

COVID-19-related leave available for Oregon employees in 2021

The COVID-19 pandemic has led to creation of a wave of new laws and regulations. In the employment context, some of the most important and complex laws affected by the pandemic are leave laws. COVID-19 has presented new circumstances under which an employee may need to take leave, including, for example, when one is unable to work because of a COVID-19 diagnosis, a quarantine order, or a need to care for a child whose school or place of care is closed.

Employers should remain aware of the different types of federal and state leave that may be available to an employee who needs to be absent from work for reasons related to COVID-19. The main types of leave available to Oregon employees for COVID-19-related reasons are: Oregon sick leave (OSL), Oregon Family Leave Act (OFLA), Family Medical Leave Act (FMLA), and the Families First Coronavirus Response Act (FFCRA). In addition, Oregon's COVID-19 temporary paid leave is available in a program designed to assist employees who need time off for reasons related to COVID-19 but either do not qualify for other paid time off or have exhausted it.

Oregon sick leave

Employees may use their accrued sick time to take protected leave for certain reasons that may arise due to COVID-19, but OSL is not paid leave unless the employer has 10 or more employees (six or more if they are in Portland). OSL allows employees to take leave for their own illness or health condition as well as to care for a family member's illness or health condition. This includes time off to obtain a medical diagnosis, treatment



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COMMENTARY

or preventive medical care. Employees may also use their sick time for absences associated with the death of a family member.

OSL also applies in certain situations during a public health emergency, including when the employee's workplace is closed or his or her child's school or place of care is closed due to a public health emergency. Employees may also use sick leave if a public health authority or health care provider has determined that the presence of the employee or family member in the community would jeopardize the health of others. Lastly, employees may use sick time if a law or rule requires the employer to exclude the employee from the workplace for health reasons.

FMLA and OFLA

Under FMLA and OFLA, eligible employees can take up to 12 weeks of unpaid leave in certain qualifying situations that may arise due to COVID-19. Employees can take FMLA/OFLA leave for their own serious health condition or to care for a family member with a serious health condition. Employees can also take up to two weeks of OFLA leave for absences associated with the death of a family member.

Additionally, the Bureau of Labor and Industries expanded its rule on OFLA sick child leave to address the ongoing closures of schools and child care providers due to COVID-19. Under the new rule, employees may take continuous or intermittent OFLA sick child leave to care for a child whose school or child care provider is closed due to COVID-19.

FFCRA

As of Jan. 1, 2021, employers are no longer required to provide FFCRA leave to employees, but employers that voluntarily provide their employees with emergency paid sick leave (EPSL) and expanded paid FMLA leave (EFMLA) may still claim a payroll tax credit through March 31, 2021. However, the tax credit extension did not create a new bank of leave, so employers will not receive a tax credit for voluntarily providing leave to an employee who previously exhausted his or her allotted FFCRA leave.

EPSL applies to an employee who is unable to work or telework because he or she is experiencing COVID-19 symptoms and seeking a medical diagnosis. It also applies if an employee or someone under his or her care is quarantined (pursuant to federal, state or local government order, or advice of health care provider). EFMLA applies to an employee unable to work or telework because he or she is caring for a child whose school or place of care is closed or unavailable for reasons related to COVID-19.

Oregon COVID-19 temporary paid leave

This state-funded program provides paid leave to Oregon employees who

meet certain eligibility requirements (e.g., unable to work or telework, not expected to earn more than \$60,000 individually, etc.) and who are required to quarantine or isolate due to COVID-19 exposure or symptoms but do not qualify for other paid time off or have exhausted it. Employees who qualify can receive \$120 per working day during the time that they are required to quarantine or isolate for up to 10 working days or \$1,200 total.

Employers have no obligations under this program but may choose to notify employees about it and how to apply. Fund administrators, and not employers, will determine eligibility and issue the payments. Additionally, paid leave under this program is not job-protected leave unless the time off overlaps with protections afforded by other laws.

While this is an overview of the different types of leave available for reasons related to COVID-19, eligibility for leave may depend on the size of the employer and/or how long the employee has been working for the employer. Employers should consult with counsel regarding the nuances and different requirements for these leave laws to ensure full compliance in 2021.

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