



FAMILY AND MEDICAL LEAVE

BACKGROUND BRIEF

LPRO: LEGISLATIVE POLICY AND RESEARCH OFFICE

Family and medical leave is protected time off from work to recover from a serious illness, care for a family member who is ill, or bond with your newborn or newly adopted child. More than half of Oregon workers are eligible for unpaid family and medical leave benefits under the federal [Family and Medical Leave Act of 1993 \(FMLA\)](#) and the [Oregon Family Leave Act \(OFLA\)](#). Other Oregon laws provide unpaid protected leave for employees to address events arising from domestic violence, sexual assault, stalking, and criminal harassment (Oregon Victims of Certain Crimes Leave Act), and for an employee whose spouse is notified of an impending call or order to active duty or impending leave from deployment (Oregon Military Family Leave Act). However, neither Oregon nor federal law requires any employer to pay employees for time on medical and family leave beyond the amount of vacation and sick leave accrued by the employee.¹

Five states and a few local governments have adopted paid family leave programs, and 20 states, including Oregon, considered proposals for paid family leave in 2016 or 2017.²

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¹ Oregon law requires covered employers to implement a sick time policy that allows all employees to accrue and use sick time in specified circumstances, including medical care for a family member. However, unlike paid family leave, paid sick time laws are designed for short-term health needs and preventative care, do not include parental leave for a new child, are generally limited to larger employers, and require employers to pay workers their usual rate-of-pay.

² Health Affairs, "Paid Family and Medical Leave," *Health Policy Brief* (November 21, 2016), <http://www.healthaffairs.org/healthpolicybriefs/brief.php?brief_id=165>, visited November 7, 2017.

EXISTING FAMILY AND MEDICAL LEAVE LAWS

Federal Family and Medical Leave Act

FMLA entitles eligible employees of covered employers to take unpaid, job-protected leave for specified family and medical reasons. 29 U.S.C. § 2601, *et seq.* The law requires companies with 50 or more employees working in the United States to allow eligible employees to take up to 12 weeks of unpaid leave per year for the birth, adoption, or placement of a child; prenatal care or a pregnancy disability; care for their own serious health condition or that of an eligible family member; or to address a qualifying exigency arising from an eligible family member's deployment; and up to 26 weeks to care for a seriously ill or injured service member or veteran.³ Employer-provided group health insurance may not be discontinued during the period of family leave.⁴ An employee returning from family leave must be restored to the employee's previously held position or to an equivalent job if the former position no longer exists.⁵ An employer may not retaliate against an employee for inquiring about or taking family and medical leave.⁶ Employees who allege a violation of FMLA may file an administrative complaint or take their case to court.⁷

To be eligible for FMLA leave, an employee must have worked for an employer for at least 12 months and 1,250 hours during the preceding 12-month period.⁸ Approximately 59 percent of American workers are eligible for protected leave under FMLA.⁹

Oregon Family Leave Act

For employees who are covered under both OFLA and FMLA, employers must allow leave under the law that is most beneficial to the employee.¹⁰ Leave that qualifies for both OFLA and FMLA counts concurrently towards the employee's maximum leave time benefit under both laws.¹¹ Because OFLA allows the employee to take leave for purposes that are not allowed under FMLA (e.g., bereavement leave), leave time taken under OFLA that is not allowed under FMLA cannot be counted against the employee's 12-week FMLA entitlement.

OFLA builds on FMLA protections, covering more workers, providing more qualifying reasons for leave, and expanding the definition of family members for whom an employee may take leave. Upon enactment in 1995, OFLA consolidated Oregon's prior leave laws, including the Parental Leave Act (1987), Pregnancy Disability Act (1989), and Family Medical Leave Act (1991).

³ 29 U.S.C. § 2612.

⁴ 29 U.S.C. § 2614(c).

⁵ 29 U.S.C. § 2614(a).

⁶ 29 U.S.C. § 2615.

⁷ 29 U.S.C. § 2617.

⁸ 29 U.S.C. § 2611.

⁹ U.S. Department of Labor, "Family and Medical Leave in 2012: Technical Reports" (Cambridge, MA: Abt Associates, Inc., 2014), <<https://www.dol.gov/asp/evaluation/fmla/FMLA-2012-Technical-Report.pdf>>, visited November 7, 2017.

¹⁰ OAR 839-009-0220.

¹¹ *Id.*

OFLA requires companies that have 25 or more employees to provide eligible employees up to 12 weeks of unpaid leave per year for specified purposes.¹² Allowable purposes for leave under OFLA include all those covered by FMLA, except for those relating to military status, which are covered by a different Oregon statute.¹³ In addition, OFLA allows family leave to care for a child with an illness, injury, or condition that is not serious but requires home care, and up to two weeks for bereavement leave.¹⁴ An eligible employee who takes 12 weeks of family leave is also entitled to take another 12 weeks of leave for a disability related to pregnancy or childbirth.¹⁵ Employees who take 12 weeks of parental leave may also take an additional 12 weeks of sick child leave.¹⁶ Employees must be allowed to use any accrued paid leave time for OFLA leave; employers may determine the order in which the accrued paid leave is to be used.¹⁷ Like under FMLA, employer-provided group health insurance may not be discontinued while on OFLA leave, ORS 659A.171(5)(b); an employee returning from OFLA leave must be restored to the employee's previously held position or to an equivalent job if the former position no longer exists, ORS 659A.171(1); and an employer may not retaliate against an employee for inquiring about or taking OFLA leave, ORS 659A.183(2).

To be eligible for OFLA parental leave, an employee must have worked for an employer for at least 180 days. For all other OFLA leave benefits, an employee must have worked at least 180 days and at least an average of 25 hours a week during the 180 days before leave begins.¹⁸

Employees may allege a violation of OFLA by filing a complaint with the Bureau of Labor and Industries or filing a civil action.¹⁹

For a more detailed comparison of FMLA and OFLA, see *Appendix 1*.

Oregon Military Family Leave Act

The Oregon Military Family Leave Act (OMFLA) requires employers with 25 or more employees to provide an employee who is the spouse of an active duty member of the military up to 14 days of unpaid leave per deployment, which the employee may take before and during deployment. ORS 659A.093(1). To qualify, an employee must have worked an average of at least 20 hours per week for an unspecified period and provide the employer notice within five days of receiving the spouse's call to duty or leave from deployment.²⁰ Leave taken under OMFLA counts toward the 12 weeks of leave allowed under OFLA.²¹

¹² ORS 659A.153; ORS 659A.159; ORS 659A.162.

¹³ ORS 659A.159.

¹⁴ ORS 659A.159; ORS 659A.162.

¹⁵ ORS 659A.162(3)(a).

¹⁶ ORS 659A.162(3)(b).

¹⁷ ORS 659A.174.

¹⁸ ORS 659A.156.

¹⁹ ORS 659A.820; ORS 659A.870.

²⁰ ORS 659A.090(1); ORS 659A.093(3).

²¹ ORS 659A.093(5).

Mirroring FMLA and OFLA protections, employers cannot deny leave for qualified employees or discriminate or retaliate because an employee has inquired about or submitted a request for military family leave.²² The employee has an option to use accrued paid leave.²³ As under OFLA, employees may allege a violation of OMFLA by filing a complaint with the Bureau of Labor and Industries or taking their case to court.²⁴

Oregon Paid Sick Leave Law

Under the state's paid sick leave law, Oregon employees of covered employers are entitled to accrue and use sick time for preventative care; caring for a new family member; caring for their own or a family member's mental or physical illness, injury, or health condition; grieving a family member's death; or handling matters related to domestic violence, sexual assault, or stalking. ORS 653.616. A covered "employer" is any person or entity, other than the federal government, that employs one or more employees working anywhere in the state of Oregon.²⁵ An eligible "employee" is an individual who renders personal services at a fixed rate to an employer.²⁶

Covered employers must allow employees to accrue and use one hour of sick leave for every 30 hours worked, up to a maximum of 40 hours per year.²⁷ All employers with 10 or more employees in Oregon (at least six for employers located in Portland) must provide up to 40 hours of paid sick leave per year.²⁸ Employers with fewer than 10 employees (less than six for employers located in Portland) must provide up to 40 hours of unpaid protected sick time.²⁹

Employers may require medical verification of the need for sick leave under certain circumstances, and employees must provide notice of intent to use sick leave when the need is foreseeable.³⁰ The employer must pay reasonable costs to obtain a medical verification if one is required. Employers may not require employees to find a replacement or work an alternative shift when using accrued sick leave.³¹ The law prohibits retaliation or discrimination against employees who inquire about or use sick leave.³² Employees who allege a violation may file a complaint with the Bureau of Labor and Industries or take their case to court.³³

Effective July 1, 2017, Senate Bill 299 clarifies that an employer may limit employees to 40 hours of sick time accrual per year, and may adopt a policy limiting employees from accruing more than a total of 80 hours of sick time and from using more than 40 hours in a year. The measure also modifies the rate of pay for accrued sick leave by employees paid on a piece-rate or commission

²² ORS 659A.096(2).

²³ ORS 659A.093(4).

²⁴ ORS 659A.820; ORS 659A.870.

²⁵ ORS 653.601(2).

²⁶ ORS 653.601(1)(a).

²⁷ ORS 653.606(1)(a)-(b).

²⁸ ORS 653.606(1)(c).

²⁹ ORS 653.606(1)(d).

³⁰ ORS 653.626; ORS 653.621.

³¹ ORS 653.606(8).

³² ORS 653.641.

³³ ORS 653.651.

basis and exempts employers with adequate alternate time-off policies from complying with the sick time requirements after the first 40 hours that the employer's policy provides per year.

Leave for Victims of Domestic Violence, Sexual Assault, or Stalking

Oregon's domestic violence leave law requires employers with six or more employees to provide reasonable time off to all employees who are victims of domestic violence, harassment, sexual assault, or stalking, regardless of the number of hours worked per week or length of time worked for the employer.³⁴ An employer may limit the amount of leave if it would create an undue hardship.

Reasonable leave from work may be available for employees who need time off to address safety-related matters such as court hearings, counseling sessions, moving to a safe home, or visiting a doctor. An employee may take leave to address the employee's own safety-related matters or to assist a minor child or dependent in doing so. Employers may request certification that the person is a victim, including a police report, a restraining order, a stalking order, other type of court order, or a letter or note from other professionals. Employers must keep confidential any records regarding a safety accommodation or leave request.

Employees who are victims of domestic violence may use any accrued paid leave to take time off from work for purposes related to domestic violence. Public employers must offer up to 160 hours of paid leave per calendar year to employees who are victims of domestic violence.

PAID FAMILY AND MEDICAL LEAVE LAWS AND PROPOSALS

FMLA, OFLA, and OMFLA allow eligible employees to take leave from their jobs for certain purposes, but these laws do not require employers to provide paid leave to their employees. Some employees may not be able to take leave time without pay. The Oregon legislature adopted paid sick leave legislation in 2015, making certain employees eligible to receive up to 40 hours of paid sick leave per year. This may allow more employees to take advantage of leave provisions.

Currently, five states and a handful of cities have adopted some form of paid family leave laws.³⁵

³⁴ ORS 659A.270.

³⁵ [Multnomah County](#) and the [City of Portland](#) adopted paid-parental-leave ordinances in 2015 for the benefit of their employees who are new parents. Seattle and King County in Washington have similar ordinances for their own governmental employees. In 2017, [San Francisco](#) implemented a paid leave policy generally requiring employers who have employees working in San Francisco to provide Supplemental Compensation to employees who are receiving California Paid Family Leave benefits to bond with a new child, so that the employees receive 100% of their normal weekly wages, up to a weekly maximum benefit, during six weeks of parental leave. San Francisco Office of Labor Standards Enforcement, *Paid Parental Leave Ordinance FAQ*, <<http://sfgov.org/olse/sites/default/files/FAQ%20August%202017.pdf>>, visited November 7, 2017. [Washington, D.C.](#) established a Universal Paid Leave Implementation Fund, funded by a payroll tax on employees of covered employers and self-employed individuals who opt-in to the program, to pay for up to eight weeks of paid family leave within a 12-month period for an eligible District government employee to care for a child following the child's birth or placement or to care for a family member of the employee. D.C. Department of Human Resources, *Paid Family Leave FAQ*, <https://dchr.dc.gov/sites/default/files/dc/sites/dchr/publication/attachments/paid_family_leave_questions_and_answers.pdf>, visited November 7, 2017. For more information about these paid family law policies and ordinances, see Dan Grinfas, "Paid Parental Leave Continues To Gain Traction," *The Oregon Civil Rights Newsletter*, published by the Civil Rights Section of the Oregon State Bar (December 2016), <<https://www.barran.com/assets/pdf/2017/Civil%20Rights%20News%20Dec%202016.pdf>>, visited November 7, 2017.

At least 10 states provide paid leave for state employees.³⁶ Twenty states considered paid family leave proposals in 2016 or 2017, and at least four states, including Oregon, have proposed tax credits for employers who provide paid family leave as a benefit.³⁷ The Oregon legislature considered proposals in 2007 and 2017 that would have required all employers to provide more comprehensive paid family leave, but no legislation was enacted. A variety of proposals for federal paid family and medical leave have been discussed, but none has become law.

Federal Paid Family and Medical Leave Proposals

Several options for paid family and medical leave are currently under consideration at the federal level. President Trump's FY 2018 budget proposes six weeks of paid leave to mothers and fathers through the Unemployment Insurance System to be funded through reforms and administered by state unemployment insurance systems.³⁸ The Family and Medical Insurance Leave Act, also known as the FAMILY Act, [Senate Resolution 337 \(2017-18\)](#) and [House Resolution 947 \(2017-18\)](#), would provide up to 60 days of paid leave for all workers, regardless of the size of their employer, at a wage replacement rate of 66 percent. It would be administered by a newly created Office of Paid Family and Medical Leave within the Social Security Administration and be funded through a 0.2 percent payroll tax paid by all employers and employees. Another federal proposal would allow employees to make contributions to tax-free savings accounts for use upon taking parental leave. [Senate Resolution 344 \(2017-18\)](#) and [Senate Resolution 1716 \(2017-18\)](#).

Oregon Paid Family Leave Proposals

The Oregon Legislative Assembly considered two approaches to paid family leave in 2017. Prior to 2017, the legislature's most recent consideration of paid family leave was in 2007, when it rejected a different proposal by a narrow margin.

In 2007, the Oregon legislature nearly adopted a proposal to establish a paid family leave program. [House Bill \(HB\) 2575-B](#) passed in the House by a vote of 31 to 28, but failed in the Senate by a vote of 13 to 16. HB 2575-B would have created the Family Leave Benefits Insurance Program within the Bureau of Labor and Industries (BOLI) to provide benefits to employees taking family leave. Employers with 25 or more employees would have been covered, and other employers could have opted in. The program would have been funded by withholdings from employee earnings at a premium equal to one cent per hour worked.³⁹ Withholdings would have been placed into a Family Leave Benefits Insurance Account and used by BOLI to administer claims for benefits. Family leave benefits would have been payable only to the extent that moneys were available in the Family Leave Benefits Insurance Account for that purpose. Neither the state nor BOLI would have been liable for any amount exceeding that limit.

³⁶ Jackson Brainerd, "Paid Family Leave in the States," *National Center for State Legislatures LegisBrief* (August 2017).

³⁷ *Id.*; Clare O'Connor, "As NY and SF Pass Paid Family Leave, These 20 States Could Be Next," *Forbes* (Apr. 6, 2016), <<http://www.forbes.com/sites/clareoconnor/2016/04/06/as-ny-and-sf-pass-paid-family-leave-these-20-states-could-be-next/#666c7bc947df>>, visited November 7, 2017.

³⁸ Jackson Brainerd, "Paid Family Leave in the States," *National Center for State Legislatures LegisBrief* (August 2017), <<http://www.ncsl.org/research/labor-and-employment/paid-family-leave-in-the-states.aspx>>, visited November 7, 2017.

³⁹ The withholding was considered a "premium," rather than a tax; therefore, passage did not require a three-fifths majority.

Under HB 2575-B, employees would have been eligible to take paid family leave and receive up to \$250 per week for six weeks under the following circumstances:

- caring for an infant, a newly adopted child under 18 years of age, a newly placed foster child under 18 years of age, or an adopted or foster child older than 18 years of age if the child is incapable of self-care because of a mental or physical disability;
- caring for a family member with a serious health condition; or
- recovering or seeking treatment for a serious health condition that renders the employee unable to perform at least one of the essential functions of the employee's regular position.⁴⁰

In 2017, the Oregon Legislative Assembly considered [House Bill 3087](#), which would have created a family and medical leave insurance benefits program to provide a portion of wages to employees. The measure would have permitted up to 12 weeks of benefits per year, plus an additional six weeks for parental leave. Eligible employees would have been entitled to receive a percentage of their average wage, based on their wages earned during the base year (first four of the last five completed quarters preceding the benefit year), capped at a maximum weekly benefit of 130 percent of the state's average weekly wage (AWW).⁴¹ For the portion of an employee's average wages that is equal to or less than the state's AWW, the employee's weekly benefit amount would have been 90 percent of the employee's average wage. For the portion that is greater than the state's AWW, the weekly benefit amount would have been 50 percent of the employee's average wage. The program would have been funded jointly by employees and employers in equal amounts via payroll contributions of up to 0.5 percent of employee wages, the amount to be determined annually by the Department of Consumer and Business Services.

House Bill 3087, which would have required a three-fifths majority because of the revenue raised, received a public hearing and three work sessions in the House Early Childhood and Family Supports Committee before it was referred by prior reference to the House Revenue Committee with amendments and without recommendation as to passage. The bill remained in the House Revenue Committee upon adjournment *sine die*.

The Legislative Assembly also considered a bill in 2017 that would have allowed employees to create a family and medical leave savings account at a financial institution to be used when on family or medical leave ([House Bill 3336](#)). The bill would have allowed for joint accounts, multiple accounts, and contributions by employers or someone other than the account holder. The funds deposited into the account, as well as the interest and income earned, would not have been subject to Oregon income taxes, and persons other than the account holder who contributed (including an employer) would have been eligible for a tax credit. The proposal received a public hearing but

⁴⁰ [HB 2575-A](#) also would have allowed paid family leave for an employee to care for a child of the employee who is suffering from an illness, injury, or condition that is not a serious health condition but that requires home care.

⁴¹ For July 1, 2017, to June 30, 2018, the AWW is \$963.01. [ORS 657.150\(4\)\(d\)](#).

remained in the House Early Childhood and Family Supports Committee upon adjournment *sine die*.

Paid Family Leave Laws in Other States

Five states have adopted paid family and medical leave insurance programs: California, New Jersey, New York, Rhode Island, and Washington. The policies in California, New Jersey, and Rhode Island are currently effective, while programs in New York and Washington will be implemented in 2018 and 2020, respectively. California's program, adopted in 2002 and implemented in 2004, is the oldest. Washington's program, enacted in 2017, is the most recent. The programs in California, New Jersey, New York, and Rhode Island were all structured through pre-existing temporary disability insurance programs. Washington developed a new infrastructure for its paid family leave program. The scope of paid family leave coverage, program financing, and benefits vary considerably among the five states. A summary of their key program elements is provided here. For a more detailed comparison, see *Appendix 2*.

EMPLOYERS COVERED. California, Rhode Island, and Washington's paid family leave programs cover all private sector employers. New Jersey and New York's programs cover most private sector employers. Washington is the only state to cover all public employers, while California, New Jersey, and Rhode Island cover certain public employers, and New York allows public employers to opt in. California, Rhode Island, and Washington allow self-employed workers to opt-in. Washington also allows tribes and independent contractors to opt-in.

EMPLOYEE ELIGIBILITY. Qualifications vary greatly by state. New York and Washington have minimum time worked qualifications. California and Rhode Island have minimum amount earned qualifications. New Jersey has minimum requirements on both amount of time worked and money earned during the employee's base period.

PROGRAM FINANCING. Family leave insurance is financed entirely by employee payroll deductions in California, New Jersey, New York, Rhode Island, and Washington. Disability/medical leave insurance is funded jointly by employees and employers in New York and Washington. Washington is unique in providing small business assistance in the form of unemployment benefits charge-relief and small business grants to certain employers who hire a temporary worker to replace an employee on leave for seven or more days and for significant additional wage-related costs related to an employee's leave.

QUALIFYING EVENTS. All five states allow paid leave for bonding with a new child (birth, adoption, foster), caring for the employee's own disability, and caring for a family member with a serious health condition. New York and Washington also allow paid leave for military exigencies arising from a family member's active duty or notice of impending call or order to active duty. Rhode Island allows parents to take limited leave time for school involvement.

FAMILY MEMBERS COVERED. All five states include an employee's child, parent, spouse, and domestic partner in the definition of family member for purposes of paid family leave. California, New York, Rhode Island, and Washington include grandparents. California, New York, and

Washington include grandchildren. California, New York, and Washington include siblings. California, Rhode Island, and Washington include parents-in-law.

UNPAID WAITING PERIOD. California, New Jersey, and Washington require a seven-day waiting period for the start of paid family leave benefits. However, California provides an exception for mothers transitioning from disability insurance pregnancy-related claims, and Washington provides an exception for the birth or placement of a child. Rhode Island and New York have no waiting periods for paid family leave benefits, but Rhode Island requires that the employee be out of work for at least seven consecutive days to be eligible for payment.

MAXIMUM PAID FAMILY LEAVE TIME. Rhode Island provides four weeks of paid family leave. California and New Jersey provide six weeks. New York will provide eight weeks in 2018, 10 weeks from 2019-2020, and 12 weeks beginning in 2021. Washington will provide 12 weeks for either family leave or medical leave, or 16 weeks combined, per year, plus two additional weeks for incapacity due to pregnancy.

WAGE REPLACEMENT MAXIMUM BENEFIT. The five states vary significantly in the amount of wage replacement provided for family leave, ranging from 50 percent to 90 percent of an employee's average weekly wage, capped between \$633 and \$1,173 per week. All five states consider the statewide average weekly wage when establishing caps.

JOB PROTECTION. All five states provide the same protections as under the FMLA.

RESOURCES

- California Paid Family Leave Website, <http://www.edd.ca.gov/disability/About_PFL.htm>visited November 7, 2017.
- National Conference for State Legislatures, *State Family and Medical Leave Laws*, <<http://www.ncsl.org/research/labor-and-employment/state-family-and-medical-leave-laws.aspx>>, visited November 7, 2017.
- Oregon Department of Business and Consumer Services, *Comparison of Oregon and Washington State Paid Family and Medical Leave Programs* (Submitted to Senate Workforce Committee, September 18, 2017), <<https://olis.leg.state.or.us/liz/201711/Downloads/CommitteeMeetingDocument/138276>>, visited November 7, 2017.
- Paid Leave Analysis Grant WB-26511-14-60-A-44 Final Report to U.S. Department of Labor Women's Bureau, "Launching the Rhode Island Temporary Caregiver Insurance Program (TCI): Employee Experiences One Year Later" (April 2016), <<http://www.dlt.ri.gov/tdi/pdf/RIPaidLeaveFinalRpt0416URL.pdf>>, visited November 7, 2017.

- Rhode Island Department of Labor and Training, Temporary Disability Insurance/Temporary Caregiver Insurance Frequently Asked Questions, <<http://www.dlt.ri.gov/tdi/tdifaqs.htm>>, visited November 7, 2017.
- UCLA Institute for Research on Labor and Employment, “Family and Medical Leave in the U.S.: Incremental Policy and State Legislative Action” (May 2015), <<http://irle.ucla.edu/wp-content/uploads/2016/03/ResearchBrief24.pdf>>, visited November 7, 2017.

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APPENDIX 1: Comparison of FMLA and OFLA





FAMILY AND MEDICAL LEAVE ACT (FMLA) AND OREGON FAMILY LEAVE ACT (OFLA) OVERLAPPING PROTECTIONS	
<p>Maximum Leave 12 weeks unpaid leave per year</p> <p>Covered Family Employee's spouse, parent, child, and grandparent (parent or child includes biological, adoptive, step, or foster, or any individual who stood in loco parentis relationship to employee)</p> <p>Qualifying Reasons Serious health condition of employee or employee's covered family member, pregnancy, parental leave</p> <p>Pregnancy Leave 12 weeks for incapacity due to pregnancy before or after birth of child</p> <p>Parental Leave 12 weeks to bond with covered child (must be within 12 months of birth, adoption, or placement)</p> <p>Intermittent Leave Employee can take leave intermittently for a variety of purposes, including but not limited to: pregnancy disability, fertility treatment, treatment or counseling for substance abuse, and chronic medical conditions</p> <p>Employer Notice Employers must post notice of employee's rights and protections under FMLA</p> <p>Employee Notice Employee must provide 30 days' written notice if leave is foreseeable or at least verbal notice sufficient to make employer aware of need for qualifying leave, anticipated timing, and duration of leave.</p> <p>Use of Paid Leave Employees must be allowed to use accrued sick time during family leave. Employers may require employees to use paid leave during family leave.</p> <p>Protections Retaliation for use of protected leave prohibited, and maintenance of insurance benefits required.</p>	<p style="text-align: center;">FMLA</p> <p>50 or more employees in country Employed 12 months (does not have to be consecutive), worked at least 1,250 hours during 12 months immediately preceding leave, and 50 or more employees are within 75 miles of worksite</p> <p style="text-align: center;">OFLA</p> <p>25 or more employees in Oregon Employed 180 calendar days preceding leave date and worked average of 25 hours per week during that period (min. hours not required for parental leave)</p>
<p>Employers Covered</p> <p>Employee Eligibility</p> <p>Covered Family</p> <p>Qualifying Reasons</p> <p>Military Leave</p> <p>Use of Paid Leave</p>	<p>See overlapping protections above</p> <p>See overlapping protections above</p> <p>See overlapping protections above. Also allows 12 weeks to care for child of employee with non-serious illness, injury, or condition requiring home care; 2 weeks to make arrangements, attend funeral, and grieve death of covered family member, which may be intermittent</p> <p>None under OFLA, but Oregon Military Family Leave Act provides up to 14 days leave per deployment</p> <p>See overlapping protections above. Also provides that employee must be allowed to use any accrued paid leave during FMLA leave if consistent with employer's usual leave policy</p>


APPENDIX 2: Comparison of State Paid Family Leave Laws

	California	New Jersey	Rhode Island	New York	Washington
 Enacted Date	2002	2008	2013	2016	2017
 Effective Date	2004	2009	2014	2018	2020
 Linked to State Disability Insurance	Yes	Yes	Yes	Yes	No
 Employers Covered	<ul style="list-style-type: none"> • All private sector employers • Some public sector employers • Self-employed may opt-in 	<ul style="list-style-type: none"> • All public and private sector employers who are covered by New Jersey Unemployment Compensation Law, with some exceptions 	<ul style="list-style-type: none"> • All private sector employers • Some public sector employers 	<ul style="list-style-type: none"> • Most private sector employers • Some public employers may opt-in • Self-employed may opt-in 	<ul style="list-style-type: none"> • All public and private sector employers • Tribes, self-employed, and independent contractors may opt-in • Employer may opt-out upon approval of program administrator if employer voluntarily provides similar paid family leave as the state plan

	<u>California</u>	<u>New Jersey</u>	<u>Rhode Island</u>	<u>New York</u>	<u>Washington</u>
 <p>Employee Eligibility</p>	<ul style="list-style-type: none"> No minimum number hours worked or days employed Was paid at least \$300 in wages subject to State Disability Insurance (SDI) contributions during 12-month base period of claim 	<ul style="list-style-type: none"> Worked minimum of 20 calendar weeks or earned at least 1,000 times the state minimum wage during 52 weeks preceding leave Earned at least \$168 per week or \$8,400 during base period 	<ul style="list-style-type: none"> Earned wages in Rhode Island and paid into Temporary Disability Insurance/ Temporary Caregiver Insurance fund Was paid at least \$11,520 in base period or alternate base period (first four of last five completed calendar quarters before starting date of new claim, or last four completed calendar quarters before starting date of claim) or Earned at least \$1,920 in one of the base period quarters, and total base period taxable wages were at least 150% of employee's highest quarter of earnings, and employee's taxable wages during base period were at least \$3,480 	<ul style="list-style-type: none"> Family Care: Worked 26 or more consecutive weeks for a covered employer (175 days for part-time employees) Disability: Worked four consecutive weeks for a covered employer (25 days for part-time employees) 	Worked at least 820 hours during qualifying period (four of five calendar quarters prior to leave application)
 <p>Program Financing</p>	<p>Family leave financed by employee only:</p> <ul style="list-style-type: none"> Payroll deduction of 0.9% from first \$106,742 of covered 	<p>Disability insurance financed jointly by employee and employer:</p> <ul style="list-style-type: none"> As of January 1, 2017, payroll deduction of 0.24% from first \$33,500 of 	<p>Family leave financed by employee only:</p> <ul style="list-style-type: none"> Payroll deduction of 1.2% from first \$68,100 of covered 	<p>Disability insurance financed jointly by employee and employer:</p> <ul style="list-style-type: none"> Payroll deductions of 0.05%, up to 60 cents per week 	<p>Medical leave financed jointly by employee and employer:</p> <ul style="list-style-type: none"> Employee pays 45% of premium

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	<p>employee wages per year</p>	<p>covered employee wages per year, up to \$80.40 per year</p> <ul style="list-style-type: none"> • Employer contribution varies from 0.10% to 0.75% <p>Family care financed by employee only:</p> <ul style="list-style-type: none"> • Employee contribution 0.1% of first \$33,500 of covered employee wages per year, up to \$33.50 per year 	<p>employee wages per year</p>	<ul style="list-style-type: none"> • Employer contribution is balance of plan costs not covered by employee <p>Family care financed by employee only:</p> <ul style="list-style-type: none"> • Maximum employee contribution determined by Superintendent of Financial Services using sound actuarial principles 	<ul style="list-style-type: none"> • Employer pays 55% of premium • Employers may pay employee's share of premium • Small businesses do not pay the employer share of premium <p>Family leave financed by employee only:</p> <ul style="list-style-type: none"> • Employee pays 100% of premium • Employers may pay employee's share of premium <p>Amount of premium:</p> <ul style="list-style-type: none"> • 0.4% of employee wages beginning on January 1, 2019 • Beginning 2021, contribution rate to be revised annually by specified formula
 <p>Qualifying Events</p>	<ul style="list-style-type: none"> • Bonding with new child (birth, adoption, foster) • Caring for employee's own disability, including pregnancy • Caring for family member with serious health condition 	<ul style="list-style-type: none"> • Bonding with new child (birth, adoption, foster) • Caring for employee's own disability, including pregnancy • Caring for family member with serious health condition 	<ul style="list-style-type: none"> • Bonding with new child (birth, adoption, foster) • Caring for employee's own disability • Caring for family member with serious health condition • Attending school conferences or 	<ul style="list-style-type: none"> • Bonding with new child (birth, adoption, foster) • Caring for employee's own serious health condition • Caring for family member with serious illness • Military exigency arising out of spouse, domestic partner, child, 	<ul style="list-style-type: none"> • Bonding with new child (birth, adoption, foster) • Caring for employee's own serious health condition • Caring for a family member with a serious health condition • Military exigency arising out of family member being on active duty or notice of

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			other school-related activities (parent only; maximum 10 hours per year)	or parent being on active duty or notice of impending call or order to active duty	impending call or order to active duty
 Family Members Covered	Employee’s child, parent, parent-in-law, grandparent, grandchild, sibling, spouse, and registered domestic partner	Employee’s child, parent, spouse, domestic partner, and civil union partner	Employee’s child, parent, parent-in-law, grandparent, spouse, and domestic partner	Employee’s child, parent, grandparent, grandchild, sibling, spouse, domestic partner, and parent of domestic partner	Employee’s child, parent, parent-in-law, grandparent, grandchild, sibling, spouse, and domestic partner
 Unpaid Waiting Period	7 days (new mothers transitioning from Disability Insurance pregnancy-related claim exempt)	7 days, but if disability lasts for 3 consecutive weeks, worker is paid for those 7 days	None, but to be eligible for benefits, employee must be out of work for at least 7 consecutive days	For family care, none For disability, 7 days	7 days, except no waiting period for birth or placement of child
 Maximum Paid Family Leave Time	6 weeks	6 weeks	4 weeks	Phased in as follows: <ul style="list-style-type: none"> • 2018 (8 weeks) • 2019-2020 (10 weeks) • 2021 (12 weeks) 	12 weeks for family leave or for medical leave, or 16 weeks combined, with an additional 2 weeks for incapacity due to pregnancy, for a combined total of 18 weeks
 Wage Replacement Benefit	<ul style="list-style-type: none"> • 55% of worker’s weekly earnings, capped at \$1,173 per week in 2017 (adjusted annually based on statewide average weekly wage) • From 2018-2022, workers with quarterly earnings of at least \$929 but 	66% of worker’s average weekly wage, capped at \$633 per week in 2017 (adjusted annually based on statewide average weekly wage)	<ul style="list-style-type: none"> • Weekly benefit rate is equal to 4.62% of wages paid to employee in highest quarter of employee’s base period, capped at \$817 per week (adjusted annually based on statewide average weekly wage) • Employee with dependent 	For family care: <ul style="list-style-type: none"> • 2018: 50% of employee’s average weekly wage, capped at 50% of state average weekly wage (AWW) • 2019: Increases to 55% AWW • 2020: Increases to 60% AWW • 2021: Increases to 67% AWW 	<ul style="list-style-type: none"> • 90% of wages earned below the state average weekly wage, 50% of wages earned above the state average weekly wage • Maximum weekly benefit is \$1,000 until January 1, 2020, when maximum amount will be adjusted annually to 90%

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	<p>less than one-third of state average quarterly wage, weekly benefit rate will be 70% of worker's weekly wage; workers with quarterly earnings of at least one-third of state average, weekly benefit rate will be greater of 23.3% of state average weekly wage or 60% of worker's weekly wage</p> <ul style="list-style-type: none"> • Weekly benefit cannot exceed maximum set yearly by Department of Industrial Relations • Workers with quarterly earnings less than \$929 will receive weekly benefit of \$50 		<p>children under age 18, or incapacitated children over 18, also may be entitled to dependency allowance, limited to five dependents and equal to greater of \$10 or 7% of employee's benefit rate</p>	<p>For employee's own disability:</p> <ul style="list-style-type: none"> • Weekly benefit rate is 50% of employee's weekly wage, capped at \$170 • If employee earns less than \$20 per week, benefit will be employee's full average weekly wage 	<p>of state average weekly wage</p>
 <p>Job Protection</p>	<ul style="list-style-type: none"> • California Family Leave Act does not provide job protection • Employees have some job protections under FMLA,⁴² and California 	<ul style="list-style-type: none"> • Not more than under FMLA and New Jersey Family Leave Act (NJFLA) • NJFLA offers the same job protections as FMLA 	<ul style="list-style-type: none"> • Rhode Island Temporary Caregiver Insurance Program (TCI) requires employers to reinstate employee to prior position or one 	<ul style="list-style-type: none"> • New York Paid Family Leave Benefits Law (PFL) requires employers to reinstate employee to prior position or one equivalent to it in all benefits and 	<p>Washington Paid Family and Medical Leave Act job protections mirror FMLA</p>

⁴² FMLA provides the following job protections to eligible employees who take family and medical leave:

- Returning employee must be restored to prior position or one equivalent to it in all benefits and other terms and conditions of employment
- Exceptions may apply for highest paid employees
- Health insurance must be continued under same conditions as prior to leave

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	Family Rights Act (CFRA) <ul style="list-style-type: none"> CFRA offers the same job protections as FMLA, plus CFRA covers same-sex domestic partners and provides more privacy protections than FMLA 		equivalent to it in all benefits and other terms and conditions of employment <ul style="list-style-type: none"> TCI job protection is limited to leave for family care; those returning from leave for their own disability have some job protections under FMLA or Rhode Island Parental Family and Medical Leave (RIPFML) RIFMLA offers the same job protections as FMLA 	other terms and conditions of employment <ul style="list-style-type: none"> PFL job protection is limited to leave for family care; employees returning from leave for their own disability have some job protections under FMLA 	

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