

Procedure Name: Protected Leave Process

Guide for Protective Leave Process

Background:

Protected Leave will be fully processed in house by The City of Salem Protected Leave Analyst starting January 2024.

List of forms for protected leaves:

- [HR016](#) – Protected Leave Instructions
 - This is the application process instructions and charts depicting what type of leave can be requested, what forms are necessary, the application and approval process.
- [HR017](#) – Protected Leave Application Form
 - The employee completes this form as soon as they can and submits to the Protected Leave Benefits Analyst.
- [HR018](#) – Release of Health Information Authorization
 - Employee completes and submits along with their application packet. This will allow HR to follow up with the employee's doctors for clarification on time away, treatments, or incomplete forms if necessary.
- [HR019](#) – Verification of Serious Health Condition
 - This form is also the OR State form for PLO. This form is to be completed by the employee's or family member's Health Care Provider. It must be complete for the leave to be accepted as it will ensure that the criteria for protected leave eligibility are met.
 - The form is due to HR within 15 days of the submission of the application.
- [HR020](#) – Certain Crimes Application
 - This form is to be completed and the proper documentation needs to be attached for those seeking leave under this protection category.
- [HR021](#) - Certificate of Qualifying Exigency for Military Family Leave
 - The City of Salem has adopted the Federal forms to use with Military Family Leave. These forms are to be completed by the employee. It must be complete to be accepted and have the below listed attachments to ensure that the criteria for eligibility are met.
 - This form is due to HR within 15 days of the submission of the application.
 - The form must contain one of the following attachments:
 - A copy of the military member's covered active-duty orders is attached.

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- Other documentation from the military certifying that the military member is on covered active duty (or has been notified of an impending call to covered active duty).
- [HR022](#) - Certification for Serious Injury or Illness of a Current Servicemember
- [HR023](#) - Certification for Serious Injury or Illness of a Veteran (Military Caregiver)
 - The City of Salem has adopted the Federal forms to use with Military Family Leave. These forms are to be completed by the family member's Health Care Provider. It must be complete to be accepted as it will ensure that the criteria for eligibility are met.
 - These forms are due to HR within 15 days of the submission of the application. However, if not received within 15 days, the Protected Leave Benefits Analyst will send a notice (either certified or electronically) with an extension prior to denying the protected leave.
 - HR068 - Verification of Birth Form
 - This form is also the OR State form for PLO. This form is to be completed by the employee's or family member's Health Care Provider. It must be complete for the leave to be accepted as it will ensure that the criteria for protected leave eligibility are met.
- HR024 – Notice of Eligibility Protected Leave
- HR025 – Rights and Responsibilities under Protected Leave
 - Employees will receive this form from HR after they have reviewed all of the certification received and timecards to ensure eligibility.
 - If an employee has had prior protected leave, the Protected Leave Benefits Analyst must determine if each application falls within the same “leave year” and if so, calculate the balance of leave available.
 - For new applications, it will be 12 weeks/480 hours (IAFF 12 weeks/560 hours) , OFLA allows part time eligible proration based upon their prorated full-time hours.
 - Once complete, eligible applicants get the HR024 and the HR025 mailed both regular mail and certified mail.
- HR026 – Release for Return to Work Protected Leave
 - For an employee's own personal leave for serious health condition which is continuous, the employee must have their health care provider complete this form and return it to HR prior to their first day back to work.
- [HR051](#) – Safe Leave Verification
 - This form is also used for Oregon's PLO.
- [HR068](#) – Verification of Birth

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Procedure:

Please note:

- Employees are asked to provide a 30-day notice of leave.
- If the qualifying reason precludes the employee from giving 30-day notice, then the employee must give as much notice as practicable.
- In unanticipated or emergency situations, the employee must give verbal or written notice within 24 hours of the commencement of leave and the employer may require written notice within three days of returning to work.
- If proper notice is not given, OFLA may be reduced by three weeks.
- You will receive a notice of approval from the Protected Leave Benefits Analyst. Once approved for protected leave you can begin to record your time as such, however until you receive additional approval notification from Paid Leave Oregon, we will not designate you under that protection.

Steps to apply:

1. Check eligibility [here](#) or [here](#)
2. Fill out HR017
 - a. This form is also used as a notification of intent to use Paid Leave Oregon (PLO)
 - b. Applications for PLO can be done [here](#).
3. Fill out HR018
4. Take or send the FMLA/OFLA Certification or Verification form (see attached chart for forms needed based upon leave requested) to your/patient's health care provider or as instructed based upon your protected leave request.
 - a. Please note: Medical Certification is not required for birth/adoption/foster child UNLESS there are medical circumstances resulting in the need for time that are directly related to the pregnancy.
 - b. Some certifications are from Legal entities and/or authorized doctors.
5. Return all completed forms to the Protected Leave Analyst.
 - a. Forms may be mailed or delivered to, 295 Church St. SE Suite 210 Salem OR 97301, or faxed to our attention. The Human Resources fax number is 503-588-6170. Make sure the health care provider marks the fax as confidential.
6. You will be notified of approval status via regular and certified mail to the address listed on the application. A copy of the notification will be sent to your supervisor.
7. Prior to your return from a protected leave that is for a medical reason, you will need to have your provider complete the Release for Return to Work Form HR026 and return it to the Protected Leave Analyst prior to your first day back.

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Eligibility Considerations and Necessary Forms:

General

- OFLA – Eligibility prior to certification:
 - 180 days of employment (days on payroll whether paid or unpaid); and
 - Averaging 25 hours per week in the 180 days preceding leave (count actual hours worked, not any paid leave taken).

**Parental leave is available after 180 days, no hour's requirement.

- FMLA – Eligibility prior to certification:
 - 12 months of employment – looking back over a seven (7) year time frame (with breaks in service this means someone who works 7.5 months a year is eligible); and
 - 1250 hours of work in the 12 months preceding leave.

Required Forms:

- HR016 – Protected Leave Instructions
- HR017 – Protected Leave Application Form
- HR018 – Protected Leave Authorization for Release of Information

Other Leave Type Requirements

OFLA /FMLA – Parental Leave:

- Does not require certification.
- FMLA allows only 12 weeks combined between parents that work for same organization.
- Must be taken within the first 12 months of date of event.
- OFLA if a female takes 12 weeks pregnancy disability (serious health condition) they are entitled to 12 weeks parental leave.
 - If they exhaust their parental leave, they are entitled to 12 weeks sick child. Each 12 weeks must be exhausted in order to receive the next qualifying leave. If they don't exhaust serious health condition, they are still eligible for 12 weeks parental leave and 12 weeks sick child in the first year of the birth.
- Required Forms (additional to forms required for general leave):
 - HR019 – Verification of Serious Health Condition

OFLA – Sick Child:

- Other than a serious condition.
- Does not require a certification notice, however after three days of absence HR can request a note from a health care provider.
- Child must be under 18.
- Does not require any formal certification.

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- May be used within 60 days of notice of death.
- Under OFLA, woman taking any pregnancy disability leave are allowed an additional 12 weeks for any OFLA purpose. Either parent who has taken a full 12 weeks of parental leave (e.g., to care for a newborn, newly adopted child or newly placed foster child) are also entitled to take up to an additional 12 weeks leave to care for a child with a non-serious health condition requiring home care.

Eligibility for Certain Crime Victims Leave

- 180 days of employment (days on payroll whether paid or unpaid); and
- Averaging 25 hours per week in the 180 days preceding leave (count actual hours worked, not any paid leaves taken).
- The law says the employee must also be a “crime victim”, meaning that he or she “has suffered financial, social, psychological or physical harm as a result of a personal felony.” The law treats immediate family members of the person as a crime victim as well and defines “immediate family” to include a spouse, domestic partner, father, mother, sibling, child, stepchild, or grandparent.

Serious Health Condition - Employee

- OFLA – Eligibility: To be eligible under OFLA Protected Leave “Serious Health Condition”, an employee must demonstrate that their leave meets one of these criteria for themselves or their family member.
 - Requires inpatient care.
 - Poses imminent danger of death or terminal prognosis.
 - Requires constant or continuing care.
 - Pregnancy is considered a serious health condition (however, eligible for pregnancy leave apart from the 12 weeks OFLA).
 - Transition period and transportation to long term residential care facility.
 - Period of incapacity for more than three days; and
 - Inability to perform at least one essential job function or perform regular daily activities
 - Two or more treatments
 - One treatment and continuing care
 - Chronic conditions requiring periodic treatment.
 - Any period of incapacity related to pregnancy or parental care.
- FMLA – Eligibility: To be eligible under FMLA Protected Leave “Serious Health Condition”, an employee must demonstrate that their leave meets one of these criteria.
 - Illness, injury, impairment or physical or mental condition that involves inpatient care or continuing treatment by a health care provider.
 - Requires constant or continuing care (chronic conditions).
 - Absence or incapacity for more than three days; and
 - Saw health care provider within seven (7) days of incapacity, and
 - Was prescribed a regimen for continuing care, or

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- Employee had two or more health care provider visits within 30 days.
- Any period of incapacity related to pregnancy or parental care.

Required Forms (additional to forms required for general leave):

- HR019 – Verification of Serious Health Condition

Serious Health Condition – Family Member

- To be eligible under Protected Leave to care for the employee’s spouse, son, daughter, or parent who has serious health condition.
 - An employee must be needed to provide care for defined family member because of the family member’s serious health condition in order for the employee to take FMLA leave.
 - An employee may be needed to provide care to the family member.
 - When the family member is unable to care for his or her own medical, safety or other needs because of the serious health condition or needs help in being transported to the doctor.
 - To provide psychological comfort and reassurance to the family member with a serious health condition.
- OFLA definition of family member: The employee’s spouse, child (any age), parent (or one standing in the place of a parent), grandparents, grandchildren, parents-in-law, same-gender domestic partners, and children and parents of same-gender domestic partners.
- FMLA definition of family member:
 - Spouse: Spouse means a husband or wife as defined or recognized in the state where the individual was married and includes individuals in a same-sex marriage or common law marriage.
 - Parent: Parent means a biological, adoptive, step or foster father or mother, or any other individual who stood in loco parentis to the employee when the employee was a child. This term does not include “parents-in-law.”
 - Son or Daughter: Son or daughter means a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis, who is either under age 18, or age 18 or older and “incapable of self-care because of mental or physical disability” at the time that FMLA leave is to commence.

Qualifying Exigency for Military Family Leave

- FMLA – Eligibility: A qualifying exigency arising out of the fact that the spouse, or a son, daughter, or parent of the employee is on covered active duty (or has been notified of an impending call or order to covered active duty) in the Armed Forces in a foreign country, including the National Guard or Reserves.
 - Short notice deployment.
 - Military events and related activities.
 - Childcare and school activities.
 - Financial and legal arrangements.

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- Counseling.
- Rest and recuperation (up to 15 days in a single 12-month period).
- Post deployment activities.
- Care for the service member's parent when that parent is incapable of self-care.
- OMFLA – Eligibility: During a period of military conflict, an employee who is a spouse of a military member (as described below):
 - the Armed Forces of the United States,
 - the National Guard, or
 - the military reserve forces;
 - an impending call or order to active duty,
 - who has been notified of impending leave from deployment

They are entitled to a total of **14 days** of unpaid leave **per deployment** before deployment and/or during leave from deployment.

An employee who intends to take leave must provide the employer with 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. An employee who takes leave authorized under this section may choose to substitute any accrued leave to which the employee is entitled for any part of the leave. Military family leave counts against an employee's general OFLA leave entitlement (ORS 659A.162(1)).

Serious Injury or Illness of a Current Servicemember for Military Family Leave or of a Veteran for Military Caregiver Leave

- FMLA ONLY – Eligibility: A covered employer must grant an eligible employee up to a total of **26 work weeks** of unpaid, job protected leave during a “single 12-month period” to care for a covered service member with a serious injury or illness. The employee must be the spouse, son, daughter, parent, or next of kin of the covered service member.
 - A covered service member is either:
 - A **current** member of the Armed Forces (including a member of the National Guard or Reserves) who is undergoing medical treatment, recuperation, or therapy, is in outpatient status, or is on the temporary disability retired list, for a serious injury or illness; or
 - A **veteran** who has a serious injury or illness that rendered the veteran medically unfit to perform his or her military duties, or an injury or illness that qualifies the veteran for a certain benefit from the Department of Veterans Affairs, or substantially impairs the veteran's ability to work.
 - For veterans, it includes injuries or illnesses that were incurred or aggravated during military service but that did not manifest until after the veteran left active duty. A veteran who was dishonorable discharged does not meet the FMLA definition of a covered service member.

Paid Leave Oregon (PLO)

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- Employees are eligible for PLO effective day one of employment as long as they have earned \$1000 in the previous 12 months and are eligible job protection in conjunction with PLO after 90 days of service.
 - Prior to applying for PLO, employees are required to give 30-day notice of intent to take PLO to the City via the HR017 form.
 - The employee must complete the PLO application process via the Frances online portal.
 - We suggest that you submit all of your medical certification documentation at the same time as you apply via the portal to expedite your approval process with the State.
 - Once the application is received the State verifies your employment and notification with the City. It is at this point where the City notifies the State of the date in which the employee provided us notification of intent to use PLO.
 - Once the employee received their benefit award letter, that is to be submitted to the City in order for the City to determine how many hours are needed for each employee to supplement their State benefits to make the 100% whole with regards to pay.
 - After the City receives the approval notice from the State the employee will receive notification of the approval along with proper payroll codes for their timecards from the Benefits Analyst.
 - The City will not retroactively adjust any wages paid during the waiting period for approval of PLO.

Important notes:

- The State of Oregon will not share any information regarding your PLO leave with the City. If you receive notification from the City of enrollment into PLO and you did not intend to apply, please let us know immediately; there are fraudulent claims being submitted.
- If you have applied and are having a difficult time getting approval, check your portal and then give them a call.
- Finally understand that any periods of leave without pay will affect your PERS service credits and you will be responsible for paying for your benefit premiums.