issued on a retroactive basis.

7. Notification to County: If the need for leave is foreseeable, the employee will provide the County with not less than thirty (30) days notice before WA PFML is to begin. In an emergency, employees must notify the County within twenty-four (24) hours and give them written notice within three (3) days of starting leave.

8. Program Administration and Coordination with Other Policies

(A) WA PFML may run concurrently with leave under FMLA if the leave is FMLA qualifying.

(B) All supplemental benefits provided by the County shall run concurrently with FMLA, if they fall under FMLA covered events.

(C) County employees localized in Washington do not qualify for OFLA benefits.

(D) County employees who are co-parents with another County employee, will each have an individual right to WA PFML and use of supplemental benefits for this purpose.

(E) If a County holiday occurs while the employee is on a qualified leave under WA PFML, the employee may, but is not required to, use accrued holiday pay instead of the employee's WA PFML.

(F) The County retains the right to communicate statutory changes to the program as needed to employees. The County will provide notice of such statutory changes to bargaining units and complete bargaining obligations as required by law.

(G) County employees eligible to receive WA PFML benefits are not eligible for catastrophic leave donations, even if they don't apply for WA PFML.

H) Employees who are receiving WA PFML benefits, regardless of any supplemental payment, are considered in paid status and will continue to accrue applicable seniority, sick, vacation, holiday, and personal leave, and will continue receiving all collective bargaining agreement benefits, regardless of whether the employee uses accrued leave to supplement (“top off”) their WA PFML benefit.

§ 2-60-040 Applicability

FMLA controls unless OFLA, applicable collective bargaining agreements, or the personnel rules provide more generous benefits for the employee. In that case, the employee will receive the benefit of the more generous provision.

§ 2-60-050 Calculation of Leave

- A. When leave is authorized under FMLA, **OFLA, PLO, WA PFML**, ~~as well as OFLA~~ and/or a collective bargaining agreement, the leave will be designated as FMLA/**OFLA** qualifying and will simultaneously exhaust the FMLA, OFLA, and contractual leave entitlement.
- B. An employee's FMLA twelve (12) week entitlement shall run concurrently with any employee absence resulting from a workers' compensation claim.
- C. The **e**County uses a calendar year basis for purposes of determining an employee's FMLA or OFLA leave entitlement. Eligible employees may receive up to twelve (12) weeks of FMLA/OFLA per calendar year (except as otherwise noted below).
- D. Under both FMLA and OFLA, **e**County employees are eligible for twelve (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 twelve (12).
- E. An **f**emale employee giving birth to a child may take up to thirty-six (36) weeks leave when applying all the provisions of family leave: **up to** twelve (12) weeks of pregnancy disability (OFLA and FMLA); plus **up to** twelve (12) weeks for serious health condition of self or family member, sick child or parental leave (OFLA); and, if the full twelve (12) weeks of parental leave have been exhausted, an additional twelve (12) weeks of sick child leave (OFLA).
- F. Under OFLA, a spouse or domestic partner may take up to twenty-four (24) weeks when applying all the provisions of family leave: twelve (12) weeks for serious health condition of self or family members, sick child or parental leave, and twelve (12) weeks

of additional sick child leave if the full twelve (12) weeks of parental leave have been used.

- G. Employees who take FMLA military caregiver leave ~~under~~ on behalf of an injured or ill service member or qualified veteran are entitled to up to twenty-six (26) weeks of protected leave during a single twelve (12) -month period. The calculation of the FMLA year is different for FMLA military caregiver leave. When an eligible employee takes military caregiver leave under FMLA, the leave begins on the first day the employee takes Military Caregiver leave to care for an ill or wounded eligible service member and ends twelve (12) months after the date of first use.
- 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 twelve (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 ~~e~~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 fourteen (14) days of unpaid leave per deployment.

§ 2-60-060 Use of Accrued Leave

- A. County employees are required to charge FMLA/OFLA leave to accrued sick, vacation, **holiday (all types)** leave, and compensatory time balances unless otherwise provided by a collective bargaining agreement, **or if the leave is approved under Paid Leave Oregon, or Washington Paid Family and Medical Leave**. Employees will determine the order in which paid leave is used. Once sick and vacation leave, and other forms of paid leave including compensatory time 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. The use of compensatory time off while on FMLA or OFLA leave will be counted against the employee's FMLA or OFLA twelve (12)-week entitlement as stated in federal or state law or regulations.
- ~~C. An employee using leave authorized by OFLA may elect to substitute any accrued leave, rather than taking unpaid leave, for any leave authorized by the act.~~
- C.** County-paid Bereavement Leave (described in MCPR 4-30) will **run concurrent with be applied to** OFLA Bereavement Leave **first**, unless arrangements are made under

an existing collective bargaining agreement to use part of an employee's eCounty-paid bereavement leave non-consecutively, outside of the OFLA sixty (60) day time period.

§ 2-60-070 Notification to Employer and Required Medical Certification

- A. An employee will provide no less than thirty (30) calendar days notice for a planned absence under the provisions of FMLA/OFLA. In the event of a medical emergency or other unforeseeable event, the employee will **notify contact** the supervisor **within twenty-four (24) hours of starting leave and provide written notice within three (3) days, or** as soon as practicable.
- B. Employees requesting FMLA/OFLA leave under these rules must provide medical certification of the need for **medical** leave, whether due to their own serious health condition, or to care for a family member. Employees may be asked to provide medical **documentation certification** on the next occurrence after taking three **(3)** consecutive or separate days of **OFLA** sick child leave during a leave year. Employees may be required to provide periodic medical recertification and/or return to work certification upon request. Health care providers are instructed not to provide genetic information as part of medical certification, except as specifically allowed by law. Employees requesting military FMLA leave for qualifying exigency may be required to provide certification of the qualifying exigency. **(A The County will provide the employee with a copy of the Department of Labor's FMLA Qualifying Exigency Certificate if one is required. is attached to this rule.)**
- C. An employee requesting leave under OMFLA must provide notice to **his or her their** supervisor within five (5) business days of receiving official notice of an impending call or order to active duty or of a leave for deployment.

§ 2-60-080 Health Insurance

- A. The eCounty will maintain the same level of health insurance coverage for an employee on FMLA/OFLA 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. **Opt out coverage ends on the last date of the month in which the employee is in paid status. Opt out converge is reinstated on the first of the month following return to paid status. If the employee is in paid status on the first of the month, coverage will begin that month.**
- ~~C. The county does not provide health insurance coverage for employees who have been on unpaid OFLA leave for over thirty (30) days. At this time, employees will be provided the option of continuing health insurance coverage on a self-pay basis under COBRA.~~

C. For employees on unpaid leave, unpaid premiums will be recovered from future pay upon the employee's return to paid status, subject to collective bargaining overpayment provisions if applicable. In some instances, the eCounty may recover, as allowed by law, premiums paid to maintain health coverage for an employee who fails to return to work from FMLA/OFLA leave.

§ 2-60-090 Reinstatement

- A. When an employee returns from family FMLA/OFLA 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 eCounty may deny reinstatement if:
1. 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 eCounty asked for one at the time leave commenced;
 2. The employee tells the eCounty ~~he/she~~ **that they are** is not returning to work; or
 3. The employee fraudulently obtained the leave.

§ 2-60-100 Confidentiality

The circumstances involving the need for an employee to be granted FMLA/OFLA leave will be kept confidential. Documents provided to the eCounty regarding the leave will be maintained ~~in the employee's medical file which is kept~~ separately from the employee's personnel file, in accordance with state and federal laws.

§ 2-60-110 Notification to Employee and Department Responsibilities

- A. Each department will develop and administer internal procedures for employees to request and receive, if eligible, FMLA, OFLA, and OMFLA leaves. Procedures will include a process to ensure that supervisors promptly notify their HR departments of requests for **family and** medical leave, and that such requests are immediately submitted to the department's ~~HR unit~~ **designated Leave Administrator** for final

review and approval/denial. Only **designated Leave Administrators** ~~department HR units~~ have authority for final approval or denial of **FMLA/OFLA** ~~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,~~ **u**pon receipt of an employee's request for leave, **Leave Administration will** 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 **FMLA or OFLA** 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 **if the employee requests reimbursement and provides documentation**; and
3. Notification of the employee's leave balances, and the requirements for the employee to use accrued leave during the **FMLA and/or OFLA** absence; and
4. Notification that employer health care contributions will continue if the leave has been designated as FMLA **and/or OFLA**. In this case, the employee will be advised of the requirement to reimburse the ~~e~~County for ~~health plan~~ premiums if the employee **enters unpaid leave status or** fails to return from leave, provided that such reimbursement conforms with the provisions of FMLA/**OFLA**; 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.

RESOURCES

[29 U.S.C. § 28 et seq](#)

[Title 10, United States Code](#)

[Title 32, United States Code](#)

[Family and Medical Leave Act \(FMLA\)](#)

[Oregon Family and Medical Leave Act \(OFLA\)](#)

[Oregon Military Family Leave Act \(OMFLA\)](#)

[Paid Leave Oregon \(PLO\)](#)

[Washington Paid Family and Medical Leave \(WA PFML\)](#)

[MCPR 2-55 Catastrophic Leave Donations](#)

[MCPR 4-30 Leaves: Non-Represented Employees](#)