

Questions About the New Provisions in the Oregon Family Leave Act

- 1) Does it matter whether an employee who is eligible to take OFLA is caring for a sick child, spouse or grandparent?

If an eligible employee requests OFLA leave to take care of a sick child, it is advisable for an employer to find out from the employee if the child has a serious health condition or an illness or injury that requires home care but is not a serious health condition. The distinction is important. A serious health condition must be taken concurrently with Family Medical Leave (FMLA), if the employer has to follow FMLA and the employee is FMLA eligible. A non-serious health condition of a child is an OFLA qualifying event only, which means the employer may not deduct the leave period from the employee's FMLA entitlement. Further, in Oregon an eligible male or female employee may take up to an additional 12 weeks of "sick child leave" for the employee's child's non-serious health conditions under OFLA, if the employee has previously been granted and taken 12 weeks of parental leave within the same one-year period.

If an eligible employee requests OFLA leave to care for a spouse, the spouse must have a qualifying serious health condition. The leave time must be taken concurrently with FMLA, if the employee is eligible and the employer is a covered employer under FMLA.

If an eligible employee requests OFLA leave to care for a grandparent (or grandchild), the grandparent (or grandchild) must have a qualifying serious health condition. The leave period may not be deducted from the employee's FMLA entitlement, if any, because it is an OFLA qualifying event only.

- 2) Can an employer require an eligible employee to first use vacation time or personal leave days before using sick days while on OFLA leave to care for a sick child, spouse or grandparent?

Yes, an employer may require an employee to use paid leave (e.g. vacation time, personal leave days or sick days) during OFLA leave, if available, and may determine the order in which paid leave is to be used. If the employee's paid leave (e.g., vacation time or personal leave) is exhausted and the employee still needs OFLA leave to care for a sick child, spouse or grandparent, and the employee has accrued sick days, the employee is entitled to use the employee's accrued sick days.

- 3) If there is a collective bargaining agreement and the agreement only allows an employee to use sick days when the employee is sick, does the 2007 change in the OFLA take precedence?

Yes, it does. The change in the OFLA says when an employee is on OFLA leave (e.g., to care for a family member who is seriously ill, to care for a sick child who does not have a serious illness but only needs home care, to take care of the employee's own serious health condition) the employee is entitled to use any accrued sick leave.

- 4) If there is a collective bargaining agreement that only allows an employee to use sick days if the employee is on-duty the day immediately preceding the sick day (or any other reasonable conditions before triggering the usage of sick days), does the 2007 change in the OFLA invalidate these pre-conditions which are agreed upon collectively between the employer and the employees?

Please read our future columns. Seek and you will find *later*.

If you would like to learn more about the changes in the Oregon Family Leave Act (OFLA) and the amended Family Medical Leave Act (FMLA), the Technical Assistance for Employers Program will be conducting seminars on Leave Laws in various cities: April 3, Portland; April 16, Salem; May 6, Medford; May 8, Portland; May 14, Oregon City; and May 21, Eugene. Please visit www.oregon.gov/BOLI for registration information.