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Coordinating Protected Leave in Oregon

By Stacie Damazo

Employees working primarily in Oregon may be eligible for protected time away from work under the federal Family and Medical Leave Act (“FMLA”), Oregon Family Leave Act (“OFLA”), Oregon sick leave, or Paid Leave Oregon. Each of these “buckets” of protected time away from work are governed by different laws and different eligibility requirements, which can complicate the coordination of leave, if the underlying reason for leave qualifies under more than one of these laws. Adding to the complexity, the order in which an employee chooses to take leave under these four laws may impact the total amount of protected time away from work available to that particular employee.

To help navigate these complex leave situations, the following addresses common questions relating to the coordination of protected leave in Oregon:

1. My employee has experienced a qualifying event under FMLA, OLFA, and Paid Leave Oregon but they do not want to apply for Paid Leave Oregon. What happens next?

An employer may not require an employee to apply for benefits under Paid Leave Oregon even if they have experienced a qualifying event under Paid Leave Oregon. Assuming that your employee is eligible under both OFLA and FMLA, and that the reason for leave is in fact a qualifying event under both laws, the employee will start their OFLA and FMLA leave year according to the relevant definition of a “leave year.” Note that during a period of leave under OFLA, an employee may also choose to use their accrued sick time, paid time off, or other employer-provided paid benefits. As a result, this employee may decide whether they would like to exhaust their accrued sick time or other employer-provided paid benefits during their period of leave under OFLA and FMLA.

Importantly, OFLA and FMLA leave taken prior to the start of an employee’s Paid Leave Oregon benefit year does not reduce the employee’s entitlement to benefits under Paid Leave Oregon. As a result, while this employee’s leave under OFLA and FMLA will run concurrently, even after they have exhausted their leave, they may subsequently apply for benefits under Paid Leave Oregon (assuming they are still experiencing a qualifying event). In this scenario, the employee is “stacking” benefits they are eligible for under Paid Leave Oregon on top of their leave taken under OFLA and FMLA.

2. What can my company do to minimize the potential of employees “stacking” their protected leave?

As noted above, employees may choose the order in which they take protected leave. That order matters. For example, if the employee in the above example had instead opted to apply for benefits under Paid Leave Oregon at the outset, then (assuming the reason for leave is a qualifying reason under OFLA and FMLA as well) the potential for stacking the different “buckets” of leave on top of



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one another is minimized. If an employee opts to apply for benefits under Paid Leave Oregon, then their leave runs concurrently under Paid Leave Oregon, OFLA, and FMLA.

Even though the order in which an employee decides to take protected leave for which they are eligible is ultimately the employee's decision, employers may incentivize their employees to apply for benefits under Paid Leave Oregon by allowing them to "top off" their benefits with their accrued sick leave, paid time off, or other employer-provided benefits during a period of leave under Paid Leave Oregon. Employees whose average weekly wage is more than 65% of the state average weekly wage will not receive benefits under Paid Leave Oregon that fully replace their wages during a period of leave. Accordingly, if employers allow eligible employees to use their accrued benefits to bring them up to 100% of pay, that may motivate those employees to apply for Paid Leave Oregon benefits.

In addition, when an employee provides notice of a need for leave, it can be very helpful for both the employer and employee to have a conversation about the various buckets of leave the employee may be eligible for, as well as the different decision points available to the employee. For example, the employee may not understand the options available to them, including which types of leave may be eligible for which types of paid benefits.

Finally, while the possibility of an employee "stacking" their leave may allow an employee to become eligible for more leave than they may have been entitled to otherwise, it is important to remember that it is an unlawful employment practice to violate the protections of any of the leave laws, to deny leave or interfere with any other right available to them under these laws, or to retaliate or discriminate against an employee because they have inquired about their rights or responsibilities under any of these laws.

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