

# Everything You Wanted To Know... about Tracking and Stacking



# Employer Assistance



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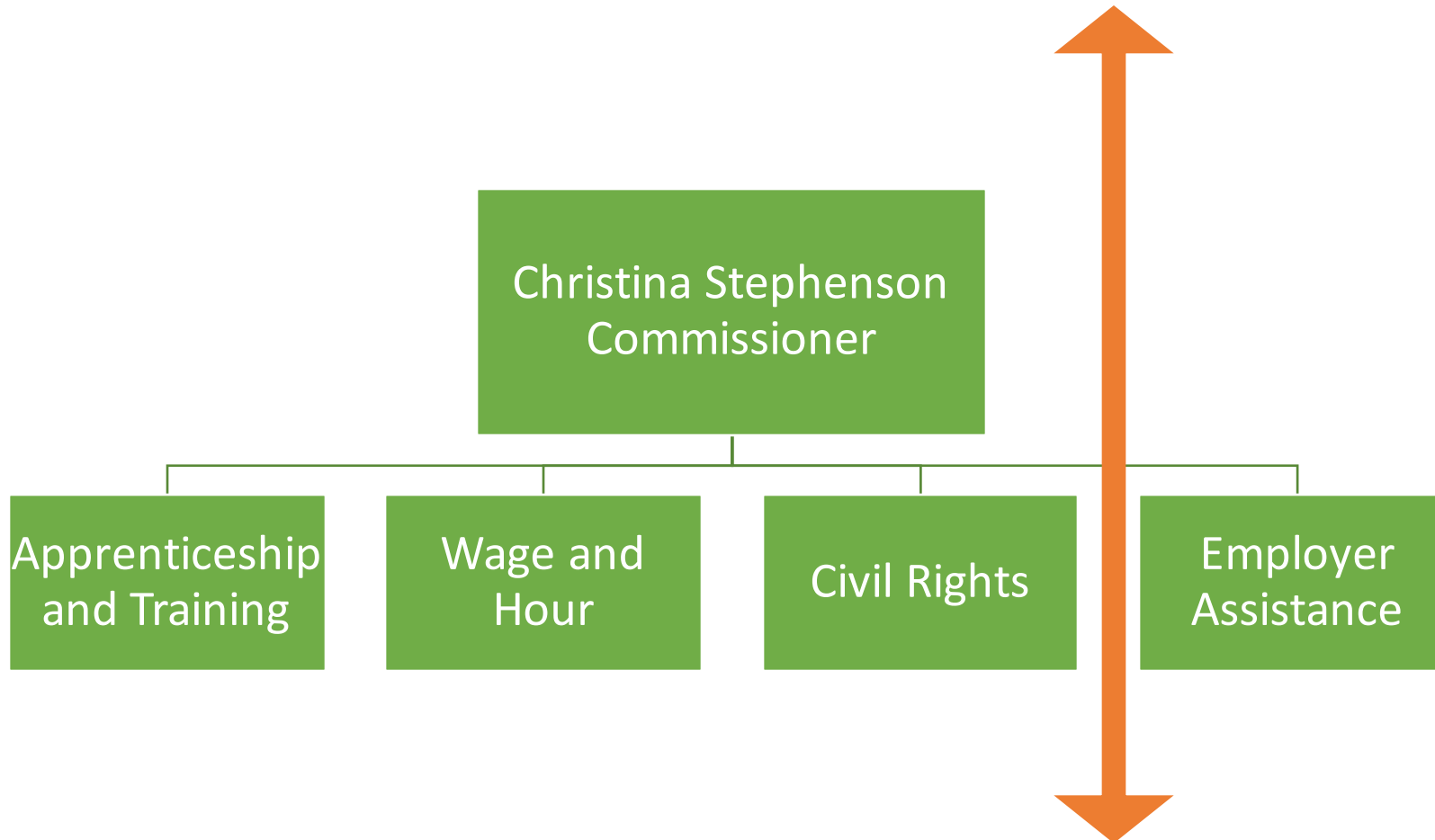
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# BOLI's enforcement firewall



# Overview

## **This training will cover:**

- **Employee rights and employer responsibilities regarding the federal Family Medical Leave Act, the Oregon Family Leave Act, and Paid Leave Oregon**
- **What happens when these banks of protected leave overlap**
- **How we track leaves, maximize concurrency and avoid stacking**
- **Special considerations for schools**

# The 4 components of leave requirements



Covered  
Employer



Eligible  
Employee



Qualifying  
Reason



Leave  
Available



# Covered Employer

## Paid Leave

- 1 or more employees
- Elective Coverage

## OFLA

- 25 or more employees

## FMLA

- 50 or more employees nationwide
- All school and public employers

# Eligible Employees

FMLA

- Employed for a total of **12** months prior to leave
- Worked for at least **1,250** hours during the 12-month period prior to leave
- Employer must have **50** employees within **75** miles

OFLA

- Employed at least **180** calendar days prior to leave
- Averaged **25** hours per week during the 180 calendar days\* prior to leave

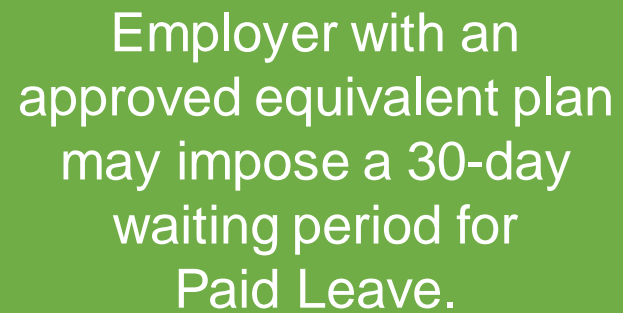
Paid Leave

- Work for an Oregon employer
- Earned \$1,000 the year prior to leave

# Length of eligibility period: Paid Leave



1 day



Employer with an approved equivalent plan may impose a 30-day waiting period for Paid Leave.



# Length of eligibility period: OFLA



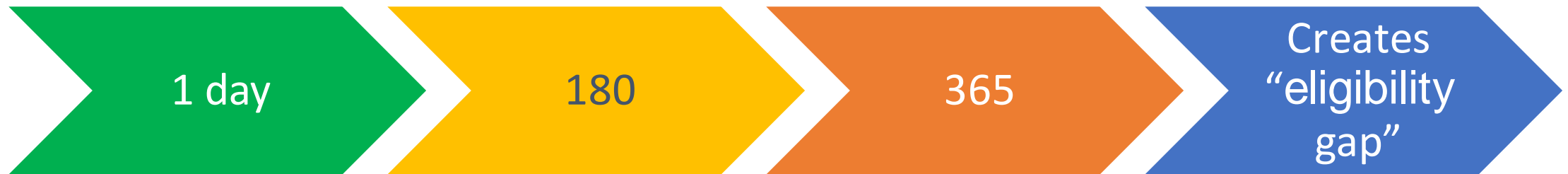
OFLA has a 180-day eligibility period (except during a public health emergency)

# Length of eligibility period: FMLA



FMLA has a 1-year  
eligibility period

# Different eligibility periods = eligibility gap





# Qualifying Circumstances





# Nine ways to enter the “House of Leave”






# Nine qualifying circumstances

## For all eligible employees:

1. Pregnancy disability leave
2. Parental leave
3. Sick child leave
4. Serious health condition leave
  - a) EE's serious health condition
  - b) Family member's serious health condition leave
  - c) Organ/tissue donation
5. Bereavement leave
6. Safe Leave

## For military families only:

7. Oregon military family leave
8. Military caregiver leave
9. Qualifying exigency leave

Key	
	Paid Leave, OFLA, and/or FMLA
	OFLA Only
	Paid Leave and ORS <a href="#">659.277</a>
	OMFLA
	FMLA (military)



# Interplay of OFLA, FMLA, and Paid Leave:

## Family Members



# Family Members

- “Family” is very [narrow under FMLA](#): parents, spouses and children (plus next of kin but only for military caregiver leave)
- [OFLA](#) and [Paid Leave Oregon](#) include **domestic partners and their parents and children, siblings** and their spouses/domestic partners, grandparents and grandchildren and their spouses/domestic partners, parents in law, and **individuals related by blood or affinity** that is the equivalent of a family member



# How will the new definitions affect FMLA tracking?

Leave cannot run concurrently with FMLA if the leave is to care for an uncovered family member (such as grandparent\*, sibling\*, domestic partner, etc.)

\*unless *in loco parentis*





# Leave and Benefit Year

# FMLA/OFLA leave year

2023					2024						
	Sept	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	July
5 options currently											

From 9-3-23 to 6-30-2024, there are 5 options:

- (1) Calendar year,
- (2) Fixed 12 months,
- (3) 12-month moving forward,
- (4) Rolling backward 12 months, or
- (5) A period of 52 consecutive weeks beginning on the Sunday immediately preceding the date on which OFLA/FMLA leave commences.

[29 CFR 825.200](#)

# OFLA leave year

2023					2024						
Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	July
											1 method

No later than [7-1-24](#), employers must change their OFLA leave year to a period of 52 consecutive weeks beginning on the Sunday immediately preceding the date on which OFLA leave commences.

The *definition* of an OFLA leave year will be identical to the Paid Leave benefit year but in some cases, an employee may start a benefit year before they begin an OFLA leave year or vice versa.

[SB 999 Section 2](#)

# Paid Leave benefit year

2023					2024						
Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	July
											1 method

A period of 52 consecutive weeks beginning on the Sunday immediately preceding the day that family, medical, or safe leave commences, except that the benefit year shall be 53 weeks if a 52-week benefit year would result in an overlap of any quarter of the base year of a previously filed valid claim. A claimant may only have one valid benefit year at a time.

[OAR 471-070-1000\(4\)](#)

# FMLA rule for the transition

- Must provide **60 days' notice to all employees** (in writing is best)
- Must **retain the full benefit of 12 weeks of leave** under whichever method affords the greatest benefit to the employee.
- Under no circumstances may a new method be implemented to avoid leave requirements.

[29 CFR 825.200\(d\)\(1\)](#)

# How does the new leave year affect tracking?

- The span of an employee's "benefit year" under Paid Leave Oregon may or may not coincide with your employer's OFLA/FMLA "leave year" in every case.
- An employer should ascertain the beginning and end dates for Paid Leave benefit year and OFLA/FMLA leave year and track the amount of leave taken by an employee under each law accordingly.

We'll discuss tracking strategies in a bit.





# Interplay of OFLA, FMLA, and Paid Leave:

## Length of Leave



# Timing Matters

The amount of leave available depends on whether an employee has begun a benefit year by taking Paid Leave.

If the employee has not taken Paid Leave benefits or a year has passed since they began a leave year, OFLA and FMLA entitlements will be the same as they have been for decades (we'll summarize those briefly and then turn to what happens once an employee does begin a Paid Leave benefit year)



# If the employee does not apply for Paid Leave Oregon benefits



Generally, employees receive 12 weeks FMLA and 12 weeks OFLA, which may run concurrently depending on eligibility and qualification of the leave event under both laws.

# If the employee does not apply for Paid Leave Oregon benefits

## Exception #2:



Under OFLA, pregnant employees are entitled to an additional 12 weeks of disability leave in addition to their 12 weeks of OFLA leave (for any qualifying reason)

# If the employee does not apply for Paid Leave Oregon benefits

## Exception #3:



Under OFLA, an employee may receive up to 12 weeks parental leave plus 12 weeks of sick child leave if the full 12 weeks of parental leave are taken.

# If the employee does not apply for Paid Leave Oregon benefits

## Exception #4:



A pregnant employee may receive up to 36 weeks of leave due to pregnancy leave, parental leave, and sick child leave allotments.

# If the employee takes military caregiver leave

## Exception #4:



With military caregiver leave, if the leave is for “next of kin”, the leave can only run concurrently with OFLA and Paid Leave Oregon if the individual also falls within the definition of family member under those laws as well.



# Key concept 1

## **Follow the OFLA/FMLA procedures, with a minor adjustment, when applicable**

- If your employer is covered under OFLA or FMLA, follow your employer's procedures for notice and the process for medical certification.
- Your employer may have to adjust its policy on the use of paid time off in case the employee, who has requested OFLA/FMLA leave, applies and is approved for Paid Leave benefits. See the fact sheet posted on Paid Leave Oregon's website on *Use of Paid Time Off, OFLA and Paid Leave Oregon*: [paidleave.oregon.gov/resources/resources.html](https://paidleave.oregon.gov/resources/resources.html)

# Key concept 2

- Paid Leave is a voluntary program.
- Employers may not require their employee to apply for Paid Leave benefits.



# Key concept 3

- The amount of FMLA or OFLA leave taken by an eligible employee prior to the commencement of a Paid Leave benefit year **does not diminish the employee's entitlement under the Paid Leave** program if they apply for Paid Leave benefits later or not at all.
- Among the HR professionals, this is commonly known as “stacking” of leaves.

Once an employee  
has an accepted  
Paid Leave claim

The ORS 657A.020  
switch is flipped



# Key concept: If OFLA eligible, additional protected time

## ORS 657B.020:

- A covered individual who has taken any amount of paid leave available under subsection (1) of this section **may take a total of 16 weeks\*** of leave in the benefit year in any combination of the paid leave available under subsection (1) of this section, not to exceed 12 weeks, and **unpaid leave under ORS 659A.159 for which the covered individual is eligible under ORS 659A.156**. The leave may be taken for any purpose for which leave is allowable under the respective leave programs.
- \* Plus, up to an **additional 2 weeks for pregnancy** complications.

# If an eligible employee is approved for Paid Leave benefits

## Exception #5:



In a benefit year



# If an eligible employee is approved for Paid Leave benefits

## Exception #6:



In a benefit year



# If an eligible employee is approved for Paid Leave benefits

## Exception #7:



In a benefit year



# Concurrent Leaves

## FMLA

If leave qualifies for FMLA leave and leave under State law (e.g., OFLA and/or Paid Leave\*), the leave counts against both or all three entitlements.

## OFLA

OFLA leave taken must be taken concurrently with, not in addition to, any leave taken under the FMLA and Paid Leave\*, if the employee is eligible for FMLA and the reason for leave is qualified under all three laws.

## Paid Leave Oregon

Any family leave or medical leave taken under Paid Leave Oregon must be taken concurrently with any leave taken by an eligible employee under OFLA or under the FMLA for the same purposes.

\*If the employee applies and is approved for Paid Leave benefits.

[29 CFR §825.701\(a\)](#)

[Senate Bill 999 Sec. 8\(2\)](#)

[ORS 657B.025](#)



# Paid leave benefits activate concurrent leave

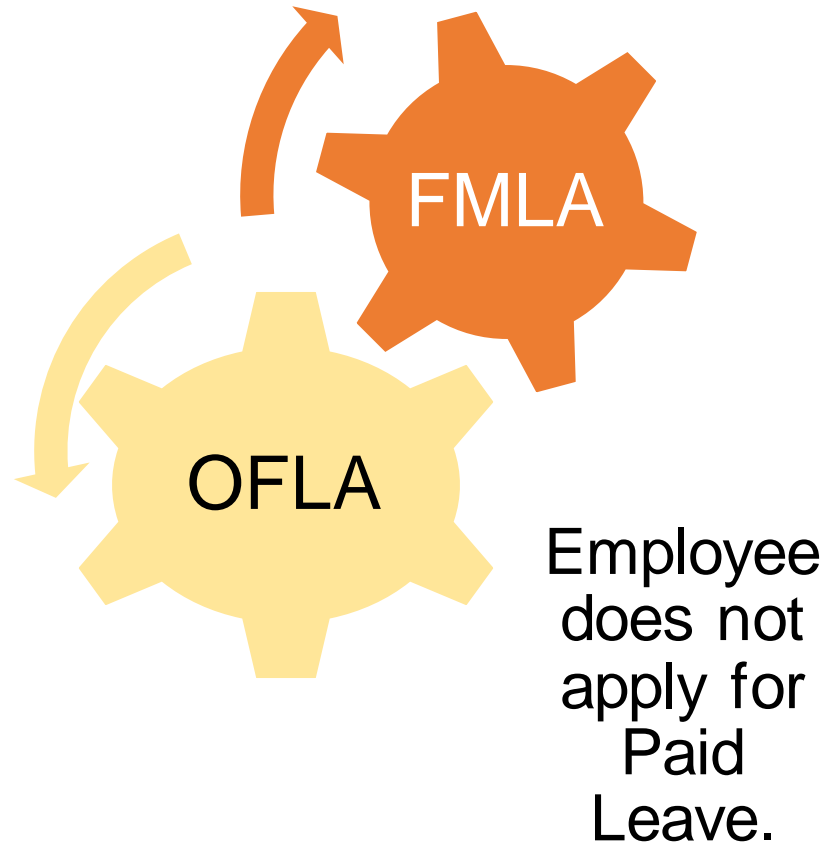


Once an employee is approved for family leave or medical leave under the Paid Leave program the benefit year is set as measuring forward. This will set OFLA and FMLA in motion, meaning the **three leaves will be counted concurrently if the employee meets the respective eligibility requirements and the qualifying event is covered under all three laws.**

See: [SB 999 Section 8 \(2\)](#), [ORS 657B.025](#)



# If an eligible employee does not apply for benefits



If an employee, who is eligible for Paid Leave, chooses not to apply for Paid Leave benefits, the employer will **not** be able to count the three leaves concurrently.

The leave will only be counted as OFLA and FMLA concurrently if the employee meets the eligibility requirements AND the qualifying event is covered by the two laws. It could potentially create “stacking” of leaves.

# Tips for successful tracking

For each leave request, ask the following questions:

	FMLA	OFLA	Paid Leave
1. Is the employer covered?	Yes/No	Yes/No	Yes/No
2. Is the employee eligible?	Yes/No	Yes/No	Yes/No
3. Does the employee have a qualifying event?	Yes/No	Yes/No	Yes/No
4. Does the employee have leave available?	Yes/No	Yes/No	Yes/No

# Scenario: Paid Leave Oregon only

	Paid Leave Oregon	OFLA	FMLA
Category 1:			

- Worked fewer than 180 days
  - Worked fewer than 25 hours per week or fewer than 1,250 hours per year
  - Employer has fewer than 25 employees
  - Employees who take only safe leave
- (Not all inclusive.)

# Paid Leave and OFLA example

	Paid Leave Oregon	OFLA	FMLA
Category 2:			

- Employed for fewer than 12 months, but more than 180 days
- Leave is to care for a sibling, sibling-in-law, grandparent, parent in-law, or affinity relation, etc.
- Employer has 25 to 49 employees within 75 miles of the Oregon location, but 50+ employees nationally

(This list is not all inclusive.)

# OFLA only

	Paid Leave Oregon	OFLA	FMLA
Category 3:			

- Employees who exhausted Paid Leave and FMLA leave in a concurrent year, but take the additional 4 weeks of OFLA
- Employees who worked fewer than 365 days but more than 180 days
- Employees who take sick child leave, bereavement leave, or Oregon Military Family Leave
- Employees taking partial days PLUS the employer is only covered by OFLA
- Employees who are eligible for OFLA leave but they do not apply for Paid Leave benefits

(This list is not all inclusive.)

# OFLA and FMLA only

	Paid Leave Oregon	OFLA	FMLA
Category 4:			
<ul style="list-style-type: none"><li>○ Employees who take parental leave <i>before</i> the birth, adoption or foster placement</li><li>○ Employees who take intermittent leave for partial days</li><li>○ Employees who take qualifying military leave (for both OMFLA and FMLA)</li><li>○ Employees who do not apply for Paid Leave benefits, but have a qualifying event (for OFLA and FMLA)</li></ul> <p>(This list is not all inclusive.)</p>			

# FMLA only

	Paid Leave Oregon	OFLA	FMLA
Category 5:			

- An employee who does not apply for Paid Leave and is not OFLA eligible
- A new employee who exhausted their Paid Leave and OFLA prior to becoming FMLA eligible, but later takes additional leave after becoming FMLA eligible
- Employee who takes leave due to the deployment of a service member for more than 14 working days (FMLA exigency leave)
- Employee who takes 26 weeks FMLA military caregiver leave (exceeds 12 weeks)

(This list is not all inclusive)



# Paid Leave and FMLA only

	Paid Leave Oregon	OFLA	FMLA
Category 6:			

- Employer has fewer than 25 employees in Oregon, but more than 50 employees within 75 miles of the Oregon work location (e.g., certain employers in Portland, Ontario, Ashland, Klamath Falls, etc.)
- Employees who cannot meet the OFLA eligibility requirements when they take Paid Leave for a qualifying reason that is also covered by FMLA, and they are FMLA eligible

(This list is not all inclusive.)

# Paid Leave, OFLA and FMLA

	Paid Leave Oregon	OFLA	FMLA
Category 7:			

Employee, who meets all three eligibility requirements, applies for Paid Leave benefits and takes leave due to their own serious health condition, or to care for a family member (who is recognized under all three laws) with a serious health condition.

## Key Takeaways

- Job protections starts at the 90th day of employment under Paid Leave Oregon
- Ensure the employer meets the coverage criteria under the leave laws
- Ensure the employee is qualified under the leave laws
- Run the leave concurrently if the employer, employee, and circumstances fall under the other leave law(s).



# BOLI leave tracker (including Paid Leave)

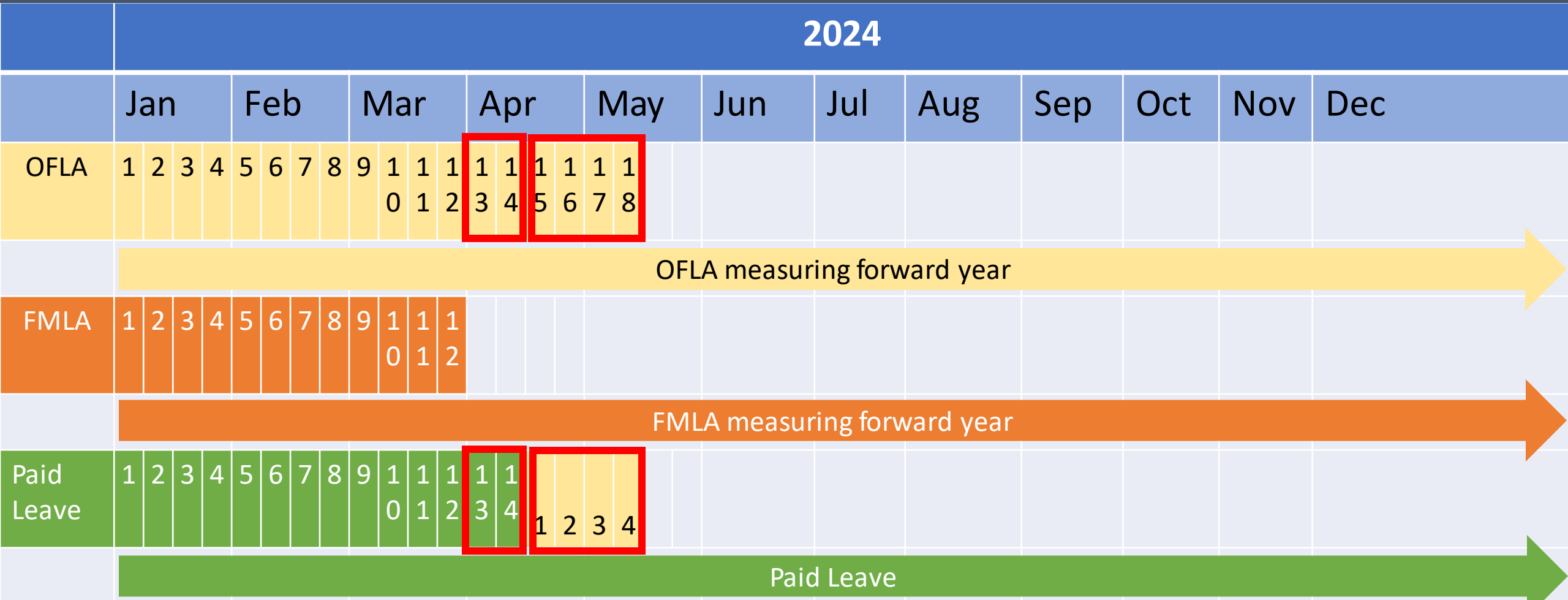
OFLA, FMLA and PAID LEAVE OREGON TRACKING FORM															Beginning September 3, 2023				
OFLA Leave Year: 00/00/00										FMLA leave Year: 00/00/00					Benefit Year: 00/00/00 to 00/00/00				
OFLA	OFLEA	OFLA	OFLA	OFLA	OFLA	OFLA	OFLA	OMFL	FMLA	FMLA	FMLA	FMLA	FMLA	Paid Leave	Fam Leave	Med Leave	Safe Leave	Pregnancy	
	Serious Health Condition of the Employee	Pregnancy Disabilities	Serious Health Condition of the Spouse, Parent, or Child	Serious Health Condition of the child's spouse or domestic partner	Bereavement	Birth, Adoption, Foster Care	Non-Serious Illness of a Child	Oregon Military Family Leave (14 days)		Serious Health Condition of the Employee	Serious Health Condition of the Spouse, Parent, or Child	Birth, Adoption, Foster Care	Qualifying Exigency						Serious Injury or Illness of a Service-member/Veteran (26 wks)
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# Common Scenario

**Baby is due in March, but the employee begins pregnancy disability leave on January 1, 2024**

# Employee Applies for Paid Leave Immediately



ORS 657B.020(2)







# Another Option

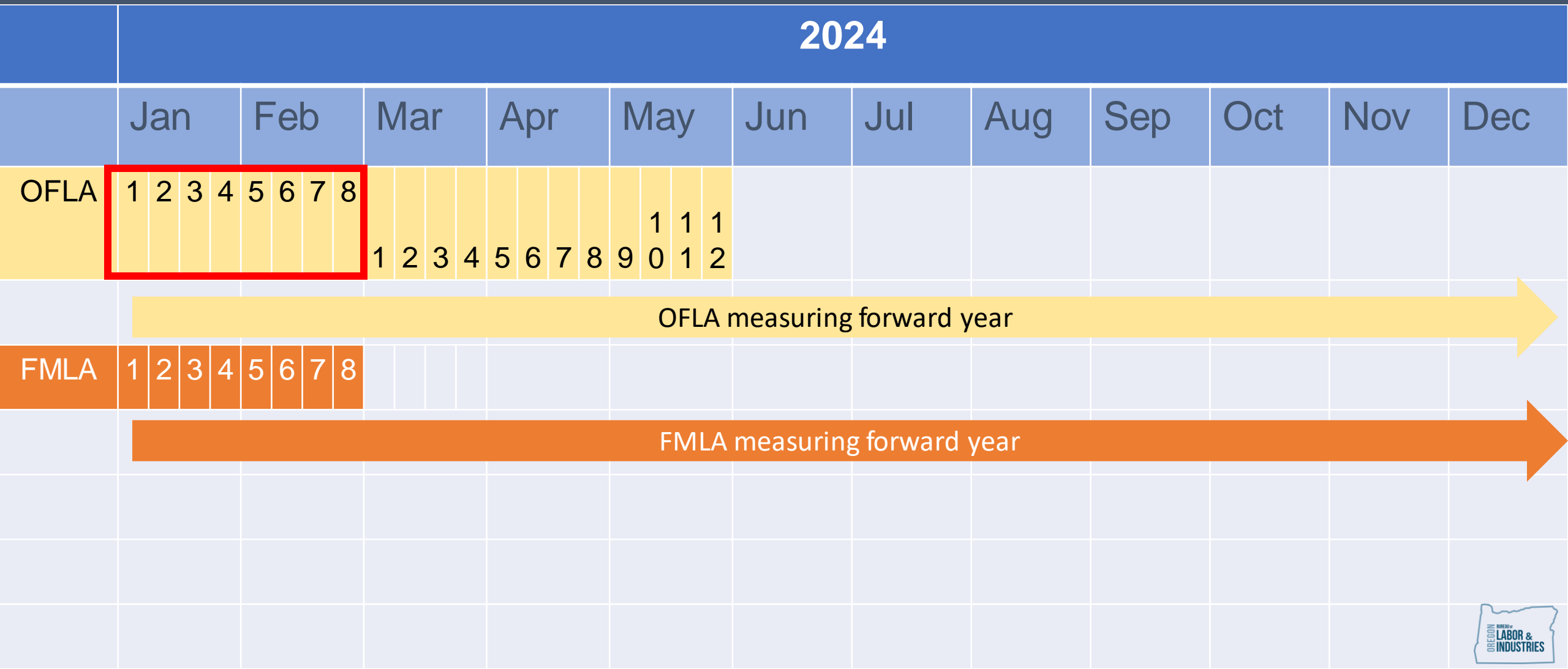
**Employee waits to take Paid Leave until after the birth of the child.**



# Concurrent Leave: 8 weeks of pregnancy disability leave under OFLA/FMLA



# Employee requests 12 weeks of OFLA parental leave after giving birth March 1



# Only 4 of the 12 weeks of parental leave run concurrent with FMLA



# Waits to apply for Paid Leave until after the birth



ORS 657B.020(2)





# Common Scenario

**Employee needs leave for their own serious health condition (that is not pregnancy disability) beginning on January 1, 2024**

# Employee Applies for Paid Leave Immediately



ORS 657B.020(2)







# Another Scenario

**Employee uses OFLA/FMLA for their own serious health condition on January 1, 2024, but has a second qualifying event and they apply for Paid Leave Oregon.**



# Waits to apply for Paid Leave



ORS 657B.020(2)





# Intermittent leave

# Major difference

Absences	FMLA	OFLA	Paid Leave
Full day	Yes	Yes	Yes
Partial day	Yes	Yes	No

# Example prenatal appointment

- A pregnant employee may take a partial day off for a pre-natal appointment. They are not eligible for Paid Leave benefits for a partial day off.
- The employer will only count the intermittent leave (or reduced schedule leave) as OFLA and FMLA, if the employee is eligible for OFLA/FMLA.
- If this is the employee's first time using OFLA and FMLA, they will start an OFLA/FMLA leave year but will not set a Paid Leave benefit year.
- Alternatively, the employee may be able to take a full day absence and be eligible for Paid Leave.

# Example: Migraines

- An employee with migraines may take intermittent leave whenever a flare-up occurs. They may miss a full day of work and may apply for Paid Leave. If approved, the full day absence can be counted concurrently as OFLA and FMLA, if the employee is eligible for OFLA/FMLA.
- Or the employee may leave work early with a flare-up and miss a partial day. If so, the partial day absence can only be counted as OFLA and FMLA, if eligible, but may not apply for Paid Leave because it was not a full-day absence.

# Intermittent parental leave with Paid Leave

		PAID LEAVE
FMLA is generally not applicable	OFLA is generally not applicable	An eligible employee is entitled to take intermittent parental leave (family leave).
		<a href="https://www.oregon.gov/DEI/REGISTRATION/Pages/471-070-1420(1).aspx">471-070-1420(1)</a>

Employers may want to consider permitting OFLA/FMLA parental leave on an intermittent basis in increments of full days if the employee is drawing from Paid Leave as well.



# Another Scenario

**Employee applies for Paid Leave Oregon for intermittent leave. She needs every Monday off to attend and recover from treatments for her own serious health condition.**



# Public School Teachers



- If a public-school teacher
- Requests foreseeable OFLA leave for either their own serious health condition or to care for a family member

## **AND**

- The teacher will be absent more than 20% of the total number of working days in the period of which the leave would occur

## **THEN**

- The employer may elect to have the teacher either:
  - (a) Take the leave in one uninterrupted period of time (School holidays and school vacation days are not counted as OFLA leave);
  - OR**
  - (b) Transfer to a temporarily, available alternative position that better accommodates periodic absences.

**ONLY APPLIES TO OFLA, NOT PAID LEAVE**

# OFLA/FMLA Run Concurrently with Paid Leave

2024																																										
	Jan					Feb				Mar				Apr				May			Jun	Jul	Aug	Sep			Oct			Nov			Dec									
Dates	1	8	1	2	2	5	1	1	2	4	1	1	2	1	8	1	2	2	6	1	2	2	Break	Break	Break	2	9	1	2	3	7	1	2	2	4	1	1	2	2	9	1	
			5	2	9		2	9	6		1	8	5		5	2	9		3	0	7						6	3	0		4	1	8		1	8	5			6		
OFLA	1	2	3	4	5	6	7	8	9	1	1	1	1	1	1	1	1	1	2	2	2				2	2	2	2	2	2	2	3	3	3	3	3	3	3	3	3	3	3
										0	1	2	3	4	5	6	7	8	9	0	1	2				3	4	5	6	7	8	9	0	1	2	3	4	5	6	7	8	
OFLA measuring forward year																																										
FMLA	1	2	3	4	5	6	7	8	9	1	1	1	1	1	1	1	1	1	2	2	2				2	2	2	2	2	2	2	3	3	3	3	3	3	3	3	3	3	3
										0	1	2	3	4	5	6	7	8	9	0	1	2				3	4	5	6	7	8	9	0	1	2	3	4	5	6	7	8	
FMLA measuring forward year																																										
Paid Leave	1	2	3	4	5	6	7	8	9	1	1	1	1	1	1	1	1	1	2	2	2				2	2	2	2	2	2	2	3	3	3	3	3	3	3	3	3	3	3
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Paid Leave Benefit Year																																										



# Another Scenario

**Employee applies for Paid Leave Oregon for intermittent leave. She will need intermittent leave for appointments (lasting about 2 hours) and a day off to recover. These appointments are two times per month.**

# Full Day and Partial Day Absences

2024																																						
	Jan				Feb				Mar				Apr				May				Jun	Jul	Aug	Sep				Oct				Nov				Dec		
Dates	2	3	1	1	5	6	1	2	4	5	1	1	1	2	1	1	6	7	2	2	Break	Break	Break	9	1	2	2	7	8	2	2	4	5	1	1	9	1	
			5	6			9	0			8	9			5	6			0	1					0	3	4			1	2			8	9			
OFLA (hours)	2	1	1	2	2	3	3	4	4	5	5	6	6	7	7	8	8	9	9	1					1	1	1	1	1	1	1	1	1	1	1	1	1	1
		0	2	0	2	0	2	0	2	0	2	0	2	0	2	0	2	0	2	0					0	2	2	0	2	3	3	4	4	5	5	6	6	7
OFLA measuring forward year																																						
FMLA (hours)	2	1	1	2	2	3	3	4	4	5	5	6	6	7	7	8	8	9	9	1									1	1	1	1	1	1	1	1	1	1
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FMLA measuring forward year																																						
Paid Leave (days)		1		2		3		4		5		6		7		8		9		1									1		1		1		1		1	
																													1		2		3		4		5	



# Frequently Asked Questions



# Use of Accrued Leave

## Paid Leave

- An employer may permit an employee to use paid accrued leave in addition to receiving paid family and medical leave insurance benefits
- This is no longer capped at 100% of an employee's wages to account for the delay in receiving benefits and an inability to determine the amount of benefits

[ORS 657B.030](#) as amended by [SB 913](#)

## OFLA/FMLA

- An employee is entitled to use accrued paid sick leave, personal leave, vacation leave or any other paid leave.
- An employer may require an employee to use accrued leave and may determine the order in which paid leave is to be used
  - Consistent with collective bargaining or written agreement
  - Employer must provide written notice to employee that paid leave is to be used
  - Employer must provide written notice to the employee before foreseeable leave or within five business days of unforeseeable leave

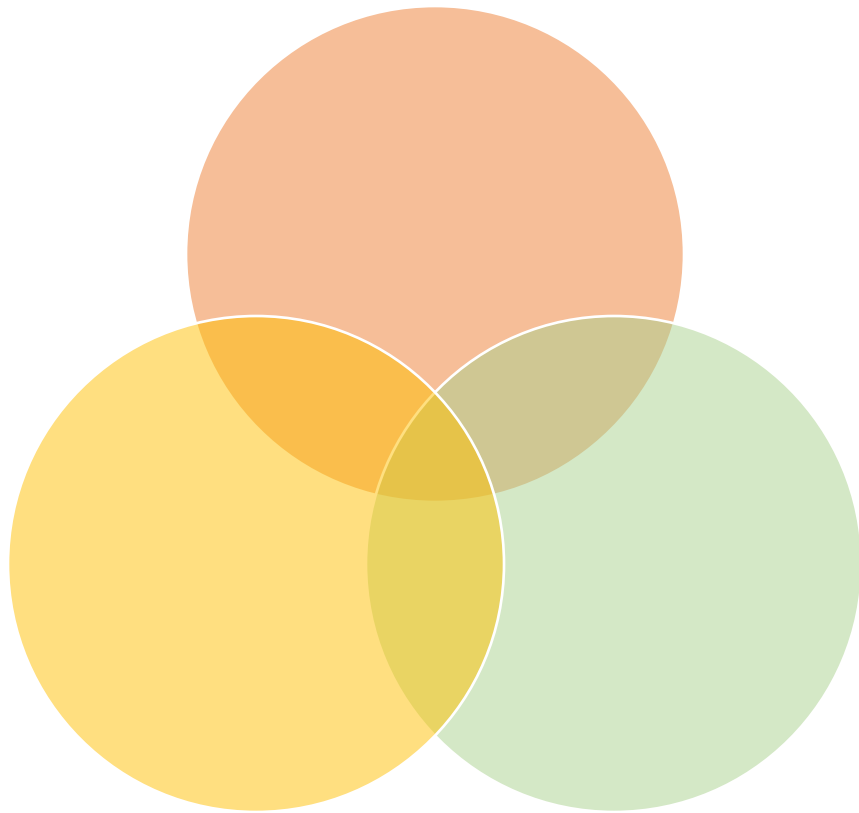
[OAR 839-009-0280](#)

# Use of Accrued Leave

- Employers denying the use of employer provided sick/vacation/pto in addition to Paid Leave Oregon could be a standalone OFLA violation.
- Employers requiring the use of employer provided sick/vacation/PTO while on Paid Leave Oregon could be a standalone Paid Leave Oregon violation.
  - This can be especially tricky for employers who provide employees with lots of accrued leave as this allows the employee to reserve their accrued leave. Note, employers do not have to approve accrued leave if it does not fall within protected leave unless there is a more generous policy or CBA.
  - When state law and collective bargaining agreements conflict, state law will prevail.



# Health Benefits



- Employers shall **maintain health care coverage** during the leave period
- Cannot increase premium share while on leave
- Employers may only deduct 10% of the employee's gross pay each pay period after the employee returns to repay premiums.

[ORS 657B.030](#)

# Paid Leave Oregon Application is Voluntary

Employer cannot force an employee to apply for Paid Leave Oregon. Employees can choose to defer this benefit and use OFLA/FMLA first



# Medical Certification and Verification



- Employers must pay the cost of any medical examination or providing any health certificate

## UNLESS

- The employer pays benefits that cover the entire cost, or
- The payment of the certification is required by a collective bargaining agreement or required by law or ordinance

ORS 659A.306

# Bereavement, Sick Child, and Partial Day Intermittent leave

**PAID  
LEAVE**

- **Not Covered**

**FMLA**

- **Only  
intermittent  
leave**

**OFLA**

- **Covered**

# Best practices

- Describe options for these benefits and document the employee's choice
  - Use of employer-provided paid leave options
  - When and how to apply for Paid Leave Oregon
  - Proper notification and posters
- Continue to follow OFLA/FMLA notification requirements
- Consider whether to obtain medical verification documents for OFLA/FMLA if the employee is also using Paid Leave
- Communicate with the employee about their protected leave options, especially with partial day absences.
- Provide leave as designated by Paid Leave Oregon.





# The End

Employer Assistance

(971) 361-8400

[employer.assistance@boli.oregon.gov](mailto:employer.assistance@boli.oregon.gov)

Paid Leave Oregon

1-833-854-0166

[Paidleave@oregon.gov](mailto:Paidleave@oregon.gov)

**Thank you for having us! Please give us a call or send us an email if you have questions.**