4E. **Family Medical Leave**

FMLA/OFLA Policy

The following is a summary of Family and Medical Leave policy and procedures under the federal Family Medical Leave Act (FMLA) and the Oregon Family Leave Act (OFLA). Generally, and as will be discussed, eligible employees are entitled to 12 weeks of unpaid leave for the reasons identified below. Federal and state law prohibit retaliation against an employee with respect to hiring or any other term or condition of employment because the employee asked about, requested or used Family and Medical Leave. In all cases, applicable Oregon and federal laws, rules, policies and collective bargaining agreements govern the employee's and Morrow County's rights and obligations, not this policy.

Employees seeking further information should contact the HR Director. Please also refer to the "Employee Rights and Responsibilities Under the Family Medical Leave Act" and "Oregon Family Leave Act" notices posted in the nearest breakroom, which are incorporated here by reference.

Definitions

Child/Son or Daughter

For purposes of OFLA, "child" includes a biological, adopted, foster or stepchild, the child of a registered same-sex domestic partner or a child with whom the employee is in a relationship of *in loco parentis*. For purposes of OFLA Serious Health Condition Leave, the "child" can be any age; for all other types of leave under OFLA, the "child" must be under the age of 18 or over 18 if incapable of self-care.

A "son or daughter" is defined by FMLA as 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 18 years of age or is 18 years of age or older and "incapable of self-care because of a mental or physical disability" at the time FMLA leave is to commence. FMLA also provides separate definitions of "son or daughter" for FMLA military family leave that are not restricted by age — see below.

Eligible Employee

OFLA – To qualify for OFLA leave for a Serious Health Condition or Sick Child Leave, an employee must have been employed for at least 180 days and worked an average of at least 25 hours per week. To qualify for Parental Leave under OFLA, an employee must have been employed for at least 180 days (no per-week hourly minimum is required).

OMFLA — For purposes of Oregon Military Family Leave Act leave, the employee need have only worked 20 hours per week (no minimum length of employment required). A different calculation method applies for reemployed service members under USERRA who seek OMFLA leave; see the HR Director for more information.

FMLA — Employees are eligible for FMLA leave if they have worked for a covered employer for at least one year (which may be based on separate stints of employment) and for 1,250 hours during the 12 months preceding the date leave is to begin. They must also be employed at a worksite where 50 or more employees are employed by the employer within 75 miles of that worksite.

Leave under Oregon and federal law will run concurrently when permitted.

Family Medical Leave

This includes all of the types of leave identified in the section below, entitled "Reasons for Taking Leave," unless otherwise specified.

Family Member

- For purposes of FMLA, "family member" is defined as a spouse, parent or a "son" or "daughter" (defined above).
- For purposes of OFLA, "family member" includes the definitions found under FMLA and also includes adult children (for "serious health condition" leave only), a parent-in-law, grandparent, grandchild, registered same-sex domestic partner, and parent or child of a registered same-sex domestic partner.

Serious Health Condition

"Serious health condition" is defined under FMLA and OFLA as an illness, injury, impairment, or physical or mental condition that involves either an overnight stay in a medical care facility, or continuing treatment by a health care provider for a condition that either prevents the employee from performing the functions of the employee's job, or prevents the qualified family member from participating in school or other daily activities. Under OFLA only, "serious health condition" includes any period of absence for the donation of a body part, organ or tissue, including preoperative or diagnostic services, surgery, post-operative treatment and recovery.

Subject to certain conditions, the continuing treatment requirement may be met by a period of incapacity of more than three consecutive calendar days combined with at least two visits to a health care provider or one visit and a regimen of continuing treatment, or incapacity due to pregnancy, or incapacity due to a chronic condition.

Other conditions may meet the definition of a "serious health condition;" see the HR Director for more information. The common cold, flu, earaches, upset stomach, minor ulcers, headaches other than migraine, routine dental or orthodontia problems, periodontal disease, and cosmetic treatments (without complications), are examples of conditions that are not generally defined as serious health conditions.

<u>Reasons for Taking Leave</u>

Family Medical Leave may be taken under any of the following circumstances:

- Call to Active-Duty Leave: Eligible employees with a spouse, son, daughter or parent on active duty or call to active-duty status in the regular Armed Forces, National Guard or Reserves in support of a contingency operation may use their 12-week leave entitlement to address certain "qualifying exigencies." "Qualifying exigencies" may include attending certain military events, arranging for alternative childcare, addressing certain financial and legal arrangements, attending certain counseling sessions, and attending post-deployment reintegration briefings. This type of leave is available under FMLA only; however, under OFLA, specifically under the Oregon Military Family Leave Act, during a period of military conflict, as defined by the statute, eligible employees with a spouse or registered same-sex domestic partner who is a member of the Armed

Forces, National Guard, or military reserve forces of the U.S. and who has been notified of an impending call or order to active duty, or who has been deployed, is entitled to a total of 14 days of unpaid leave per deployment after the military spouse or registered same-sex domestic partner has been notified of an impending call or order to active duty and before deployment and when the military person is on leave from deployment.

- Employee's Serious Health Condition Leave: To recover from or seek treatment for an employee's serious health condition, including pregnancy-related conditions and prenatal care.
- Family Member's Serious Health Condition Leave: To care for a family member with a serious health condition.
- Parental Leave: For the birth of a child or for the placement of a child under 18 years of age for adoption or foster care. Parental leave must be completed within 12 months of the birth of a newborn or placement of an adopted or foster child.
- Pregnancy Disability Leave: For incapacity due to pregnancy, prenatal medical care or birth.
- Servicemember Family Leave: Eligible employees may take up to 26 weeks of leave to care for a "covered servicemember" during a single 12-month period. A "covered servicemember" is a current member of the Armed Forces, including a member of the National Guard or Reserves, who has a serious injury or illness incurred in the line of duty on active duty that may render the servicemember medically unfit to perform his/her duties for which the servicemember is undergoing medical treatment, recuperation, or therapy; or is in outpatient status; or is on the temporary disability retired list. Under some circumstances, a veteran will be considered a "covered servicemember." This type of leave is available under FMLA only.
- Sick Child Leave: To care for a child who suffers from an illness or injury that does not qualify as a serious health condition but that requires home care. This type of leave does not provide for routine medical and dental appointments or issues surrounding the availability of childcare when the child is not ill or injured. Sick child leave is not available if another family member is able and willing to care for the child. This type of leave is available only to employees who are eligible under OFLA.
- Bereavement Leave. This type of leave is addressed under OFLA; see the Bereavement Leave Policy on page 40 for more information.

<u>Length of Leave</u>

In any One-Year Calculation Period, eligible employees may take:

- Up to 12 weeks of Parental Leave, Serious Health Condition Leave (employee's own or family member), Sick Child Leave, or Call to Active-Duty Leave;
- An additional 12 weeks of leave may be available to an eligible employee for an illness, injury or condition related to pregnancy or childbirth that disables the employee; and
- Employees who take the entire 12 weeks of OFLA Parental Leave may be entitled to an additional 12 weeks of Sick Child Leave.

When leave is taken for Servicemember Family Leave, an eligible employee may take up to 26 weeks of leave during the One-Year Calculation Period to care for the servicemember. During the One-Year Calculation Period in which Servicemember Family Leave is taken, an eligible employee is entitled to a combined total of 26 weeks of FMLA Leave (some of which may include other types of FMLA-specific leaves of absence).

One-Year Calculation Period

The "12-month period" during which leave is available (also referred to as the "One-Year Calculation Period") will be determined by a rolling 12-month period measured backward from the date an employee uses any Family Medical Leave. Each time an employee takes Family Medical Leave, the remaining leave entitlement would be any balance of the 12 weeks which has not been used during the immediately preceding 12 months.

Intermittent Leave

Intermittent or reduced schedule leave may be taken during a period of Family Member or Employee Serious Health Condition Leave or Servicemember Family Leave. Additionally, call to Active-Duty Leave may be taken on an intermittent or reduced leave schedule basis. An employee may be temporarily reassigned to a position that better accommodates an intermittent or reduced schedule; employees covered by OFLA will not be reassigned without their expressed consent and agreement. Employees must make reasonable efforts to schedule planned medical treatments to minimize disruption of Morrow County operations, including consulting management prior to the scheduling of treatment in order to work out a treatment schedule which best suits the needs of both Morrow County and the employee. Intermittent leave for Parental Leave is not available.

Employee Responsibilities — Notice

Employees must provide at least 30 days' notice before Family Medical Leave is to begin if the reason for leave is foreseeable based on an expected birth, placement for adoption or foster care, planned medical treatment for a serious health condition of the employee or of a family member, or the planned treatment for a serious injury or illness of a covered servicemember (Servicemember Family Leave). If 30 days' notice is not practicable, because of a lack of knowledge of approximately when leave will be required to begin, a change in circumstances, or a medical emergency, notice must be given as soon as practicable. If the situation giving rise to a Sick Child Leave is unforeseeable, an employee must give verbal or written notice to Morrow County within 24 hours of commencement of the leave.

For Call to Active-Duty Leave, notice must be provided as soon as practicable, regardless of how far in advance such leave is foreseeable.

Whether leave is to be continuous or is to be taken intermittently or on a reduced schedule basis, notice need only be given one time, but the employee must let the HR Director know as soon as practicable if dates of scheduled leave change or are extended, or were initially unknown.

If circumstances change during the leave and the leave period differs from the original request, the employee must notify the HR Director within three business days, or as soon

as possible. Further, employees must provide written notice within three days of returning to work.

Regardless of the reason for leave, or whether the need for leave is foreseeable, employees will be expected to comply with Morrow County's normal call-in procedures. Employees who fail to comply with Morrow County's leave procedures may be denied leave, subject to discipline, or the start date of the employee's Family Medical Leave may be delayed.

Certification

Generally speaking, employees must provide sufficient information for Morrow County to determine if the leave may qualify for FMLA or OFLA protection and the anticipated timing and duration of the leave. Sufficient information may include that the employee is unable to perform job functions, the family member is unable to perform daily activities, the need for hospitalization or continuing treatment by a health care provider, or circumstances supporting the need for either Call to Active Duty or Servicemember Family Leave.

Employees also must inform Morrow County if the requested leave is for a reason for which FMLA leave was previously taken or certified. Additionally:

- Employees requesting serious health condition leave for themselves or to care for a covered family member will be required to provide certification from the health care provider of the employee or the covered family member to support the request.
- Employees requesting sick child leave under OFLA may be required to submit, at a minimum, a note from a doctor if the employee has requested to use more than three days (i.e., one three-day occurrence or three separate instances) of sick child leave within a one-year period.

Employees must furnish Morrow County's requested medical certification information within 15 calendar days after such information is requested by Morrow County. In some cases (except for leave to care for a sick child), Morrow County may require a second or third opinion, at Morrow County's expense. Employees also may be required to submit subsequent medical verification.

Employees will not be asked for, and they should not provide, any genetic information about themselves or a family member in connection with a FMLA/OFLA medical certification.

Medical Certification Prior to Returning to Work

If Family Medical Leave is for the employee's own serious health condition, the employee must furnish, prior to returning to work, medical certification from his/her health care provider stating that the employee is able to resume work.

Substitution of Paid Leave for Unpaid Leave

Employees are required to use accrued paid leave, including vacation, compensatory time, admin leave, and sick leave prior to a period of unpaid leave of absence on Family Medical Leave. Use of accrued paid leaves will run concurrently with Family Medical Leave. If the employee has no accrued paid leave, admin leave, vacation,

compensatory time, or sick leave available to use during a Family Medical Leave, the leave will be unpaid.

Holiday Pay While on Leave

Employees receiving short-term or long-term disability will not qualify for holiday pay. Employees using vacation pay or sick pay during a portion of approved Family Medical Leave in which a holiday occurs will qualify to receive holiday pay. Employees who are on unpaid leave during a holiday will not qualify to receive holiday pay.

On-the-Job Injury or Illness

Periods of employee disability resulting from a compensable on-the-job injury or illness will qualify for FMLA Leave if the injury or illness is a "serious health condition" as defined by applicable law.

OFLA leave will not be reduced by and will not run concurrently with any period the employee is unable to work because of a disabling compensable on-the-job injury; however, if the injury or illness is a "serious health condition" as defined by Oregon law and the employee has refused a bona fide offer of light-duty or modified employment, OFLA leave will commence.

If the employee's serious health condition is the result of an on-the-job injury or illness, the employee may qualify for workers' compensation time-loss benefits.

Benefits While on Leave

If an employee is on approved FMLA or OFLA Leave, Morrow County will continue the employee's health coverage under any "group health plan" on the same terms as if the employee had continued to work. An employee wishing to maintain health insurance during a period of approved FMLA or OFLA leave will be responsible for bearing the cost of his/her share of group health plan premiums which had been paid by the employee prior to the OFLA/FMLA leave. Employees will not accrue vacation, sick leave or other benefits (other than health insurance) while the employee is on a non-paid FMLA or OFLA leave. The leave period, however, will be treated as continuous service (i.e., no break in service) for purposes of vesting and eligibility to participate in Morrow County benefit plans.

Job Protection

Employees returning to work from Family Medical Leave will be reinstated to their former position. If the position has been eliminated, the employee may be reassigned to an available equivalent position. Reinstatement is not guaranteed if the position has been eliminated under circumstances where the law does not require reinstatement.

Employees are expected to promptly return to work when the circumstances requiring Family Medical Leave have been resolved, even if leave was originally approved for a longer period. If an employee does not return to work at the end of a designated Family Medical Leave period, reinstatement may not be available, unless the law requires otherwise.

The use of Family Medical Leave cannot result in the loss of any employment benefit that accrued prior to the start of an employee's leave.

Employees who work for other employers during a “serious health condition” leave may be subject to discipline up to and including termination. Additionally, all employees who use Family Medical Leave for reasons other than the reason for which leave had been granted may be subject to discipline up to and including termination.