



FMLA Oregon

Federal vs. Oregon Family & Medical Leave Laws

	FEDERAL ELEMENTS	STATE ELEMENTS
Employers Covered	<p>Private employers with 50 or more employees in at least 20 weeks of the current or preceding year.</p> <p>Public agencies, including state, local and federal employers.</p> <p>Local education agencies covered under special provisions.</p>	<p>In addition to the federal FMLA, Oregon has leave laws regarding (1) family leave, (2) bone marrow donation leave, (3) military family leave, (4) leave for victims of domestic violence, sexual assault and stalking and (5) sick time.</p> <p>Family Leave: Employers with 25 or more employees in at least 20 weeks of the current or preceding year. Special provisions for teachers.</p> <p>Bone Marrow Donation Leave: All employers.</p> <p>Military Family Leave: Employers with 25 or more employees in at least 20 weeks of the current or preceding year.</p> <p>Domestic Violence/Sexual Assault Leave: Employers with six or more employees in at least 20 weeks of the current or preceding year.</p> <p>Sick Time Leave: All employers. Employers with 10 or more employees must provide paid sick time.</p> <p>Employers with fewer than 10 employees must provide unpaid sick time.</p>



<p>Employees Eligible</p>	<p>Worked for employer for at least 12 months (which need not be consecutive); worked at least 1,250 hours for employer during 12 months preceding leave; and employed at a worksite with 50 or more employees within 75 miles of worksite.</p>	<p>Family Leave:</p> <ul style="list-style-type: none"> • Employees who have worked for at least 180 days prior to leave are eligible for parental leave (that is, leave to care for a newborn child or a child placed for adoption or foster care). • Employees who have worked for at least 180 days and worked an average of at least 25 hours per week during the 180 days prior to leave are eligible for any other type of family leave. <p>Bone Marrow Donation Leave: Employees who work an average of at least 20 hours per week and who seek to undergo a medical procedure to donate bone marrow.</p> <p>Military Family Leave: Employees who work an average of at least 20 hours per week and who are the spouse or same-sex domestic partner of a member of the U.S. Armed Forces, National Guard or Reserves.</p> <p>Domestic Violence/Sexual Assault Leave: Employees who work an average of at least 25 hours per week for at least 180 days prior to leave and are:</p> <ul style="list-style-type: none"> • A victim of domestic violence, harassment, sexual assault or stalking; or • The parent or guardian of a minor child or dependent who is a victim of domestic violence, harassment, sexual assault or stalking. <p>Sick Time Leave: All employees (including part-time and temporary employees) who have completed 90 days of employment. Employees accrue paid or unpaid sick time based on their employer size.</p>
<p>Leave Amount</p>	<p>Generally, up to a total of 12 weeks during a 12-month period.</p> <p>Up to 26 weeks during a single 12-month period to care for spouse, child, parent or next of kin who is a covered service</p>	<p>Family Leave: Generally, up to a total of 12 weeks in any 12-month period, with the following exceptions:</p> <ul style="list-style-type: none"> • A female employee may take an additional 12 weeks of pregnancy disability leave; • An employee who takes the entire 12

	<p>member with a serious injury or illness.</p> <p>However, leave for birth, adoption, foster care, care for a parent with a serious health condition or care for a covered service member with a serious injury or illness must be shared by spouses working for same employer.</p>	<p>weeks of parental leave following the birth or placement of a child may take up to an additional 12 weeks of leave to care for a sick child (must be completed within 12 months after the birth or placement); and</p> <ul style="list-style-type: none"> • An employee is eligible for a total of two weeks of family leave for the death of a family member, limited by the total amount of family leave that the employee has remaining for the year (must be completed within 60 days of the date the employee receives notice of the death; employer may not require an employee to take multiple periods of leave concurrently if more than one family member dies during the one-year period). <p>Family members working for the same employer may not take concurrent family leave unless:</p> <ul style="list-style-type: none"> • One employee needs to care for the other employee who is suffering from a serious health condition; • One employee needs to care for a child who has a serious health condition while the other employee is also suffering from a serious health condition; or • The employees are taking leave for the death of a family member. <p>Bone Marrow Donation Leave: Length of leave is determined by the employee, but may not exceed the amount of already accrued paid leave or 40 work hours, whichever is less, unless the employer agrees otherwise.</p> <p>Military Family Leave: Up to 14 days of leave per deployment. This leave counts against an employee's family leave entitlement.</p> <p>Domestic Violence/Sexual Assault Leave: A reasonable leave to seek legal or law enforcement assistance or remedies, seek medical treatment or recover from injuries, obtain counseling or services from a victim services provider, relocate or take steps to secure an existing home. Employer</p>
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		<p>may limit the amount of leave if it creates an undue hardship on the employer's business.</p> <p>Sick Time Leave:</p> <ul style="list-style-type: none"> • Employers with 10 or more employees must provide up to 40 hours of paid sick time per year. • Employers with fewer than 10 employees must provide up to 40 hours of unpaid sick time per year. <p>**Portland employers see special note below**</p> <p>Employees must accrue at least one hour of sick time for every 30 hours worked (or 1 1/3 hour of sick time for every 40 hours worked).</p> <p>Employees may carry over up to 40 hours of unused sick time from one year to the next. An employer may limit employee accruals to 80 hours per year and limit use of sick time to 40 hours per year. An employer may choose any consecutive 12-month period for purposes of compliance.</p> <p>An employer may front-load 40 hours of sick time at the start of the year for employees (paid or unpaid, depending on the employer's size). An employer who front-loads sick time need not comply with the accrual and carry over requirements.</p> <p>An employer that claims an undue hardship in allowing employees to use sick time in hourly increments must front-load employees with 56 hours of sick time leave.</p>
<p>Type of Leave</p>	<p>Unpaid leave for:</p> <ul style="list-style-type: none"> • Birth of employee's newborn child; • Placement of child with employee for adoption or foster care; • Providing care for employee's parent, child or spouse with serious 	<p>Family Leave: Unpaid leave to:</p> <ul style="list-style-type: none"> • Care for an infant, a newly adopted child or a newly placed foster child under 18 years old, or an adopted or foster child older than 18 if the child is incapable of self-care because of a mental or physical disability; • Care for a family member with a serious health condition (including a spouse,

	<p>health condition;</p> <ul style="list-style-type: none"> • Employee's own serious health condition; • Any qualifying exigency when employee's spouse, child or parent is on active duty or is notified of impending call or order to active duty in Armed Forces; or • Caring for a spouse, child, parent or next of kin who is a covered service member with a serious injury or illness. 	<p>same-sex domestic partner, biological, adoptive or foster parent, child, grandparent or grandchild, parent-in-law or person standing in place of a parent or child, and children and parents of a same-sex domestic partner);</p> <ul style="list-style-type: none"> • Recover from or seek treatment for the employee's own serious health condition; • Care for a child who is suffering from an illness, injury or condition that is not a serious health condition but requires home care; or • Deal with the death of a family member by attending the funeral (or alternative to a funeral), making arrangements or grieving. <p>Bone Marrow Donation Leave: Employees may take an already accrued paid leave of absence to undergo a medical procedure to donate bone marrow.</p> <p>Military Family Leave: Unpaid leave during a period of military conflict for an employee who is a spouse or same-sex domestic partner of member of the U.S. Armed Forces, National Guard or Reserves who has been:</p> <ul style="list-style-type: none"> • Notified of impending call/order to active military duty but not yet deployed; • Deployed and on leave from active military duty; or • Called to active military duty but not yet deployed. <p>Domestic Violence/Sexual Assault Leave: An unpaid, reasonable leave to seek legal or law enforcement assistance or remedies, seek medical treatment or recover from injuries, obtain counseling or services from a victim services provider, relocate or take steps to secure an existing home.</p> <p>Sick Time Leave: Employees may use accrued sick time:</p>
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<p>Serious Health Condition/Serious Injury or Illness</p>	<p>Serious Health Condition: Illness, injury, impairment, or physical or mental condition involving incapacity or treatment connected with inpatient care in hospital, hospice, or residential medical-care facility, or continuing treatment by a health care provider involving a period of incapacity due to:</p> <ul style="list-style-type: none"> • A health condition lasting more than three 	<p>Family Leave: A “serious health condition” means:</p> <ul style="list-style-type: none"> • An illness, injury, impairment or physical or mental condition that requires inpatient care in a hospital, hospice or residential medical care facility; • 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

	<p>consecutive full calendar days and involving a certain level of treatment;</p> <ul style="list-style-type: none"> • A chronic serious health condition or a permanent or long-term condition for which treatment may be ineffective; • Absences to receive multiple treatments (including recovery periods) for a restorative surgery or for a condition that if left untreated likely would result in incapacity of more than three days; or • Any incapacity related to pregnancy or for prenatal care. <p>Serious Injury or Illness:</p> <p>In the case of a member of the Armed Forces, including a member of the National Guard or Reserves, an injury or illness incurred by the member in line of duty on active duty in the Armed Forces (or which existed before the beginning of active duty and was aggravated by service in the line of duty on active duty) that may render the member medically unfit to perform the duties of the member's office, grade, rank or rating.</p> <p>For a veteran of the Armed Forces, including a veteran of the National Guard or Reserves, an injury or illness incurred by the member in the line of duty on active duty in the Armed Forces (or which existed before the beginning of active duty and was aggravated by service in the line of duty on active</p>	<p>constant care; or</p> <ul style="list-style-type: none"> • Any period of disability due to pregnancy or period of absence for prenatal care. <p>No provision for other types of leave</p>
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	duty) and that manifested itself either before or after the member became a veteran.	
Health Care Provider	Doctors of medicine or osteopathy authorized to practice medicine or surgery; podiatrists, dentists, clinical psychologists, clinical social workers, physician assistants, optometrists, chiropractors (limited to manual manipulation of spine to correct subluxation shown to exist by x-ray), nurse practitioners, and nurse-midwives, if authorized to practice under state law and consistent with the scope of their authorization; Christian Science practitioners listed with the First Church of Christ, Scientist in Boston, MA; any provider so recognized by the employer or its group health plan's benefits manager; and any health provider listed above who practices and is authorized to practice in a country other than the United States.	<p>Family Leave: Similar to federal FMLA, but does not include language extending recognition to any provider recognized as such by the employer or its group health plan's benefits manager. Includes naturopaths and direct entry midwives. Also includes persons who are primarily responsible for treatment of an eligible employee solely through spiritual means, including, but not limited to, a Christian science practitioner.</p> <p>Sick Time Leave: Same as defined under Family Leave (above).</p> <p>No provision for other types of leave</p>
Intermittent Leave	<p>Permitted for serious health condition, for care of covered service member when medically necessary and for active duty leave.</p> <p>Not permitted for care of newborn or new placement by adoption or foster care, unless employer agrees.</p>	<p>Family Leave: Permitted under standards similar to the federal FMLA. Employee may take parental leave in two or more nonconsecutive periods only with employer's approval.</p> <p>Bone Marrow Donation Leave: Permitted</p> <p>Military Family Leave: Permitted in multiple blocks of time and/or under an altered or reduced work schedule.</p> <p>Domestic Violence/Sexual Assault Leave: Permitted</p> <p>Sick Time Leave: Permitted to be taken in hourly increments, unless it would impose undue hardship on the employer.</p>

<p>Substitution of Paid Leave</p>	<p>Employees may elect, or employers may require, accrued paid leave to be substituted in some cases. Employee must follow terms and conditions of employer's normal paid leave policies.</p>	<p>Family Leave: Employees may use any paid accrued vacation or sick leave or any other paid leave. Employer may generally determine the order in which accrued leave is to be used where more than one type of accrued leave is available.</p> <p>Bone Marrow Donation Leave: Employees use their accrued paid leave or 40 work hours, whichever is less, for bone marrow donation.</p> <p>Military Family Leave: Employees may use any paid accrued vacation or sick leave or any other paid leave.</p> <p>Domestic Violence/Sexual Assault Leave: Employees may use any paid accrued vacation or sick leave or any other paid leave. Employer may generally determine the order in which accrued leave is to be used where more than one type of accrued leave is available.</p> <p>Sick Time Leave: Employers with sick leave, paid vacation, paid personal time off or other paid time off policies or programs that are substantially equivalent to, or more generous than, the minimum requirements of the state's sick time leave law will be considered in compliance.</p>
<p>Reinstatement Rights</p>	<p>Must be restored to same position or one equivalent to it in all benefits and other terms and conditions of employment.</p>	<p>Family Leave: Similar to federal FMLA</p> <p>Bone Marrow Donation Leave: Employer may not retaliate against an employee for requesting or using accrued paid leave of absence to undergo a procedure to donate bone marrow.</p> <p>Military Family Leave: Similar to federal FMLA</p> <p>Domestic Violence/Sexual Assault Leave: Employer may not discharge, threaten to discharge, demote, suspend or in any manner discriminate or retaliate against an employee because he or she takes leave.</p> <p>Sick Time Leave: Employer may not retaliate or discriminate with respect to any term or condition of employment because an employee inquired about, requested or</p>

		used sick time. In addition, an employer may not apply an attendance policy that includes covered sick time as an absence that may lead to an adverse employment action.
Key Employee Exception to Reinstatement Rights	Limited exception for salaried employees if among highest paid 10 percent of workforce within 75 miles of worksite, restoration would lead to grievous economic harm to employer and other conditions met.	No provision
Maintenance of Health Benefits During Leave	Health insurance must be continued under same conditions as prior to leave.	<p>Family Leave: Benefits are not required to continue or accrue during a family leave unless required by a collective bargaining agreement, employment agreement or policy.</p> <p>Effective Jan. 1, 2016, the Oregon Family Leave Act requires the continuation of health coverage for an employee on leave, similar to the federal FMLA.</p> <p>Bone Marrow Donation Leave: Leave does not affect an employee's rights with respect to any other employment benefit.</p> <p>Military Family Leave: Same as family leave (including Jan. 1, 2016 amendment noted above).</p> <p>Domestic Violence/Sexual Assault Leave: No provision</p> <p>Sick Time Leave: Sick time is compensated at the regular rate of pay and without reductions in benefits, including health care benefits that the employee had at the time he or she used sick time.</p>

<p>Leave Requests</p>	<p>To be made by employee at least 30 days prior to date leave is to begin where need is known in advance or, where not foreseeable, as soon as practicable.</p> <p>If due to a planned medical treatment or for intermittent leave, the employee, subject to health care provider's approval, shall make a reasonable effort to schedule it in a way that does not unduly disrupt employer's operations.</p> <p>If due to foreseeable active duty of family member, notice must be made as soon as practicable.</p>	<p>Family Leave: Employee must provide at least 30 days' advance written notice, unless the leave is unexpected. Employees who do not give prior notice of an unexpected leave must give oral notice within 24 hours of leave commencement followed by written notice within three days after return to work.</p> <p>Bone Marrow Donation Leave: No provision</p> <p>Military Family Leave: Employee must provide notice of leave within five business days of receiving official notice of an impending call or order to active duty or leave from deployment, or as soon as is practicable if official notice is provided fewer than five days before taking leave.</p> <p>Domestic Violence/Sexual Assault Leave: Employee must provide reasonable advance notice, unless giving advance notice is not feasible. For unanticipated or emergency situations, the employee must give oral or written notice as soon as practicable.</p> <p>Sick Time Leave: When possible and when the need for leave is foreseeable, an employer may require advance notice of an employee's intention to use sick time, up to 10 days prior (or as soon as otherwise practicable). An employee must make a reasonable attempt to schedule sick time in a manner that does not unduly disrupt the employer's operations.</p>
<p>Certification Requirement</p>	<p>Employer may require certification for the following:</p> <p>Request for leave because of serious health condition or to care for covered service member with a serious illness or injury.</p> <p>Request for qualifying exigency leave because of family member's active duty or call to active duty in the Armed Forces.</p>	<p>Family Leave: Employer may require medical or other certification from a health care provider. Employer may also require a medical certification that the employee is able to resume work. Certification must be provided before leave begins (or within 15 days after the employer requests it, if leave is taken without prior notice). For sick child leave, employers may require medical certification only if the employee has taken more than three days of sick child leave in one year.</p> <p>Bone Marrow Donation Leave: Employer</p>

	<p>To demonstrate employee's fitness to return to work from medical leave where employer has a uniformly applied practice or policy requiring such certification.</p>	<p>may require verification by a physician of the purpose and length of leave.</p> <p>Military Family Leave: Employer may require a copy of the service member's active duty orders within a reasonable time to confirm that leave is for a permitted purpose.</p> <p>Domestic Violence/Sexual Assault Leave: Employer may require certification within a reasonable time that the employee or a minor child or dependent is a victim of domestic violence, harassment, sexual assault or stalking and that the leave is taken for a permitted purpose.</p> <p>Sick Time Leave: An employer may require verification from a health care provider if an employee takes more than three consecutive workdays of sick time. Where an employee's need for sick time is anticipated to last more than three consecutive workdays, the employer may require verification be provided prior to the commencement of sick time.</p> <p>In addition, an employer who suspects abuse of sick time by an employee (pattern of unscheduled sick time adjacent to weekends, holidays and vacation days) may require verification from the employee, regardless if the employee was out for three consecutive workdays.</p> <p>Employers are prohibited from requiring that the verification explain the nature of the illness or details related to the use of sick time.</p>
<p>Executive, Administrative, and Professional Employees</p>	<p>These individuals are entitled to FMLA benefits. However, their use of FMLA leave does not change their status under the Fair Labor Standards Act (FLSA), i.e., an employer does not lose its exemption from the FLSA's minimum wage and overtime requirements.</p>	<p>Family Leave: Similar to federal FMLA when FMLA applies, but not in cases when only the Oregon Family Leave Law applies.</p> <p>Sick Time Leave: An employee who is exempt from the overtime provisions of the FLSA is presumed to work 40 hours in each week for the purpose of sick time accrual. However, if the employee's actual workweek is fewer than 40 hours, sick time accrues based on the employee's actual workweek.</p>

		No provision for other types of leave
Statutes	29 USC 2601	OR ST §§ 659A.150–659A.186 (family leave); § 659A.312 (bone marrow donation leave); §§ 659A.090–659A.099 (military family leave); §§ 659A.270–659A.290 (domestic violence/sexual assault leave); O.R.S. § 653.601-653.661 (sick time leave)

SPECIAL NOTE: Prior to the passage of Oregon’s sick time law, the cities of Portland and Eugene passed their own sick leave ordinances. The new state law explicitly provides that Oregon state law preempts local government laws that set any sick leave requirements. Eugene’s sick leave ordinance was preempted by state law, employers in Eugene must only comply with the state’s sick leave requirements.

Portland’s sick time ordinance has been in effect since Jan. 1, 2014. This ordinance requires employers with six or more employees to provide paid sick time, and employers with fewer than six employees to provide unpaid sick time. Because it is more protective than the state sick time law, Portland’s sick leave ordinance remains in effect. However, employers in Portland will have to comply with the state sick time law in all other aspects. This means Portland employers with six or more employees must comply with the law’s requirements that apply employers with 10 or more employees.

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