

<b>SUBJECT:</b> Statutorily Required Leaves with and without Pay	<b>NUMBER:</b> 60.000.12
<b>DIVISION:</b> Human Resource Services Division	<b>EFFECTIVE DATE:</b> <b>6/5/08</b>

**APPROVED:**

**POLICY STATEMENT:** This policy specifically addresses the reasons under which leave with and without pay shall be granted because of state statute.

**AUTHORITY:** ORS 10.061; 10.090; 236.040; 240.145(3); 243.325; 243.330 243.335; 401.485; 401.550; 652.250; 659A.190 to 659A.198; 659A.230; OAR 839-009-0325 thru 839-009-0365

**APPLICABILITY:** All Employees (where not in conflict with a collective bargaining agreement)

**ATTACHMENTS:** Certification for Requested Leave to address Domestic Violence, Sexual Assault or Stalking issues

**DEFINITIONS:** See HRSD State Policy 10.000.01, Definitions; and OAR 105-010-0000

**POLICY:**

(1) LEAVES WITH PAY

(a) Court, Legislative Committee or Quasi-Judicial Body Witness Leave with Pay (ORS 659A.230(1) and 659A.236)

(A) An employee shall be granted court, legislative committee or quasi-judicial body witness leave with pay if such appearance was required by subpoena or other direction by proper authority for matters other than officially assigned duties. The employee may keep any compensation received for the appearance. The agency should retain a copy of the jury summons and court release, if applicable, to support the leave.

(B) Compensation received while performing officially assigned duties shall be agency property. If the appearance was required during off-duty hours, the employee may keep any compensation received.

(b) Jury Service Leave (ORS 10.061 & 10.090)

An employee shall be granted jury leave upon request. **Except where an applicable collective bargaining agreement provides otherwise, the employee shall waive any jury fees except for expense reimbursement.** The agency may request and retain a copy of the jury summons and court release, if applicable, to support the leave.

(c) Red Cross Disaster Relief Services Leave with Pay (ORS 401.485)

An agency may grant leave with pay not to exceed 15 work days to an employee to participate in disaster relief services in Oregon. To qualify for such leave the employee shall be a certified disaster services volunteer of the American Red Cross. Disaster means those disasters designated at level II and above by the American

Red Cross. The employee must present his/her currently valid disaster services American Red Cross volunteer certification at the time of the leave request. The agency should maintain a copy of the certification on file.

(d) Search and Rescue Operation Leave with Pay (ORS 401.550 & 652.250)

An agency may grant leave with pay not to exceed 5 work days for each operation identified by an incident number shall be granted if requested by a law enforcement agency; the Department of Transportation, the United States Forest Service, or any local civil defense organization.

(e) World, Pan American, or Olympic Event Training Leave with Pay (ORS 243.325, 243.330 & 243.335)

An agency may grant a leave-with-pay loan to participate in official training camps and competitions for World, Pan American, or Olympic events may be granted not to exceed 90 calendar days per calendar year. The conditions under which such a loan may be granted shall be in accordance with ORS 243.325 - 243.335.

(2) LEAVES WITHOUT PAY

(a) The decision to grant leave without pay for reasons other than specified in this policy shall be at the discretion of the agency and may be granted where the work of the agency will not be seriously impacted by the absence of the employee. For the general state policy on Leave without Pay applicable to ORS 240 covered employees, see HRSD State Policy 60.000.11, Leave without Pay, or applicable collective bargaining agreement.

(A) Crime Victim Leave (659A.190 to 659A.198)

(i) Definitions:

- (I) Covered Employer – an employer who employs six or more persons in the State of Oregon for each working day during each of 20 or more calendar workweeks in the year in which an eligible employee takes leave to attend a criminal proceeding or in the year immediately preceding the year in which an eligible employee takes leave to attend a criminal proceeding. Each agency, board and commission is a separate covered employer for the purpose of this definition.
- (II) Crime victim – a person or a member of the immediate family of the person who has suffered financial, social, psychological or physical harm as a result of a person-to-person felony, as defined in the rules of the Oregon Criminal Justice Commission, OAR 213-003-0001(14), and includes a member of the immediate family of the person.
- (III) Immediate family – includes spouse, domestic partner, father, mother, sibling, child, stepchild, grandchild and grandparent.
- (IV) Criminal proceeding – any proceeding which constitutes a part of a criminal action or occurs in court in connection with a prospective, pending or completed criminal action and includes a juvenile proceeding under ORS Chapter 419C or any other procedure at which a crime victim has a right to be present.
- (V) Undue hardship – a significant difficulty and expense to a business including consideration of the agency's critical need for the employee.
- (VI) Agencies shall allow an eligible employee to use accrued vacation, personal business leave and compensatory time, and last leave without pay, to attend a criminal proceeding.

(B) The agency may not deny leave, but may limit the amount of leave an eligible employee takes to attend a criminal proceeding if the employee's leave creates an undue hardship to the agency. If leave is limited, the agency shall document the occurrence and the reason for limiting leave and inform the employee in writing.

(C) The agency may determine the order in which accrued leave is to be used when more than one type of accrued leave is available to the employee. An employee must exhaust all accrued vacation and personal business leave and, when appropriate, compensatory time prior to requesting leave without pay. Leave without pay shall be granted to an eligible employee who does not have accrued vacation or personal business leave and when appropriate compensatory time for the time remaining, unless the leave creates an undue hardship to the agency.

(i) An employee is eligible to take Crime Victim Leave if:

(I) he/she worked for the state an average of more than 25 hours per week for at least 180 days immediately before the date the employee takes leave to attend a criminal proceeding; and

(II) he/she or a member of the immediate family is a crime victim.

(ii) An eligible employee shall give the agency:

(I) reasonable notice of the employee's intention to take leave to attend a criminal proceeding; and

(II) copies of any notices of scheduled criminal proceedings that the employee receives from a law enforcement agency under ORS 147.417.

(iii) All records kept by an agency regarding an eligible employee's leave, or notices received are subject to the laws relating to confidentiality and shall be retained in a separate confidential file for a period of three years.

(iv) Agencies shall not deny leave to an eligible employee nor discharge, threaten to discharge, intimidate or coerce an employee because the employee takes leave to attend a criminal proceeding.

(v) An employee claiming to be aggrieved by an unlawful employment practice as specified above may file a civil action under ORS 659A.885.

(D) Court Appearance (ORS 659A.230)

(i) An employee may request and shall be granted leave without pay for the time required to make an appearance as a plaintiff or defendant in a civil or criminal court proceeding that is not connected with the defendant's officially assigned duties. The agency shall maintain documentation of the summons and court release in the employee's personnel file. For court appearance leave with pay applicable to ORS 240 covered employees see HRSD State Policy, 60.000.10, Special Leaves with Pay, or applicable collective bargaining agreement.

(ii) Court appearance leave without pay shall be granted only after exhaustion of the employee's accrued vacation leave and personal business leave.

(iii) For court appearances associated with Crime Victim Leave, see section (1)(a)(A) above.

(E) Leave to address Domestic Violence, Sexual Assault or Stalking issues (ORS 180)

(i) Definitions

(I) Covered Employer – an employer who employs six or more individuals in the State of Oregon for each working day during each of 20 or more calendar workweeks in the year in which an eligible employee takes leave to address domestic violence, sexual assault or stalking, or in the year immediately preceding the year in which an eligible employee takes leave to address domestic

violence, sexual assault or stalking. Each agency, board and commission is a separate covered employer for the purpose of this definition.

- (II) Dependent – an adult dependent child substantially limited by a physical or mental impairment as defined by ORS 659A.100(2)(d) or any adult of who the employee has guardianship.
  - (III) Eligible Employee – an employee of a state agency on the date the leave is requested; and
    - (i) has worked an average of more than 25 hours per week for a covered employer for at least 180 days immediately prior to the date the employee takes the leave; and
    - (ii) is a victim of domestic violence, sexual assault, or stalking or is the parent or guardian of a minor child or dependent who is a victim of domestic violence, sexual assault, or stalking.
  - (IV) Minor Child – biological, adopted, foster or step child, or a child with whom the employee is or was in relationship of in loco parentis. It also includes the biological, adopted, foster, or stepchild of an employee's same-sex domestic partner. The minor child must be under age 18.
  - (V) Protective order – an order authorized by ORS 30.866, 107.095 (1)(c), 107.700 to 107.735, 124.005 to 124.040 or 163.730 to 163.750 or any other order that restrains an individual from contact with an eligible employee or the employee's minor child or dependent.
  - (VI) Undue hardship – a significant difficulty and expense to a covered employer and includes consideration of the size of the agency and the agency's critical need for the eligible employee.
  - (VII) Victim of domestic violence – an individual who has been a victim of abuse as defined in ORS 107.705; or any other individual designated as a victim of domestic violence by rule adopted under ORS 659A.805. In no event will the alleged perpetrator of domestic violence be considered a victim for the purposes of this policy.
  - (VIII) Victim of sexual assault – an individual against whom a sexual offense has been committed as described in ORS 163.305 to 163.467 or 163.525; or any other individual designated as a victim of sexual assault by rule adopted under ORS 659A.805. In no event will the alleged perpetrator of sexual assault be considered a victim for the purposes of this policy.
  - (IX) Victim of stalking – an individual against who stalking has been committed as described in ORS 163.732; or any other individual designated as a victim of stalking by rule adopted under ORS 659A.805. In no event will the alleged perpetrator of stalking be considered a victim for the purposes of this policy
  - (X) Victim service provider – a prosecutor-based victim assistance program or a nonprofit program offering safety planning, counseling, support or advocacy related to domestic violence, sexual assault or stalking.
- (ii) Agencies shall allow an eligible employee to take reasonable leave, paid using accrued leave or unpaid, for any of the following purposes.
- (I) To seek legal or law enforcement assistance or remedies to ensure the health and safety of the employee or the employee's minor child or dependent, including preparing for and participating in protective order proceedings or other civil or criminal legal proceedings related to domestic violence, sexual assault or stalking;
  - (II) To seek medical treatment for or to recover from injuries caused by domestic violence or sexual assault or stalking of the eligible employee or the employee's minor child or dependent;

- (III) To obtain, or to assist a minor child or dependent in obtaining, counseling from a licensed mental health professional related to an experience of domestic violence, sexual assault or stalking;
- (IV) To obtain services from a victim services provider for the eligible employee or the employee's minor child or dependent; or
- (V) To relocate or take steps to secure an existing home to ensure the health and safety of the eligible employee or the employee's minor child or dependent. Relocate includes:
  - (i) Transition periods spent moving the eligible employee or the eligible employee's minor child or dependent from one home or facility to another, including but not limited to time to pack and make security or other arrangement for such transitions related to domestic violence, sexual assault or stalking; or
  - (ii) Transportation or other assistance required for an eligible employee or the eligible employee's minor child or dependent related to the domestic violence, sexual assault or stalking.
  - (iii) The agency shall not deny leave, but may limit the amount of leave an eligible employee takes to address the above issues, if the employee's leave creates an undue hardship to the agency. If leave is limited, the agency shall document the occurrence and the reason for limiting leave and inform the employee in writing.
  - (iv) An agency shall not discharge, threaten to discharge, demote, suspend, or in any other manner discriminate or retaliate against an employee with regard to promotion, compensation, or the terms, conditions, or privileges of employment on the basis of that employee having taken, requested, or inquired about leave under this policy.
  - (v) An eligible employee shall give the agency reasonable advance notice of the employee's intention to take leave for the purposes identified in (1)(b)(C)(ii), unless giving the advance notice is not feasible.
  - (vi) An agency may require an eligible employee to provide documentation certifying that the leave is for the employee or the employee's minor child or dependent is a victim of domestic violence, sexual assault or stalking; and the leave is taken for one of the purposes identified in (1)(b)(C)(ii). If certification is requested by the agency, the employee shall provide certification within a reasonable amount of time of the request.
  - (vii) All records and information kept by an agency regarding an eligible employee's leave under this section, including the documentation that shows an employee requested or obtained leave under this section, is confidential and may not be released without the express permission of the employee unless otherwise required by law. This information shall be retained in a separate confidential file for a period of three years.

(F) Peace Corps (ORS 236.040)

- (i) Leave without pay for at least two years shall be granted to a full-time salaried employee who provides a copy of Peace Corps appointment documents. Upon completion of service in the Peace Corps, the employee shall be returned to the last held position and at the same salary step without loss of seniority, leave accrual rate or other rights. Failure of the employee to report within 90 calendar days after completion of the Peace Corps service may result in termination.
- (ii) Peace Corps leave without pay shall be granted only after exhaustion of the employee's accrued

vacation leave and personal business leave.

**Performance Measure:** Percentage of leaves without pay granted that are preceded by the exhaustion of appropriate accrued leave.

**Performance Standard:** 100%

**Performance Measure:** Percentage of leave without pay which has the documentation showing why leave was requested and why it was granted.

**Performance Standard:** 100%

**Statewide Policy**

**Statutorily Required Leaves with and without Pay**

**60.000.12**

Attachment

<p><b>State of Oregon</b>  <b>Certification for Requested Leave</b>                  to address Domestic Violence, Sexual Assault or Stalking issues</p> <p><b>This document is used to certify an employees request for leave to address issues of domestic violence, sexual assault or stalking as defined in Oregon Revised Statute (ORS) 107.705; 16.305 to 163.467; 163.732 or any other designation listed as a victim by rule adopted under ORS 659A.805.</b></p>	
1. EMPLOYEE NAME	2. AGENCY NAME
3. NAME OF MINOR CHILD OR DEPENDENT VICTIM:	4. DATES OF LEAVE: TO: _____ FROM: _____
<p>5. REASON EMPLOYEE TAKING LEAVE:</p> <p>_____ I certify that I am a victim of domestic violence, sexual assault or stalking. I am requesting leave for the following reasons: (check all that apply)</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> To seek legal or law enforcement assistance or remedies to ensure my own health and safety, including preparing for and participating in protective order proceedings or other civil or criminal legal proceedings related to domestic violence, sexual assault or stalking;</li> <li><input type="checkbox"/> To seek medical treatment for or to recover from injuries caused by my own domestic violence or sexual assault to or stalking;</li> <li><input type="checkbox"/> To obtain counseling from a licensed mental health professional related to my own domestic violence, sexual assault or stalking;</li> <li><input type="checkbox"/> To obtain services from a victim services provider; or</li> <li><input type="checkbox"/> To relocate or take steps to secure a home to ensure the health and safety of the employee or the employee's minor child or dependent.</li> </ul>	<p>_____ I certify that my minor child or dependent is a victim of domestic violence, sexual assault, or stalking. I am requesting leave for the following reasons: (check all that apply)</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> To seek legal or law enforcement assistance or remedies to ensure the health and safety of my minor child or dependent, including preparing for and participating in protective order proceedings or other civil or criminal legal proceedings related to domestic violence, sexual assault or stalking;</li> <li><input type="checkbox"/> To seek medical treatment for or to recover from injuries caused by domestic violence or sexual assault to or stalking of my minor child or dependent;</li> <li><input type="checkbox"/> To obtain or to assist my a minor child or dependent in obtaining, counseling from a licensed mental health professional related to an experience of domestic violence, sexual assault or stalking;</li> <li><input type="checkbox"/> To obtain services from a victim services provider for my minor child or dependent; or</li> <li><input type="checkbox"/> To relocate or take steps to secure a home to ensure the health and safety of my minor child or dependent.</li> </ul>
<p>6. Certification of the above is required. I am providing one of the following as certification that I am, or my minor child or dependent is, a victim of domestic violence, sexual assault, or stalking:</p> <ol style="list-style-type: none"> <li>1. A copy of a police report indicating that I or my minor child or dependent was a victim of domestic violence, sexual assault or stalking.</li> <li>2. A copy of a protective order or other evidence from a court or attorney that I or my minor child or dependent appeared in or was preparing for a civil or criminal proceeding related to domestic violence, sexual assault or stalking.</li> <li>3. Documentation from an attorney, law enforcement, health care professional, licensed mental health professional or counselor, member of the clergy or a victim services provider that I or my minor child or dependent was undergoing treatment or counseling, obtaining services, or relocating as a result of domestic violence, sexual assault or stalking.</li> </ol> <p align="center">I certify that the information provided above is true and accurate.</p>	
EMPLOYEES SIGNATURE _____	DATE _____
<p><b>FOR HUMAN RESOURCES OFFICE USE ONLY:</b></p> <p>Date Received: _____ <input type="checkbox"/> Approved <input type="checkbox"/> Not Approved by _____ Date: _____</p> <p>Appropriate documentation: <input type="checkbox"/> Yes <input type="checkbox"/> No <span style="float: right;">Copy to confidential file</span></p>	