

A Deep Dive Into Oregon's Leave Laws

November 16, 2023

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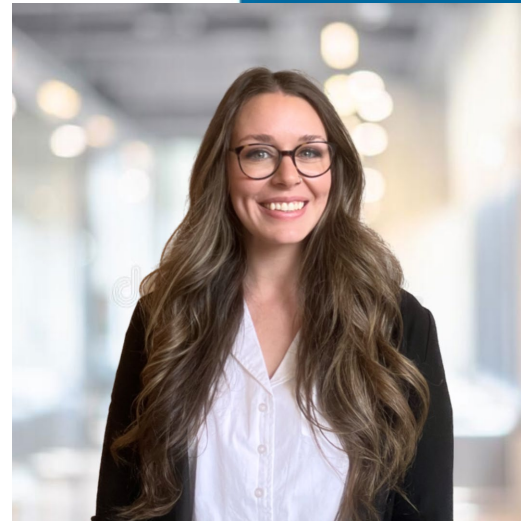
Compliance **HR**

Today's Webinar Host

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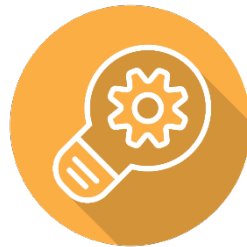
Navigator Independent Contractor

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The Reference Center

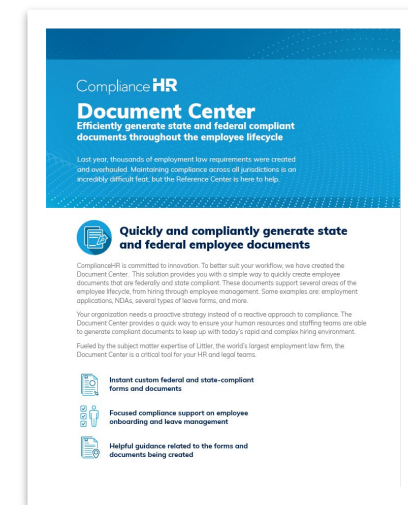
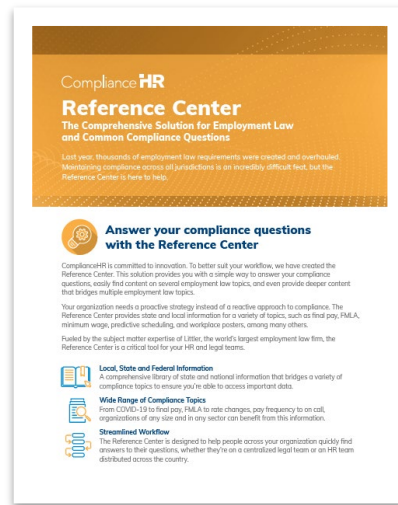
A Comprehensive Solution for Employment Law and Common HR Compliance Questions



The Document Center

Efficiently generate state and federal compliant documents throughout the employee lifecycle

ComplianceHR Leave Essentials



The Reference Center is a comprehensive solution for employment law and common HR compliance questions.

- A simple way to answer your compliance questions
- Easy to locate content on several employment law topics
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The Document Center helps you efficiently generate state and federally compliant documents throughout the employee lifecycle, especially leave.

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Oregon Leave Laws

- Basics of Leave Laws in Oregon
 - FMLA – Federal Medical Leave Laws
 - OFLA – Oregon Family Leave Law
 - PLO – Paid Leave Oregon
- Oregon Sick Leave
- Do they run Concurrently?
- When they don't run concurrently



FMLA: Overview

- Employees are eligible if they work for a covered employer for at least 12 months;
- Have at least 1,250 hours of service with the employer during the 12 months before their FMLA leave starts; and
- Work at a location where the employer has at least 50 employees within 75 miles.

FMLA -- 12 weeks of protected leave for:

- The birth of a child or placement of a child with the employee for adoption or foster care.
- The care for a child, spouse, or parent who has a serious health condition,
- A serious health condition that makes the employee unable to work, and
- Reasons related to a family member's service in the military, including
- Qualifying exigency leave - Leave for certain reasons related to a family member's foreign deployment, and
- Military caregiver leave – leave when a family member is a current servicemember or recent veteran with a serious injury or illness.

FMLA – Family Member

- Child
- Spouse
- Parent
- *In loco parentis*

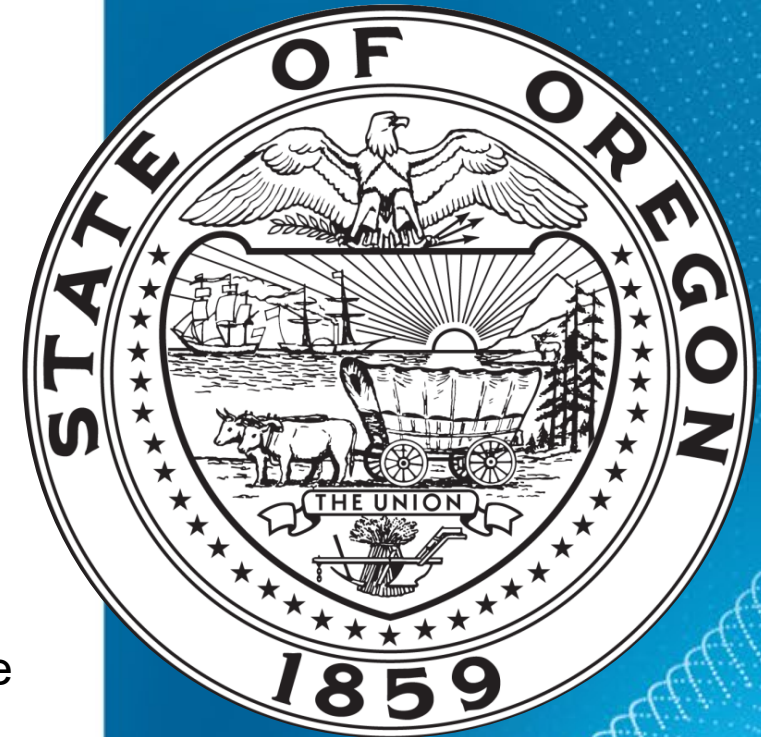
Military Caregiver Leave: The FMLA also allows 26 weeks of leave for an eligible employee to care for a covered servicemember with a serious injury or illness:

- Undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list, for a serious injury or illness incurred in the line of duty on active duty.

OFLA – Oregon Family Medical Leave

- 25 or more employees in Oregon
- Worked an average of 25 hours per week for 180 days
 - Just 180 days (no minimum hours) for parental leave
 - Eligibility at 30 days of employment during public health emergency

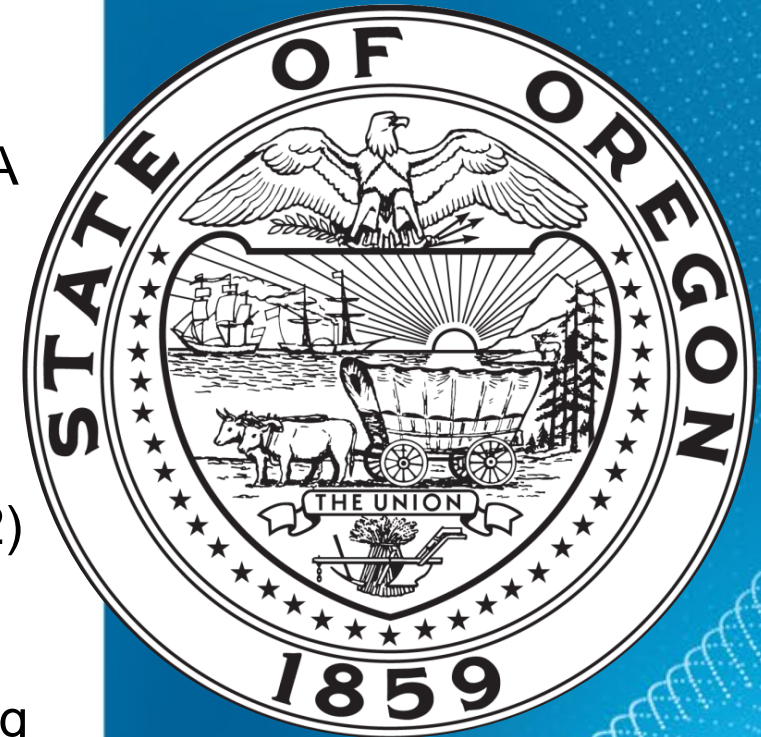
Benefit year change: Effective 7.1.24 benefit year must change to the 12-month period beginning on the Sunday immediately before the date on which the leave commences (SB 999)



OFLA – Oregon Family Medical Leave

OFLA – Changing the benefit year

- No specific requirement for how to change the OFLA leave year
- “Provisions of OFLA will be construed to the extent possible in a manner that is consistent with any similar provisions of FMLA.” – OAR 839-009-0220(2)
- FMLA procedure requires employers to give employees a 60-day advance notice before changing the leave year method.



OFLA – 12 weeks of protected leave for:

- **Parental leave:**
 - Birth, adoption, or foster placement of a child.
 - Parents who use 12 weeks of OFLA as parental leave may take up to 12 more weeks for sick child leave.
- **Serious health condition leave**
- **Pregnancy disability leave:**
 - Before or after birth of child or for prenatal care.
 - OFLA provides up to 12 weeks of pregnancy disability leave in addition to 12 weeks for any reason listed here.
- **Sick child leave:**
 - For your child with an illness or injury that requires home care but is not a serious health condition.
 - If your child's school or childcare provider is closed due to a public health emergency
- **Military family leave**
 - Up to 14 days if your spouse or domestic partner is a service member who has been called to active duty or is on leave from active duty.
- **Bereavement leave**
 - Up to 2 weeks of leave after the death of a family member.

OFLA – Family Member (SB 999 – effective 9.3.23)

- A spouse or domestic partner;
- A child of a covered individual or the child's spouse or domestic partner;
- A parent of a covered individual or the parent's spouse or domestic partner;
- A sibling or stepsibling of a covered individual or the sibling's or stepsibling's spouse or domestic partner;
- A grandparent of a covered individual or the grandparent's spouse or domestic partner;
- A grandchild of a covered individual or the grandchild's spouse or domestic partner;
- Any individual related by blood or affinity whose close association with a covered individual is the equivalent of a family relationship.

Oregon Sick and Safe Time

- Employees get paid sick leave if employer has 10 or more employees (6 or more if they have a location in Portland). Otherwise, sick time is protected but unpaid.
- Employees get at least 1 hour of protected sick time for every 30 hours worked up to 40 hours per year.
 - Frontload vs. Accrual
- Employees can start taking sick time after working for employer for at least 90 days.
- Employer must let employees know how much sick time they have earned – at least quarterly.
- No doctor note required unless employee takes more than 3 consecutively scheduled workdays.

Oregon Sick and Safe Time:

- For employee to care for self or family member with a mental or physical illness, injury, or health condition, need for medical diagnosis, care, or treatment of a mental or physical illness, injury, or health condition, or need for preventive medical care;
- Absences associated with death of family member;
- Absences related to domestic violence, harassment, sexual assault or stalking;
- Public health emergency closures;
- Any reason covered by OFLA

Paid Leave Oregon: Who is Covered?

- Employees working in Oregon; and
- Employees who have earned at least \$1,000 the year before they apply for benefits; and
- Employees who have a qualifying life event.

Notes:

- *Employees who have met this criteria are eligible for benefits on day 1 of employment. Must be employed.*
- *Job protections after 90 days of employment.*

Covered Uses:

Bonding

- New child bonding

EE & Family Medical

- Giving birth to child
- EE caring for themselves or family member due to “serious medical condition”

Safe leave

- Assistance, treatment or relocation due to sexual assault, DV, harassment, or stalking

Paid Leave Oregon: What is the Benefit?

- Employees can take up to 12 weeks of paid time off in a benefit year.
- “Benefit year” = period of 52 consecutive weeks beginning the Sunday immediately preceding the day EE commences leave.
- Employees may be able to take up to two additional weeks for pregnancy-related conditions.
- Employees can take leave for a week or a single day at a time.
- Leave is protected if the employee has worked for the employer for at least 90 days

Paid Leave Oregon: Income Replacement

- Varies based on employee's average weekly wage
 - Rate is set based on state average weekly wage
 - Average weekly wage for 2023-24: \$1,269.69
 - Updates in July
- Minimum weekly benefit amount: \$63.48
- Maximum weekly benefit amount: \$1,523.63
- Employees can receive PLO benefits, while also taking earned PTO, vacation, other paid time off.

Leave Requests and Approvals under the State Plan



Paid Leave Oregon: Notice of Leave by Employee

Before an employee applies for benefits, they *should* inform the employer.

- Employers can ask:
 - What type of leave (family, medical, safe)
 - Why employee needs to take leave (covered life event)
 - When and for how long employee expects to take leave (or estimate)
- If employee does not give notice to employer....
 - Paid Leave Oregon may reduce first weekly benefit by 25%
 - Requires policy language on notice requirements and penalty

Paid Leave Oregon: Benefit Application by Employee

Requires from employee:

- Contact information
- Employment details
- Documentation re: qualifying life event (forms online)
- Frances Online account (paper application also available)
 - Letters from Paid Leave Oregon
 - Send information to Paid Leave Oregon
 - Communicate with Paid Leave Oregon re: benefits

State Plan: Notice of Employee Filing

Notice of Paid Leave Claim Filing:

- Issue Date and ID#
- Employee first and last name
- Employee date of birth
- Employee requested leave start date
- Employee requested leave end date
- Employee notified employer?
 - Yes or No, based on EE representation

Employer may respond if:

- Employee no longer employed
- Employee did not provide required notice
- Employee receiving workers' comp benefits
- Includes program contact info

State Plan: Benefit Decision Letter to Employer

PLO Benefit Decision:

- Employee name, DOB
- Leave Amount (up to X weeks)
- Leave start date
- Leave end date
- Leave schedule
- Statutory authority

What is not included:

- Benefit amount
- Reason for the leave
- Any medical information relating to the employee

State Plan: Benefit Decision Letter (cont.)

What should
an employer
do upon
receipt of
this letter?

If you agree with the information in the letter, you do not need to do anything.

If you do not agree with the information in the letter, contact the Paid Leave Oregon program as soon as possible

If employee is receiving workers' compensation benefits, contact Paid Leave Oregon

If employee returns to work early, contact Paid Leave Oregon

2023 Legislative Updates



SB 999: Expanded Family Member Definition for OFLA/OSTL

- The spouse or domestic partner of a covered individual;
- A child of a covered individual or the child's spouse or domestic partner;
- A parent of a covered individual or the parent's spouse or domestic partner;
- A sibling or stepsibling of a covered individual or the sibling's or stepsibling's spouse or domestic partner;
- A grandparent of a covered individual or the grandparent's spouse or domestic partner;
- A grandchild of a covered individual or the grandchild's spouse or domestic partner;
- Any individual related by blood or affinity whose close association with a covered individual is the equivalent of a family relationship

SB 999: Permits Deduction to Recoup Insurance Premium

Insurance Premiums:

SB 999 amends PLO to allow an employer to take a lawful deduction to recoup costs upon the employee's return to work, not to exceed 10 percent of the employee's gross pay each pay period, if the employer is required or elects to pay any part of the costs of providing insurance coverage for an eligible employee during the period of family leave that should have been paid by the employee.

PLO Temporary Rule: Defining “Affinity” (8.9.23-2.4.24)

OAR 471-070-1000(1) The relationship must have a significant personal bond that, when examined under the totality of the circumstances, is like a family relationship, and the bond must be demonstrated by certain factors, with no single factor being determinative. The factors include, but are not limited to, the following:

- Shared personal financial responsibility;
- Emergency contact designation of the claimant by the other individual in the relationship, or vice versa;
- The expectation to provide care because of the relationship or the prior provision of care;
- Cohabitation and its duration and purpose;
- Geographical proximity; and
- Any other factor that demonstrates the existence of a family-like relationship.

OAR 839-009-0210(2)(a) –BOLI’s temporary rule defining “affinity” under OFLA (9.3.23-2.29.24)

SB 999 (cont.):

- Changed benefit year calculation period for OFLA:

Effective July 1, 2024: SB 999 amends OFLA benefit year calculation period, so OFLA uses the same one-year calculation period as PLO: a period of 52 consecutive weeks beginning on the Sunday immediately preceding the date on which leave begins.

- Could cause additional stacking issues

- Expanded job protection benefits:

Effective September 3, 2023: SB 999 amends OFLA, and inserts similar language into PLO, to provide that, if an equivalent position is not available at the job site of the former position, the employer must offer the employee an equivalent position at a site within 50 miles (formerly 20 miles) of their former job site if such a position is available; if positions are available at multiple job sites, the employer must first offer a position at the job site nearest to the former job site.

SB 913: Clarifies use of other paid leave

Permits employer to allow employee to use all or portion of other paid leave to supplement paid family and medical leave benefits.

657B.030: (1) Family and medical leave insurance benefits are in addition to any paid sick time under ORS 653.606, vacation leave or other paid leave earned by an employee.

(2) An employer may permit an employee to use **all or a portion of** paid sick time, vacation leave or any other paid leave earned by the employee in addition to receiving paid family and medical leave insurance benefits [~~to replace an employee's wages up to 100 percent of the eligible employee's average weekly wage~~] during a period of leave taken for family leave, medical leave or safe leave.

(3) In any week in which an employee is eligible to receive workers' compensation or unemployment benefits under ORS chapter 656 or 657, the employee is disqualified from receiving family and medical leave insurance benefits.

Interaction with Other State and Federal Leave Plans



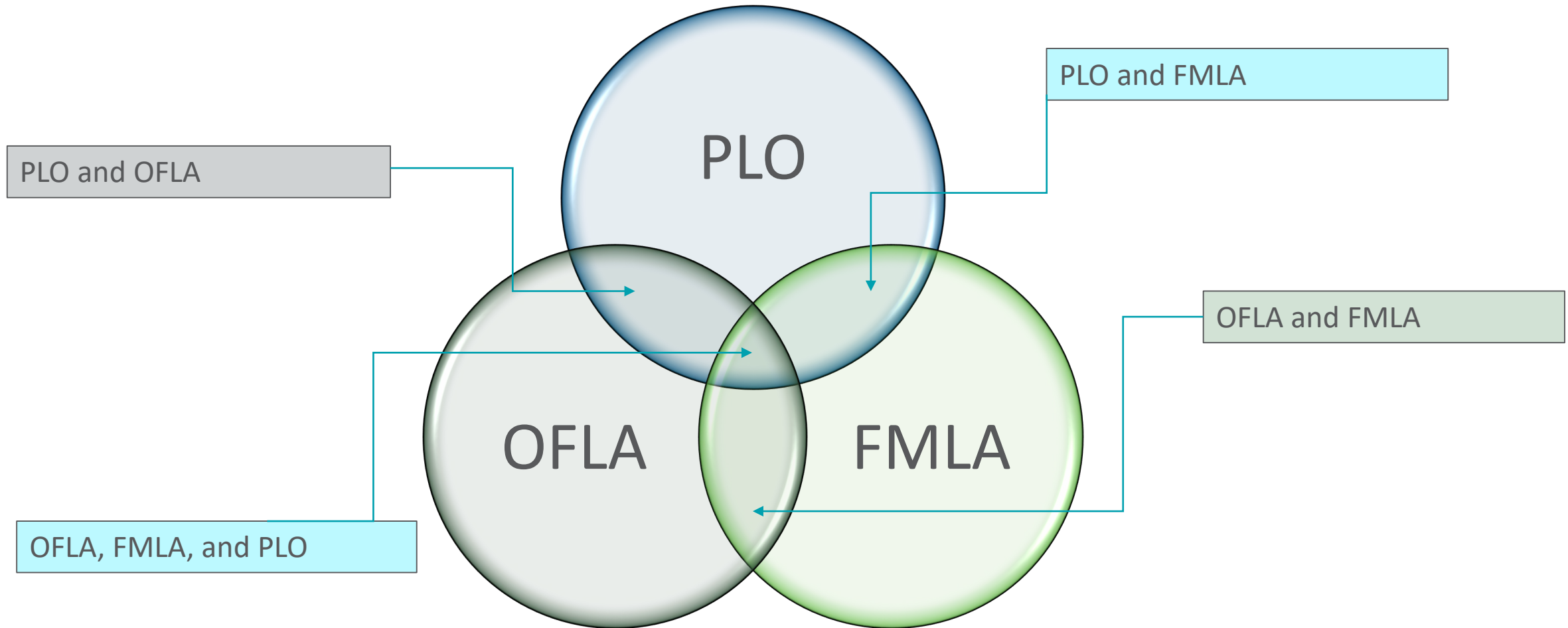
How does Paid Leave Oregon interact with other leave programs?

Concurrence of Leave Programs – the law says:

- PLO: Family and medical leave taken under PLO must be taken concurrently with leave taken by an eligible employee under OFLA or FMLA
- OFLA: Family or medical leave taken under OFLA must be taken concurrently with leave taken under PLO or FMLA

But... It doesn't work.

How does Paid Leave Oregon interact with other leave programs?



How do Eligibility Requirements of Paid Leave Oregon interact with other leave programs?

| LEAVE TYPE | ELIGIBILITY |
|------------|--|
| PLO | <ul style="list-style-type: none">• Employee working in Oregon• Earned \$1,000 in prior year• Qualifying event |
| OFLA | <ul style="list-style-type: none">• 25 or more employees working in Oregon• Employee works average of 25 hours per week for the 180 days preceding leave• Qualifying event• Effective January 1, 2022, OFLA eligible employees who terminate or are removed from the schedule but return to service within 180 days remain eligible for OFLA leave on their return, and credit for prior days of employment must be restored. |
| FMLA | <ul style="list-style-type: none">• 50 or more employees working in the United States• Employee has worked at least 12 months (need not be consecutive)• Employee has worked at least 1,250 hours in the past 12 months |
| OSTL | <ul style="list-style-type: none">• Employee is eligible after 90 days of employment• Covered employer is any employer with one or more employees working in Oregon.• Leave is paid if employer has 10 or more employees working in Oregon (6 or more working in Portland) |

Who is a Family Member for Purposes of Paid Leave Oregon vs. Other Leave Programs

| LEAVE TYPE | QUALIFYING REASONS | DEFINITION OF "FAMILY MEMBER" |
|------------|--|---|
| PLO | Family; medical (serious health condition); safe | Spouse or domestic partner; child or the child's spouse or domestic partner; parent or the parent's spouse or domestic partner; sibling or stepsibling or the sibling's or stepsibling's spouse or domestic partner; grandparent/grandchild or the grandparent/grandchild's spouse or domestic partner; or any individual related by "blood or affinity." |
| OFLA | Family; medical (serious health condition); pregnancy disability; sick child; military Family Leave (14 days); bereavement (2 weeks) | Same as Paid Leave Oregon |
| FMLA | Family; medical (serious health condition); military Caregiver | Spouse; 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 a mental or physical disability"; parent |
| OSTL | Family; medical (serious health condition); safe; bereavement; public health emergency; preventative care; sick | Same as OFLA/Paid Leave Oregon |

Leave Duration and Benefit Year of Paid Leave Oregon compared to other leave programs

| LEAVE TYPE | DURATION OF LEAVE | LEAVE INCREMENT / BENEFIT YEAR |
|------------|---|--|
| PLO | <ul style="list-style-type: none"> • 12 weeks • 14 if pregnancy related • 16 weeks max* (all leave programs) or 18 weeks (if pregnancy related) | <ul style="list-style-type: none"> • Increments of one day or one week • Benefit year set by statute beginning the Sunday before employee takes leave. |
| OFLA | <ul style="list-style-type: none"> • 12 weeks • 12 weeks pregnancy disability leave (in addition to other 12 weeks) • 12 additional weeks sick child if EE uses all 12 weeks bonding leave • 2 weeks bereavement • 14 days military family | <ul style="list-style-type: none"> • Smallest increment allowed • Any benefit year until July 1, 2024 • July 1, 2024: Benefit year set by statute beginning the Sunday before employee takes leave. |
| FMLA | <ul style="list-style-type: none"> • 12 weeks • Up to 26 weeks to care for covered family servicemember, with serious illness or injury | <ul style="list-style-type: none"> • Smallest increment allowed • Any benefit year |
| OSTL | <ul style="list-style-type: none"> • 40 hours per year • Frontload all 40 hours or accrue at 1 hour for every 30 hours worked | <ul style="list-style-type: none"> • Smallest increment allowed • Any benefit year |

Spouses and Parental Leave:

FMLA: Spouses who are eligible for FMLA leave and are employed by the same covered employer may be limited to a combined total of 12 weeks of parental leave.

OFLA: Spouses who are eligible for OFLA leave and are employed by the same covered employer may take OFLA parental leave if the employer allows them to take concurrent leave.

PLO: Employer has no say in the claim of either spouse.

The Complications



Stacking issues: (Taking leave consecutively)

Question:

What if my employee already took 12 weeks of FMLA/OFLA before September 3rd – will they be eligible for another 12 weeks of leave under PLO?

Answer:

Yes, if the employee has a qualifying event, even if they have already taken 12 weeks under OFLA or FMLA.

Stacking issues:

Question:

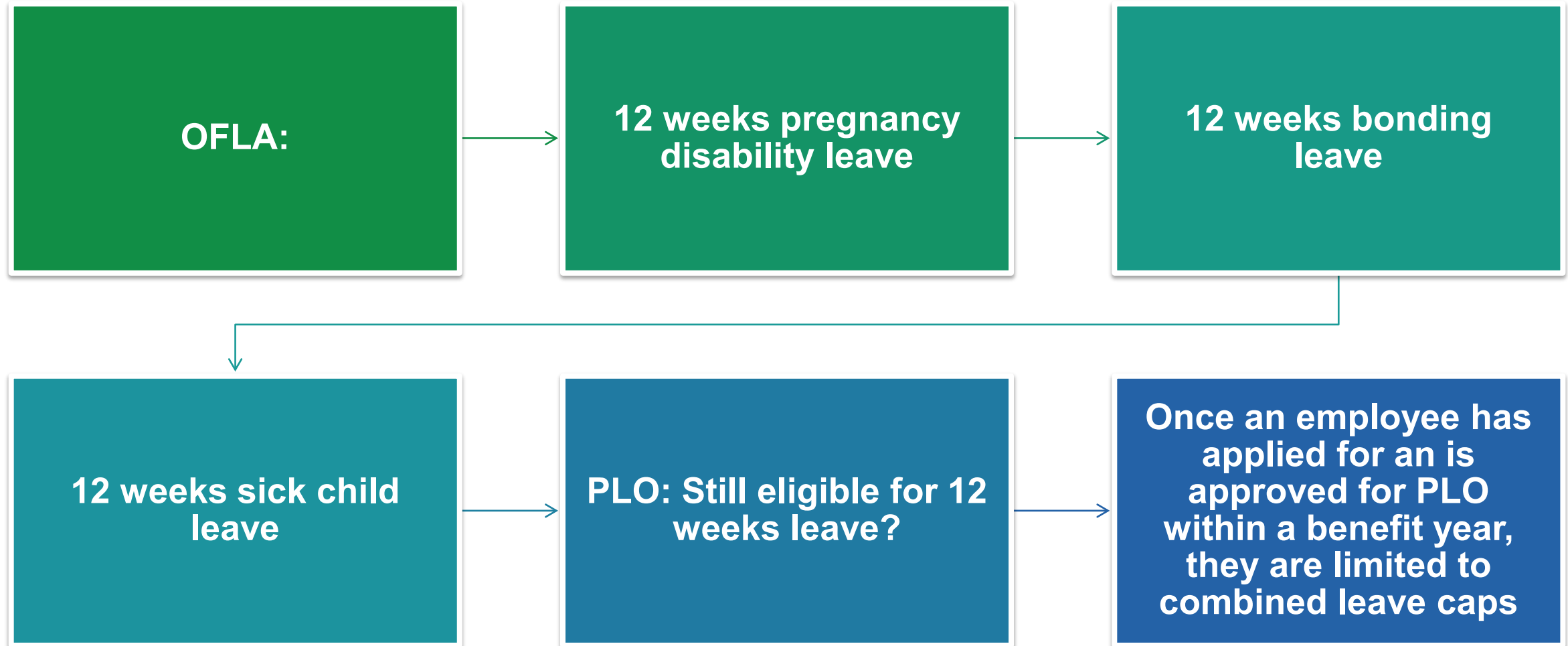
What if my employee doesn't apply for PLO, and just takes OFLA or FMLA? Isn't it supposed to run concurrently?

Answer:

Employers cannot force an employee to take PLO. Absent legislative intervention, stacking may occur.

- **Even though PLO/OFLA law states concurrent, nothing in federal law requires concurrency**

Stacking issues: Depends which leave comes first



Stacking issues:

Question:

What if my employee takes 12 weeks of PLO first?

Answer:

PLO @ 1 day of employment

OFLA @ 180 days of employment

FMLA @ 1 year of employment

PLO – Full Day Absences Only

Currently, PLO is full day or full week absences only

But - New Legislation May Be Coming

- PLO is currently working on draft administrative rule for how partial OFLA hours or days translate to PLO days.
- Likely a temporary rule, TBD

Topping Up Benefits:

Question:

Am I required to allow my employee to use additional vacation, sick, or PTO to top up their Paid Leave Oregon benefit?

Answer:

- **PLO's permissive language contradicts OFLA. Under OFLA, employees are "entitled" to use any accrued PTO while on leave.**
- **BOLI has clarified that employers must follow the rule most beneficial to the employee. Therefore, with some exceptions, if the absence is also covered by OFLA, employees are entitled to use accrued PTO while on PLO, so long as that absence is also covered by OFLA.**
- **Not capped at 100%**

Topping Up Continued:

Question:

How do employers know how much to “top up” to get an employee close to what the employee would have made had they continued working?

Answer:

- **Use PLO benefit calculator**
- **PLO may release information if EE consents to the release of information, but otherwise will not**
- **Consider policy language on topping up**

Topping Up Continued: Overpayments?

Oregon law on Deductions: ORS 652.610(3):

Employers may not withhold, deduct or divert any portion of an employee's wages unless permitted by law.

Deduction to recoup overpayments of wages, benefits, etc. generally are not permitted by law.

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Questions?

Please add any additional questions to the Q&A box

Thank you!

The background is a solid blue color. On the right side, there is a decorative graphic consisting of a series of white dots arranged in a pattern that resembles a large, stylized wave or a ribbon. The dots are arranged in a way that creates a sense of depth and movement, with the pattern curving upwards and to the right.