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TEMPORARY ADMINISTRATIVE ORDER
INCLUDING STATEMENT OF NEED & JUSTIFICATION

BLI 4-2020
CHAPTER 839
BUREAU OF LABOR AND INDUSTRIES

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ARCHIVES DIVISION
SECRETARY OF STATE
& LEGISLATIVE COUNSEL

FILING CAPTION: Allows for utilization of OFLA during statewide public health emergency

EFFECTIVE DATE: 03/18/2020 THROUGH 09/13/2020

AGENCY APPROVED DATE: 03/18/2020

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NEED FOR THE RULE(S):

This temporary rule is needed in order to respond to the declaration of COVID-19 as a statewide public health emergency and a global pandemic. It is necessary to implement the social distancing protocol consistent with mitigation strategies recommended by the Centers for Disease Control and Prevention (CDC), required by the Governor and the Public Health Director to prevent and alleviate the public health threat posed by COVID-19. This protocol includes the Governor ordering the statewide closure of all public schools in Oregon.

JUSTIFICATION OF TEMPORARY FILING:

Failure to ensure employees can utilize Oregon Family Leave Act (OFLA) during the state-ordered public school closure:

- a) Undermines efforts to protect public health and prevent the spread of COVID-19 to the most vulnerable Oregonians;
- b) Fails to protect children who may be at public health risk or create a public health risk by being together; and
- c) Results in job loss for employees who do not have access to protected or other forms of leave through their employer and are forced to leave their jobs.

Ensuring that employees can utilize OFLA during this global public health pandemic will mitigate these consequences because it allow for an employee to care for their child whose school or place of care has been closed in conjunction with a statewide public health emergency declared by a public health official.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

Executive Order No. 20-03 and Executive Order No. 20-08

AMEND: 839-009-0230

RULE SUMMARY: Utilization of OFLA in response to the declaration of global health pandemic and statewide public health emergency.

CHANGES TO RULE:

OFLA: Purposes for Taking Leave ¶¶

Eligible employees may take OFLA leave for the purposes commonly referred to as parental leave, serious health condition leave, pregnancy disability leave, sick child leave, and the death of a family member.¶¶

(1) Parental leave is leave taken for the birth of the employee's child, to care for the employee's newborn, newly adopted or newly placed foster child under 18 years of age or for a newly adopted or newly placed foster child 18 years of age or older who is incapable of self-care because of a physical or mental impairment. It includes leave time to effectuate the legal process required for placement of a foster child or the adoption of a child.¶¶

(2) Serious health condition leave is leave taken:¶¶

(a) To provide care for a family member with a serious health condition as defined in OAR 839-009-0210(20); or¶¶

(b) To recover from or seek treatment for a serious health condition that renders an employee unable to perform at least one essential function of the employee's regular position.¶¶

(3) Pregnancy disability leave is leave taken by a female employee for a disability related to pregnancy or childbirth, occurring before, during or after the birth of the child, or for prenatal care. Pregnancy disability leave is a form of serious health condition leave.¶¶

(4) Sick child leave is leave taken to care for an employee's child suffering from an illness ~~or~~, injury, or condition that requires home care but is not a serious health condition.¶¶

(a) Sick child leave includes absence to care for an employee's child whose school or place of care has been closed in conjunction with a statewide public health emergency declared by a public health official.¶¶

(b) An employer is not required to grant leave for routine medical or dental appointments.¶¶

(5) Leave to deal with the death of a family member is leave taken to attend the funeral or alternative to a funeral of the family member, to make arrangements necessitated by the death of the family member, or to grieve the death of the family member.

Statutory/Other Authority: ORS 659A.805

Statutes/Other Implemented: ORS 659A.150 - 659A.186