

**PORT OF NEWPORT  
RESOLUTION NO. 2019-17**

**A RESOLUTION ADOPTING A FAMILY AND MEDICAL LEAVE POLICY**

**WHEREAS**, the Port of Newport Board of Commissioners By-laws states in section 2 that the Board of Commissioners shall adopt policies for the governance of the Port; and

**WHEREAS**, Port staff recognizes the need to comply with the Oregon Family Leave Act; and

**WHEREAS**, Family and Medical Leave is not specifically addressed in the current Personnel Manual; and

**WHEREAS**, the Port of Newport recognized the need to inform employees of their rights under the law and the policies of the Port; and

**WHEREAS**, Port staff has prepared a Port of Newport Family and Medical Leave Policy document, attached hereto as Exhibit A, that outlines policies and procedures for Family and Medical Leave;

NOW THEREFORE,

**THE PORT OF NEWPORT BOARD OF COMMISSIONERS RESOLVES AS FOLLOWS:**

**Section I.** The Port of Newport Family and Medical Leave Policy, attached hereto as Exhibit A, is hereby adopted by reference.

**Section II.** The Policies and Procedures may be modified by Resolution or may be modified administratively to follow best practices, for example, to update items to comply with Port Personnel Policy, or to incorporate new laws and rules.

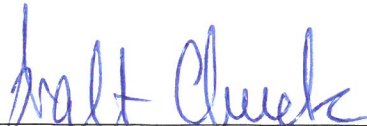
**Section II.** Staff is directed to codify this policy according to past administrative practices.

**APPROVED AND ADOPTED BY THE BOARD OF COMMISSIONERS** this  
19<sup>th</sup> day of November, 2019.

ATTEST:



Sara Skamser, President



Walter Chuck, Secretary/Treasurer



# Family and Medical Leave Policy

*Adopted by Resolution XXXX  
[DATE]*

Family & Medical Leave Policy DRAFT 2019.11.19

# PORT OF NEWPORT FAMILY & MEDICAL LEAVE POLICY

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## Chapter 1. General Provisions

**1.1 Title.** This Policy and any amendments hereto shall be called, collectively, the Port of Newport Family & Medical Leave Policy.

**1.2 Intent.** This policy addresses leave for:

- (a) Serious health condition of employee or family member
- (b) Parental leave
- (c) Sick Child leave
- (d) OFLA Bereavement leave.

**1.3 Disclosure.** Please read this statement before proceeding.

- (a) This document is a summary of Family and Medical Leave policy and procedures. In all cases applicable state law, rules and policies govern the employee's and the Port of Newport's (Port) rights and obligations, not this document.
- (b) The law requires the Port to provide these entitlements.
- (c) 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.
- (d) For more information refer to the Port of Newport Personnel Policy and Payroll administration.

**1.4 State Law.** This policy follows:

- (a) The Oregon Family Leave Act as amended.
- (b) Oregon Revised Statutes (ORS) 659.A.150 through 659A.186 and ORS 659A.306
- (c) Oregon Administrative Rules (OAR) 839-009-0200 THROUGH 839-009-0320; OAR 166-300-0010 THROUGH 166-300-0045; OAR 101-030-0005 through 101-030-0027; and OAR 839-009-0370 through 839-009-0460.

**1.5 Interpretation.** If any section or part of this policy is found to be inconsistent with any laws of the State of Oregon or of the United States, or any rule, regulation or standard established pursuant thereto, such section, or part thereof shall be interpreted in the manner most consistent with its original intent that is not

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inconsistent with any laws of the State of Oregon or the United States or any rules, regulations or standards established pursuant thereto. Nothing contained in this policy shall be construed as a limitation of any rights, privileges, or remedies previously existing under any applicable laws or as a limitation of the powers of the Port Commission or management.

- 1.6 Severability.** Should any portion or the application thereof to any person or property be found invalid for any reason, the validity of the remainder of these provisions or the application of such remainder to other persons or property shall not be affected.

## Chapter 2. Family and Medical Leave

### 2.1 Oregon Family Leave Act.

- (a) The Oregon Family Leave Act (OFLA) protects an eligible employee's absence from work under certain conditions. State law determine eligibility, if your absence qualifies as OFLA, and how much leave you can take.
- (b) This policy specifically addresses OFLA leave for:
  - (1) Leave for your serious health condition
  - (2) Leave for the serious health condition of your family member
  - (3) Parental leave
  - (4) OFLA Bereavement leave
  - (5) OFLA Sick Child leave
- (c) Other OFLA leave types can be found in the state law cited above. Information on the Oregon Military Family Leave law can be found here: [https://www.oregon.gov/boli/TA/Pages/TA\\_FAQ\\_ORMilitaryLeaveAct.aspx](https://www.oregon.gov/boli/TA/Pages/TA_FAQ_ORMilitaryLeaveAct.aspx).

### 2.2 Eligibility.

To be eligible for OFLA leave you must meet the following requirements:

- (a) To qualify for **Parental leave** (leave to care for a newborn child or newly placed adopted or foster child) employee must have been employed by the Port for a period of 180 calendar days immediately preceding the date leave begins.
- (b) To qualify for **leave for a Serious Health Condition, OFLA Bereavement leave or Sick Child leave** (to care for the employee's child with a non-serious health condition requiring home care), in addition to the 180-day requirement above, the employee must have worked an average of 25 hours per week or more.
- (c) To qualify for OFLA **Military Family leave**, the employee must have worked an

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average of 20 hours per week or more (there is no 180-day requirement).

### 2.3 **Qualifying Purposes.** The following are the qualifying purposes for OFLA leave.

- (a) To recover from or seek treatment for your own **serious health condition** that renders you incapacitated. This includes pregnancy related disability and absence for prenatal care.
- (b) To tend to the **serious health condition** of your:
  - (1) Spouse or same-sex domestic partner as defined under Oregon state law
  - (2) Parent: your biological or adoptive mother or father, or an individual who stood in loco parentis (in place of a parent) when you were a child, and the parent of your spouse or same-sex domestic partner.
  - (3) Son or daughter (child) (of any age); your biological, adopted, foster or stepchild, a legal ward, or a child of whom you stand in loco parentis, and the child of your same-sex domestic partner.
  - (4) Grandparent or grandchild.
- (c) **Parental leave:** to care for your newborn, newly adopted child or newly placed foster child.
- (d) **OFLA Bereavement leave:** to deal with the death of your:
  - (1) Spouse or same-sex domestic partner as defined under Oregon state law.
  - (2) Parent: your biological or adoptive mother or father, or an individual who stood in loco parentis (in place of a parent) when you were a child, and the parent of your spouse or same-sex domestic partner.
  - (3) Son or daughter (child) (of any age); your biological, adopted, foster or stepchild, a legal ward, or a child of whom you stand in loco parentis, and the child of your same-sex domestic partner.
  - (4) Grandparent or grandchild.

### 2.4 **Serious Health Condition.** A serious health condition is an illness, injury, impairment, or physical or mental condition that involves one or more of the following:

- (a) **Hospital care:** Inpatient care (i.e., an overnight stay) in a hospital, hospice, or residential medical care facility, including any period of incapacity or subsequent treatment in connection with or as a consequence of inpatient care.
- (b) **Absence plus treatment:** A period of incapacity of more than three consecutive calendar days, including any subsequent treatment or period of incapacity relating to the same condition, that also involves one or both of the following:

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- (1) Treatment received in person, two or more times by a health care provider, a nurse, or a physician's assistant under direct supervision of a health care provider, or a provider of health care services (e.g., physical therapist) under orders of or referred by a health care provider.
  - (2) Treatment by a health care provider on at least one occasion resulting in a regimen of continuing treatment under the supervision of the health care provider.
- (c) **Regimen of Continuing Treatment:** includes a course of prescription medication such as an antibiotic or physical therapy requiring special equipment to resolve or alleviate the health condition. A regimen of continuing treatment does not include taking over-the-counter medications such as aspirin, antihistamines or salves, bed-rest, drinking fluids, exercise, and other similar activities that could be initiated without a visit to a health care provider.
- (d) **Any period of incapacity** for pregnancy, pregnancy-related illness, or for prenatal care (pregnancy disability). The following absences related to pregnancy disability qualify:
- (1) Part-day or full-day absences for severe morning sickness.
  - (2) Periods of bed rest ordered by the physician of the pregnant employee.
  - (3) A reduced work schedule because of pregnancy complications.
  - (4) Routine prenatal visits to the doctor.
  - (5) Leave following childbirth if the employee is incapacitated since the definition of pregnancy disability includes incapacity due to pregnancy or childbirth. Pregnancy is a temporary condition and not a covered disability that requires reasonable accommodation under the Americans with Disabilities Act Amendments Act (ADAAA).
- (e) **Chronic conditions:** A chronic condition is one which:
- (1) Requires periodic in-person treatments by a health care provider, or by a nurse or physician's assistant under direct supervision of a health care provider.
  - (2) Continues over an extended period of time, including recurring episodes of a single underlying condition.
  - (3) May cause episodic rather than a continuing period of incapacity; for example, asthma, diabetes, epilepsy.
- (f) **Permanent or long-term conditions requiring supervision:** A period of incapacity that is permanent or long-term due to a condition for which

treatment is potentially ineffective. The employee or family member is under supervision of a health care provider, not necessarily receiving active treatment. Examples are Alzheimer's disease, a severe stroke, the terminal stages of a disease.

- (g) **Multiple treatments (non-chronic conditions):** Any period of absence to receive multiple treatments (including any period of recovery) by a health care provider or by a provider of health care services under orders of, or on referral by a health care provider for one or both of the following reasons:
  - (1) Restorative surgery after an accident or other injury.
  - (2) For a condition that in the absence of treatment or medical intervention, will likely result in a period of incapacity of more than three consecutive calendar days. For example: chemotherapy or radiation for cancer, physical therapy for severe arthritis, dialysis for kidney disease.

**2.5 Leave Entitlement.** Under OFLA you are entitled to:

- (a) Up to 12 weeks of leave in a leave year, January through December, if you meet the eligibility and purpose requirements.
- (b) OFLA may entitle you to additional leave under the following circumstances:
  - (1) An employee who takes any amount of leave for their own pregnancy-related disability, may take up to an additional 12 weeks of OFLA leave for any OFLA-qualifying purpose.
  - (2) An employee who uses a full 12 weeks of Parental leave under OFLA, may take up to 12 additional weeks of OFLA leave in the same leave year for Sick Child leave.
- (c) If you are a part-time employee, your leave entitlement is pro-rated. For example, if you normally work 30 hours per week, you are entitled to up to 12 weeks of leave at 30 hours per week. Leave taken on an intermittent basis is calculated by the hour. If you are a full-time employee working 40 hours per week, you are entitled to up to 480 hours of leave. A part-time employee's hourly entitlement is pro-rated. For example, if you normally work 30 hours per week, your hourly entitlement is 360 hours.
- (d) You may need OFLA leave for more than one qualifying condition or purpose at the same time or in the same leave year. Having more than one qualifying condition does not extend the amount of your entitlement.
- (e) If you and a family member both work for the Port, you may not take OFLA leave at the same time except under one of the following circumstances:



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- (1) One of you needs to care for the other who has a serious health condition.
  - (2) One of you needs to care for a child with a serious health condition while the other is suffering from a serious health condition.
  - (3) You both have a serious health condition.
  - (4) The Port grants an exception under special circumstances.
- (f) If you are on time loss due to workers' compensation and your claim is denied, OFLA leave will immediately begin if you meet eligibility requirements. If you have disabling compensable injury and refuse an offer of transitional work, OFLA leave will immediately begin if you meet eligibility and purpose requirements.
- (g) There are three types of OFLA leave schedules:
- (1) Continuous leave: leave taken in a block of time. For example, you take six weeks of leave due to a serious health condition.
  - (2) Intermittent leave: Leave taken sporadically. For example, you miss five days of work a month due to a serious health condition.
  - (3) Reduced schedule leave: Leave taken where you are scheduled to work less than your normal work hours in a day or week. For example, you are normally scheduled to work eight hours a day, instead work six hours and take the remaining two hours as OFLA leave due to a serious health condition.

## Chapter 3. Requesting Leave

### 3.1 *Submitting a Request.*

- (a) Generally, you must give a 30 calendar day notice for planned absences (paid or unpaid) related to OFLA leave. Follow Port procedures for submitting a request for leave. If you are unable to request leave in advance due to an emergency or unforeseeable event, let the Port know as soon as possible. You are not required to specifically state the leave is for OFLA, but you must provide enough information so the Port can determine if the leave qualifies. The Port may ask for more information, if necessary.

### 3.2 *Determination of Eligibility*

- (a) **Notice of Eligibility:** After you make a request for Family and Medical leave, the

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Port will generally let you know within five business days if you are eligible for the leave entitlement and if the Port needs more information, such as a medical certification.

- (b) **Medical Certification:** If you are required to provide a medical certification for your own or your family member's serious health condition, the Port will give you a Medical Certification form to take to your medical provider. The Port uses this information to determine if your reason for leave qualifies under OFLA. The medical certification must be returned within 15 days or your leave can be denied. Denied leave means you do not have job protection under OFLA. You may be asked to provide an updated medical certification under certain circumstances. In some circumstances, the Port may have enough information to designate OFLA leave without requesting medical certification.
- (c) **Final Determination:** The Port will inform you once it has enough information to determine whether your absence qualifies as OFLA leave. The Port will tell you how much OFLA leave time you have available, requirements to use your paid leave, information about insurance, your reinstatement rights, and if the Port will require you to provide a Fitness for Duty Certification before returning to work if your absence is for your own serious health condition.

### Chapter 4. Additional Provisions

#### 4.1 *Parental Leave.*

- (a) Parental leave is time for you to bond with your child after the child's birth, adoption or foster placement in your home. Parental leave must be completed within one year of the birth, adoption or placement.
- (b) You may take intermittent Parental leave prior to the adoption or placement of a foster child if your presence is required to affect the adoption or placement.
- (c) In other situations, Parental leave must be taken in a continuous block unless the Port allows you to take it on an intermittent or reduced schedule that is agreed to by the Port and you.

#### 4.2 *Sick Child Leave*

- (a) OFLA Sick Child leave is part of your 12-week OFLA entitlement. It is used intermittently. Follow normal call in procedures each time you are absent for OFLA Sick Child leave to care for your child 17 years of age or younger (or incapable of self-care due to a mental or physical disability), who has a non-

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serious health condition (i.e. head cold, ear ache, flu), requiring home care. The Port will inform you whether you qualify for OFLA Sick Child leave. The Port may require you to provide a medical certification after the third time you take OFLA Sick Child leave in the leave year.

### **4.3 OFLA Bereavement Leave**

- (a) OFLA Bereavement leave is time for you to deal with the death of a family member by attending the funeral or alternative to a funeral, making arrangements necessitated by the death, or grieving. An eligible employee may take up to two weeks of leave in a block of time or intermittently. The leave must be completed within 60 days of the date on which the eligible employee receives notice of the death of a family member.
- (b) Employees are entitled to take multiple periods of OFLA bereavement leave if more than one family member of the employee dies. OFLA Bereavement leave is deducted from the employee's overall (up to 12 weeks) OFLA entitlement, and cannot exceed the yearly entitlement.
- (c) Two or more eligible family members who are employees are allowed to take OFLA bereavement leave at the same time for the same family member.

### **4.4 Pay During OFLA Leave**

- (a) OFLA is unpaid leave. Except for the reason below, while on OFLA leave, you must use all your paid leave (except compensatory time) before going into leave without pay. You may choose whether to use your compensatory time. All paid and unpaid leave used for OFLA purposes counts against your OFLA entitlement.
- (b) For any OFLA absence during which you are receiving payments from your disability insurance provider, you are not required to use your paid leave except as required by the disability insurance contract.
- (c) Your OFLA leave needs to be entered correctly using the appropriate timesheet code. If you are unable to enter your own time, your supervisor will do it for you. Stop coding your timesheet as OFLA when your OFLA entitlement ends. Also, stop coding your time as OFLA if you were absent to provide care for a family member and that person dies. Seek approval from your supervisor to use other leave or leave without pay as necessary. Refer questions about tracking your time to your supervisor, manager, or payroll administration.

### **4.5 Insurance During OFLA Leave**

- (a) If you use any amount of OFLA leave in a month, the Port pays its share of premiums for your medical, dental and other health insurance for that month. If

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you normally pay a portion of the premiums for your health insurance, you must continue timely payments during the leave period to avoid cancellation, including premium payments through payroll.

- (b) If you exhaust your OFLA leave entitlements, are in leave without pay and not in a current Affordable Care Act (ACA) stability period, you have the option of continuing coverage under COBRA. You will be notified by a third party administrator regarding how to continue your health and dental insurances while on leave without pay.
- (c) Your insurance resumes normally if you return from OFLA leave immediately following your OFLA absence. If you return beyond that timeframe, you must work a minimum of 80 hours in the month to receive the employer contribution for the following month, unless you are in a current ACA stability period.
- (d) If you do not return to work following OFLA leave, you may be required to reimburse the Port for the full premium cost of health care coverage paid on your behalf, unless a recurrence, continuation, or onset of a serious health condition or a serious illness or injury of a covered employee occurs or the reason for not returning is beyond your control.

### 4.6 *Returning to Work*

- (a) Before returning to work from OFLA leave for your own serious health condition, the Port may require you to provide a statement from your medical provider verifying you are able to return to work, and if you have any limitations.
- (b) If returning from OFLA leave, you have a right to be restored to the position you held prior to your leave. The following exception apply:
  - (1) If your position was eliminated through a Port layoff process, you must be treated as if you were not on OFLA leave and will be treated the same as similarly situated employees according to Port policy.
  - (2) If you are a temporary or limited duration employee, the Port will return you to your position to the extent the placement or position still exists.
  - (3) If you are unable to perform an essential function of your position and reasonable accommodations are not appropriate, OFLA job protection ends. You may be subject to termination under an applicable law, rule, or policy.
- (c) If you are unable to return to work following OFLA leave or cannot perform all essential functions of your job, you may request an extension of your absence.

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The Port may grant an extension when continuing your leave does not impose an undue hardship for the Port and complies with law, policy, and reasonable accommodation provisions of the Americans with Disabilities Act Amendments Act (ADAAA).

### References

Reserved.