

Part Two

Tracking and Stacking: FMLA, OFLA and Paid Leave Oregon

October 13, 2023



Paid Leave/OFLA/FMLA Requirements

Paid Leave Oregon, OFLA and FMLA protections require all of these basic elements:

- A covered employer
- An eligible employee
- A qualifying reason for leave
- Leave available to the employee in the applicable leave year

Remember that all three types of leave have different criteria for each of these elements, and that any need for leave should be assessed under each law's distinct criteria.



Employers with fewer than 25 employees

- You are NOT covered under OFLA or FMLA.
- You do not have to provide OFLA or FMLA leave to your employees because you fall under the small employer exemptions under both laws.
- Our discussion focuses on employers who have 25 or more employees but fewer than 49 in Oregon, and those who have 50 or more employees in the U.S.



OFLA / FMLA coverage

OFLA

- An employee must be employed by an OFLA-covered employer.
- To be a covered employer the employer must employ 25 or more persons statewide for each working day during each of 20 or more calendar workweeks in the year in which the leave is to be taken or in the year immediately preceding the year in which the leave is to be taken.
- ORS 659A.153

FMLA

- An employee must be employed by a FMLA-covered employer.
- To be a covered employer the employer must employ 50 or more persons nationwide for each working day during each of 20 or more calendar workweeks in the year in which the leave is to be taken or in the year immediately preceding the year in which the leave is to be taken, except that all schools and public employers are covered. 29 CFR 825.104



OFLA / FMLA eligibility requirements

OFLA

- Employee must have been employed at least **180** calendar days preceding the date on which OFLA leave begins.
- Employee must have worked an average of **25** hours per week during the 180 calendar days (except for parental leave).
- **[ORS 659A.156](#)**;
[OAR 839-009-0210\(8\)](#)

FMLA

- Employee must have been employed for a total of **12** months (not necessarily consecutively)
- Worked for at least **1,250** hours during the 12-month period immediately preceding the leave
- Employer must have **50** employees within **75** miles
- **29 CFR 825.110**



Who is Covered by Paid Leave Oregon?



Employers

- All employers with at least one employee working in Oregon

Employees

- All employees working in Oregon

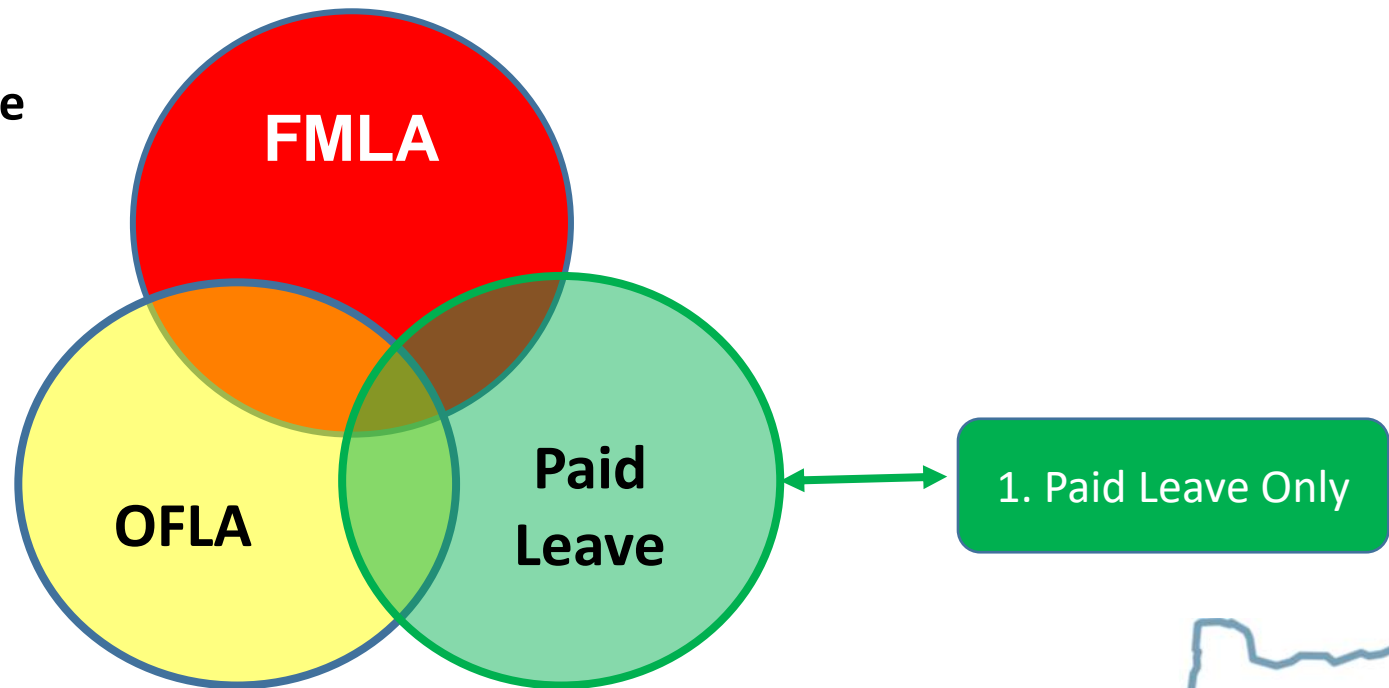
Elective Coverage

- Self-employed individuals and independent contractors
- Tribal governments



Eligibility possibility #1

- Due to the different criteria for employer coverage and employee eligibility requirements, and the various qualifying events under Paid Leave, OFLA, and FMLA, there are seven eligibility possibilities.



Who could be in this category?

	Paid Leave Oregon	OFLA	FMLA
Category 1:			

1.1 Employees with fewer than 180 days of employment

1.2 Part-time employees who cannot meet the hourly requirements for OFLA or FMLA

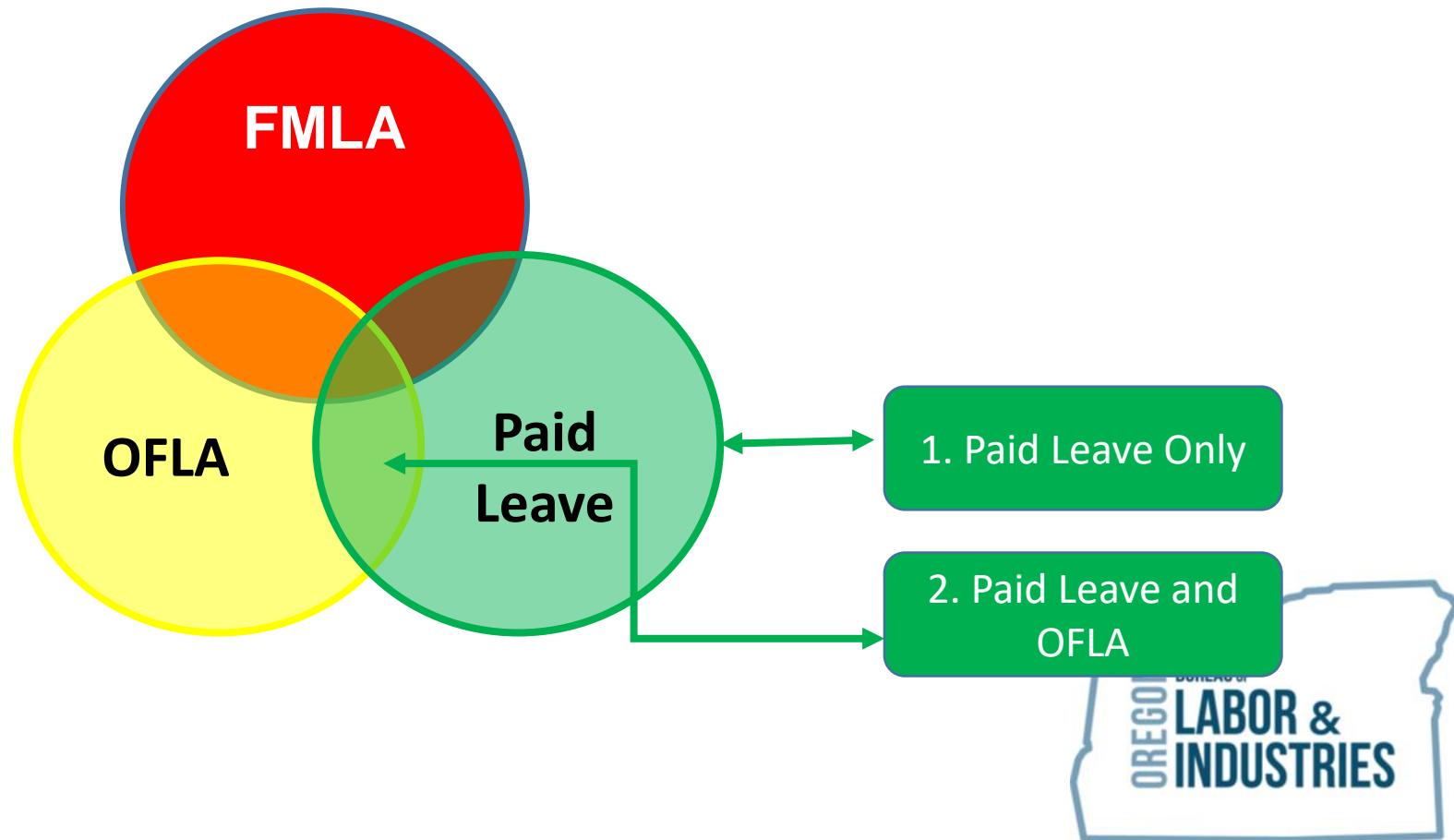
1.3 Employees who take safe leave

1.4 Employees working for an employer who is a small employer with fewer than 25 employees in Oregon.

(This list is not all inclusive.)



Eligibility possibility #2

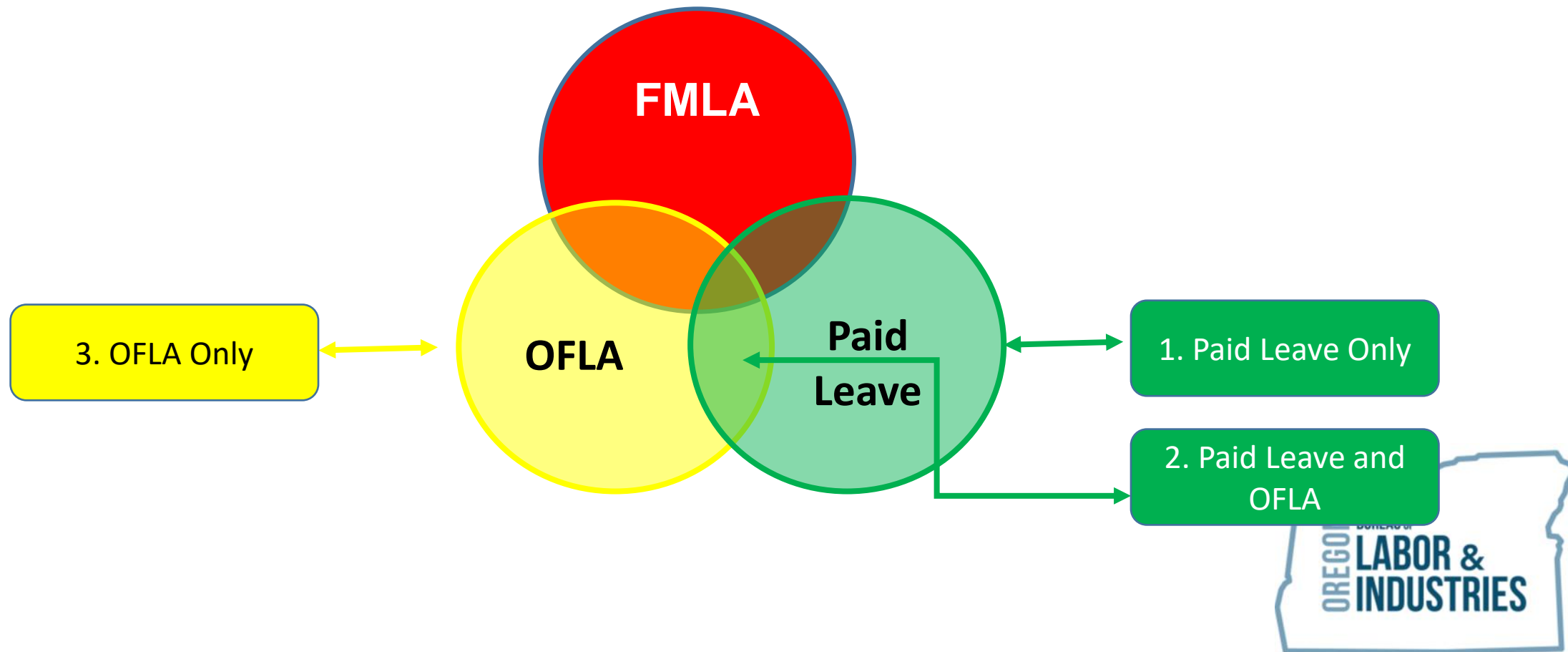


Who could be in this category?

	Paid Leave Oregon	OFLA	FMLA
Category 2:			
2.1 Employees who have fewer than 12 months of employment and they take leave either for their own serious health condition, or to care for a family member			
2.2 Employees who have 12 months or more of service and they take leave to care for a family member who is not recognized as a family member under FMLA			
2.3 Employees working for an employer who is a small employer with 25 or more employees in Oregon but fewer than 50			
2.4 Employees working for an employer who has 50 or employees in the U.S. but the employer only has 25 to 49 employees within 75 miles of the Oregon location			
2.4 Employees who exercise their <i>Escriba</i> right when they take Paid Leave and OFLA leave			
(This list is not all inclusive.)			



Eligibility possibility #3

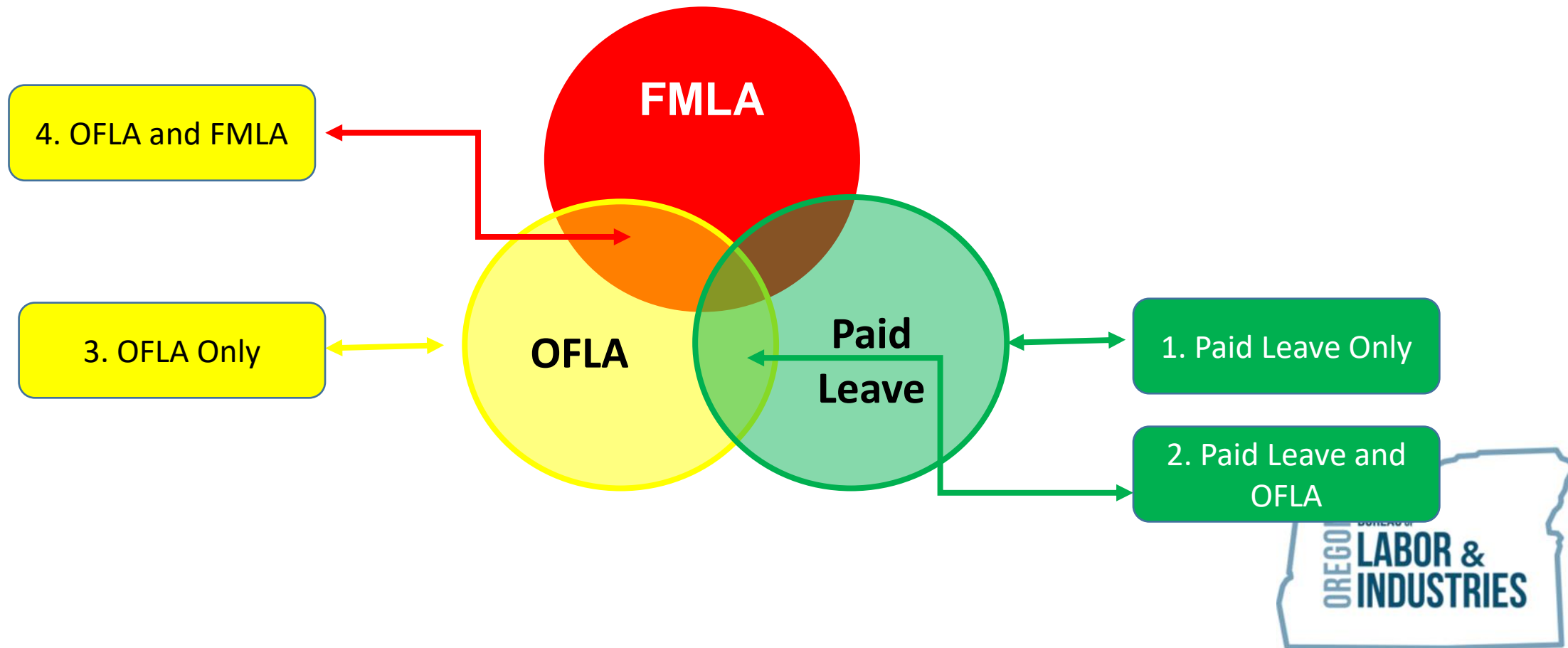


Who could be in this category?

	Paid Leave Oregon	OFLA	FMLA
Category 3:			
<p>3.1 Employees who have used 12 weeks of Paid Leave in a benefit year and FMLA leave in a leave year concurrently and they take 4 weeks OFLA, if they can meet the OFLA eligibility requirements</p> <p>3.2 Employees who have fewer than 365 days of employment and they take OFLA sick child leave, OFLA bereavement leave, or Oregon Military Family Leave</p> <p>3.2 Employees working for a small employer with more than 25 employees in Oregon but fewer than 50 nationwide and taking partial days off (reduced scheduled leave) due to a qualifying reason</p> <p>3.3 Employees who are eligible for OFLA and have an OFLA reason (<i>e.g.</i>, family leave or medical leave) covered by Paid Leave but they do not apply for Paid Leave benefits</p> <p>(This list is not all inclusive.)</p>			



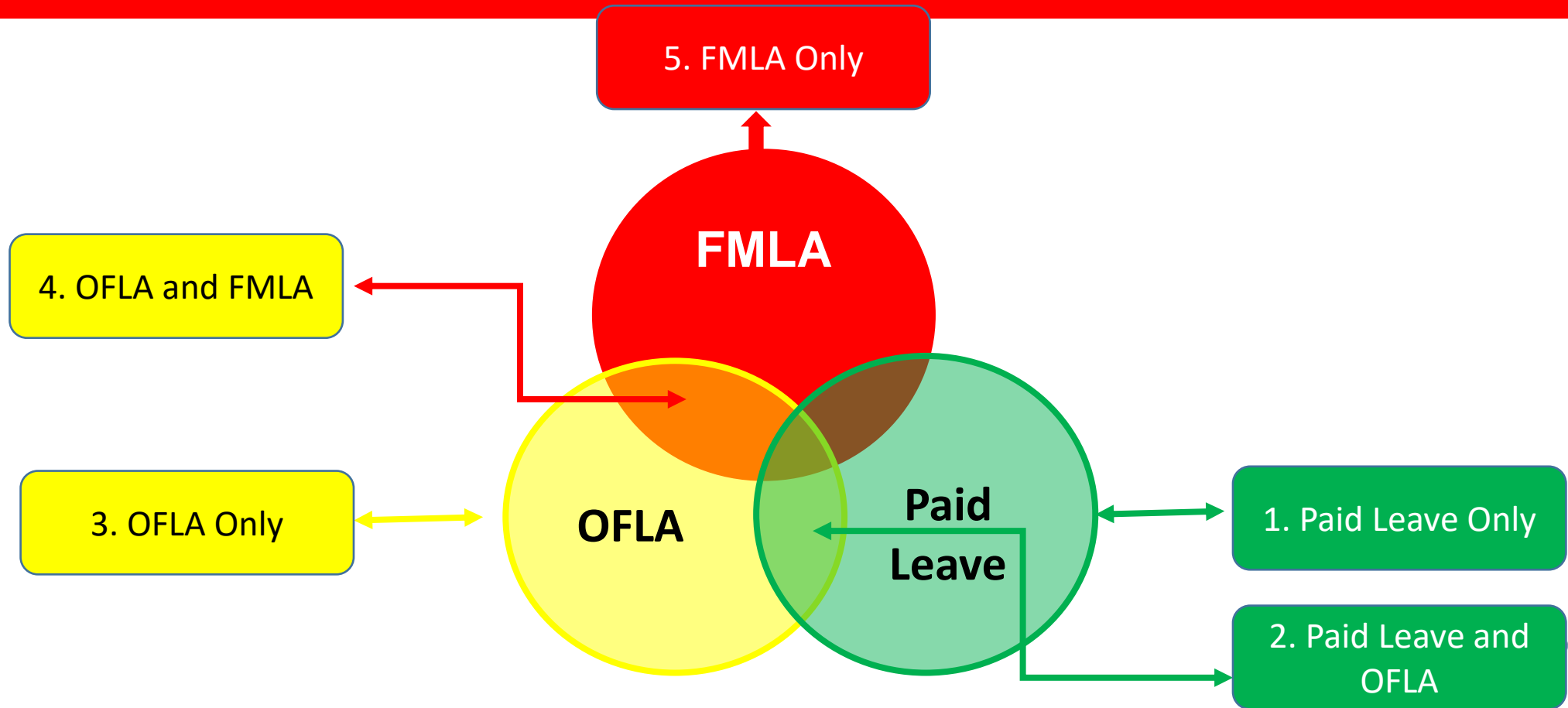
Eligibility possibility #4



Who could be in this category?

	Paid Leave Oregon	OFLA	FMLA
Category 4:			
4.1 Employees who take parental leave <i>before</i> the birth, adoption or foster placement			
4.2 Employees who take intermittent leave for partial days			
4.3 Employees who take Oregon Military Family Leave and FMLA qualifying exigency leave concurrently			
4.4 Employees who do not apply for Paid Leave benefits when they have a qualifying event (<i>e.g.</i> , family leave or medical leave) under OFLA and FMLA (This list is not all inclusive.)			

Eligibility possibility #5

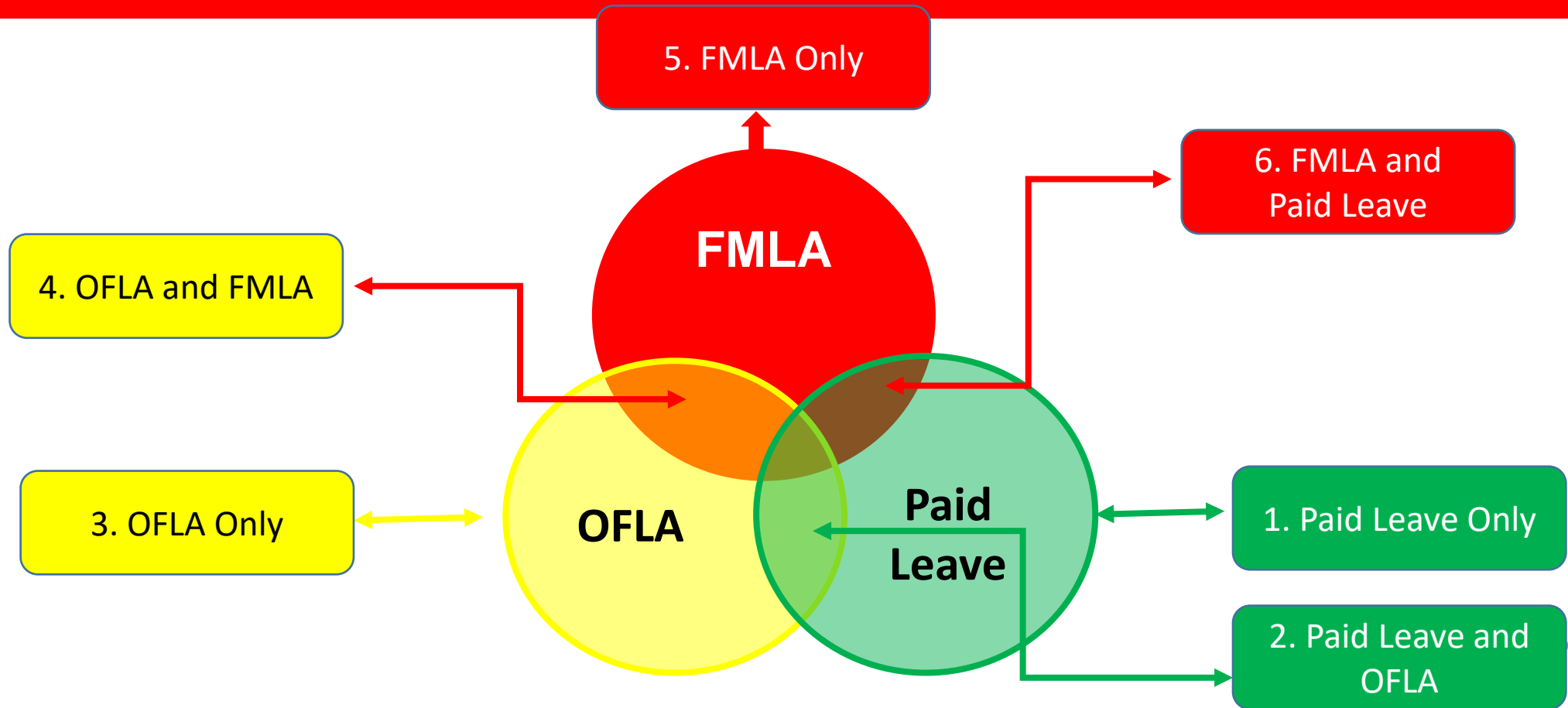


Who could be in this category?

	Paid Leave Oregon	OFLA	FMLA
Category 5:			
<p>5.1 An employee who does not apply for Paid Leave benefits and they cannot meet the OFLA eligibility requirements</p> <p>5.2 A new employee who has exhausted their Paid Leave and OFLA sometime in the first year of employment prior to the end of their 12 months of service and the leave taken could not be counted as FMLA due to their length of service. When they become eligible for FMLA, after completing 12 months of service, they may take FMLA only for a period of time</p> <p>5.3 Employees who take Qualifying Exigency Leave and the exigency is not covered under Paid Leave, or the leave is beyond the 14 working days covered by Oregon Military Family Leave.</p> <p>5.4 Employees who take 26 weeks FMLA military caregiver leave in a single 12-month period but beyond 12 weeks in a Paid Leave benefit year.</p> <p>5.5 Employees who take partial days off as intermittent leave under Qualifying Exigency or military caregiver leave.</p> <p>(This list is not all inclusive)</p>			



Eligibility possibility #6



Who could be in this category?

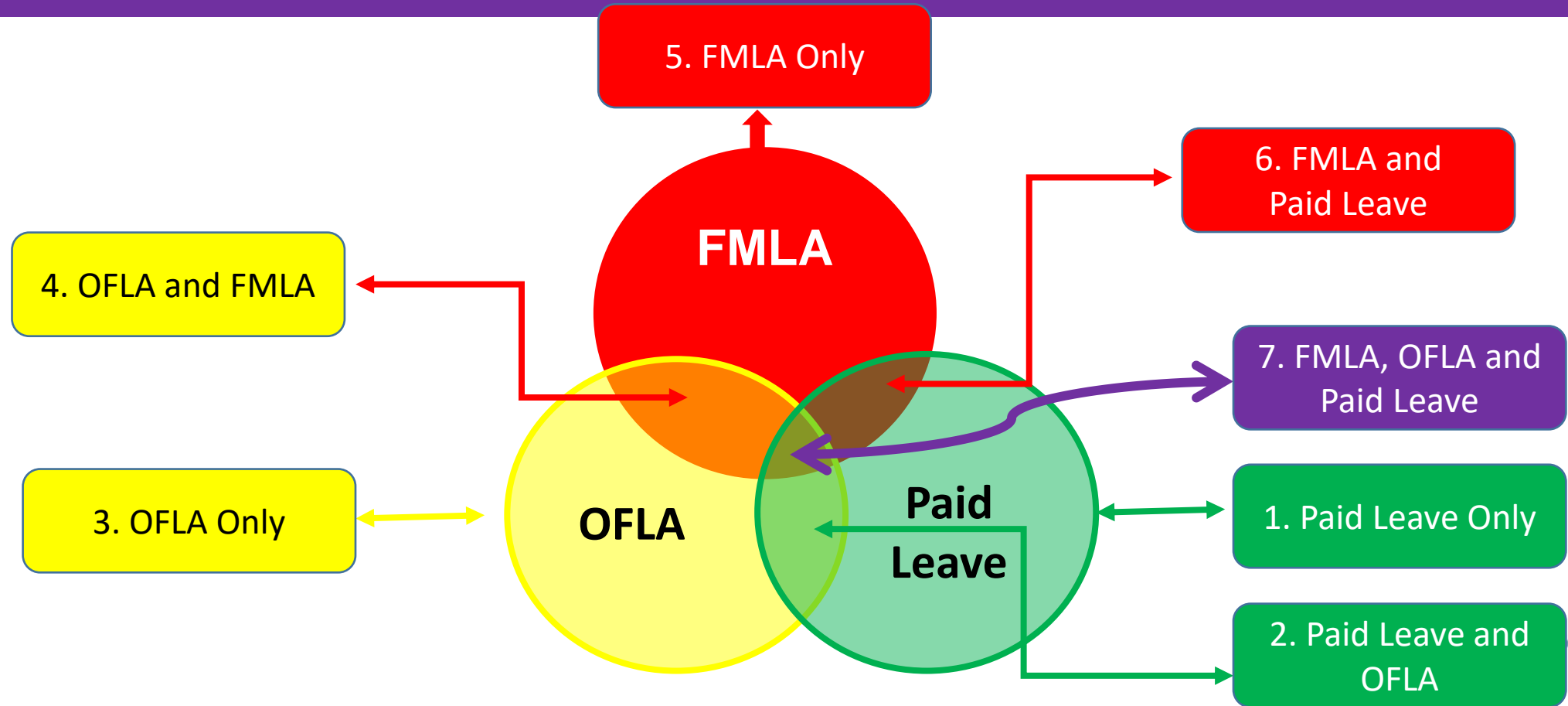
	Paid Leave Oregon	OFLA	FMLA
Category 6:			

6.1 Employees who work for an employer that has fewer than 25 employees in Oregon but their employer has more than 50 employees within 75 miles of the Oregon work location (e.g., certain employers in Portland, Ontario, Ashland, Klamath Falls, etc.).

6.2 Employees who cannot meet the OFLA eligibility requirements when they take Paid Leave for a qualifying reason that is also covered by FMLA.
(This list is not all inclusive.)



Eligibility possibility #7



Who could be in this category?

	Paid Leave Oregon	OFLA	FMLA
Category 7:			

7.1 Employees, who meet all three eligibility requirements, apply for Paid Leave benefits and take leave due to their own serious health condition, or to care for a family member (who is recognized under all three laws) with a serious health condition.

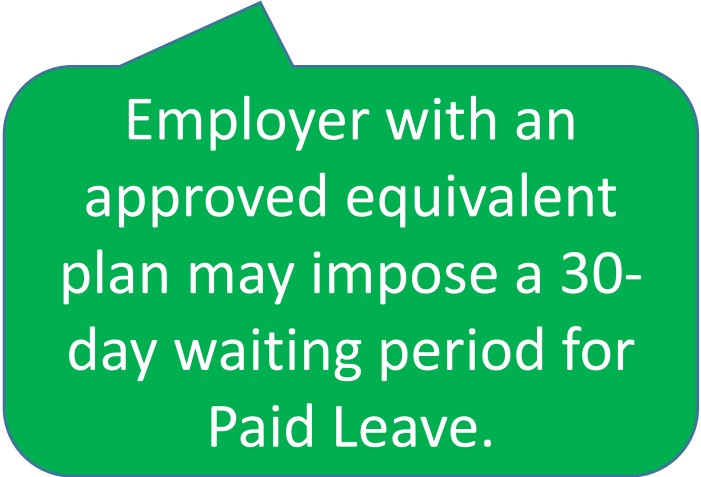
(This list is not all inclusive.)



Length of the eligibility period: Paid Leave



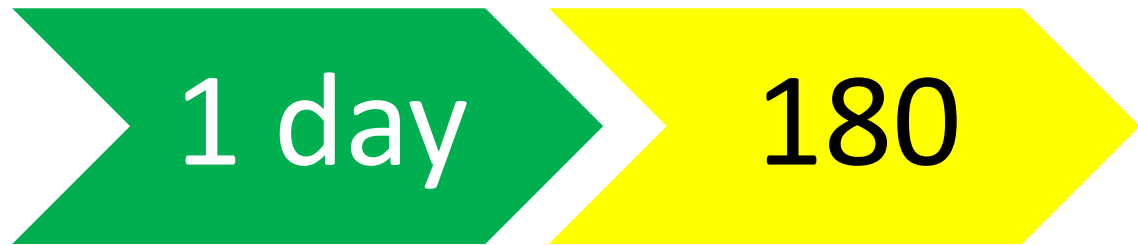
1 day



Employer with an approved equivalent plan may impose a 30-day waiting period for Paid Leave.



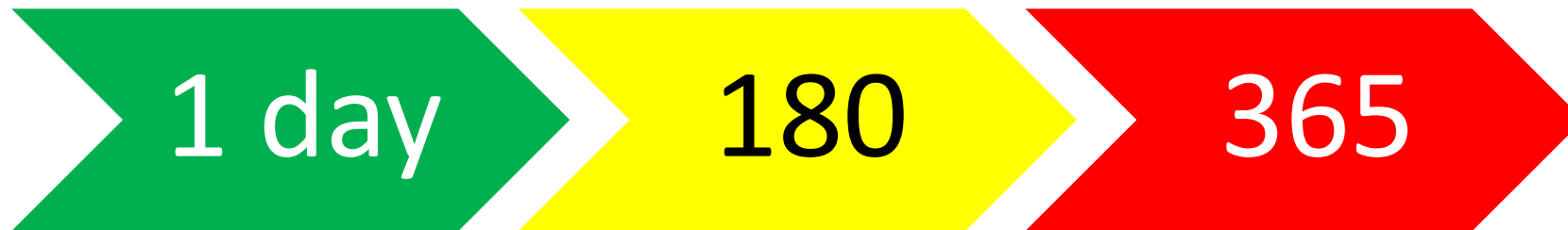
Length of the eligibility period: OFLA



OFLA has a 180-day eligibility period (except during a public health emergency)



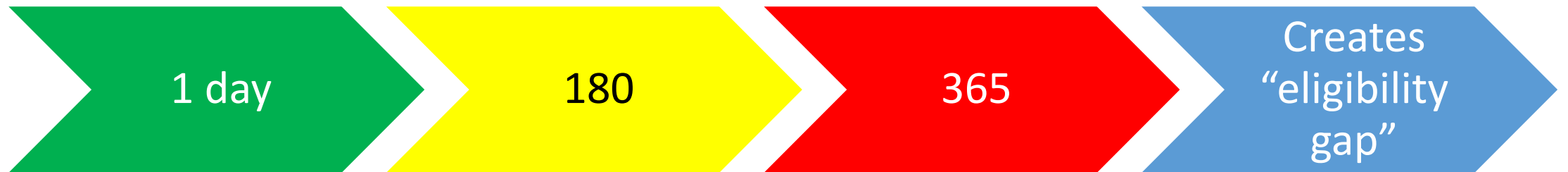
Length of the eligibility period: FMLA



FMLA has a 1-year
eligibility period



Due to differences in eligibility periods



Key concept #1: Defining Paid Leave benefit year

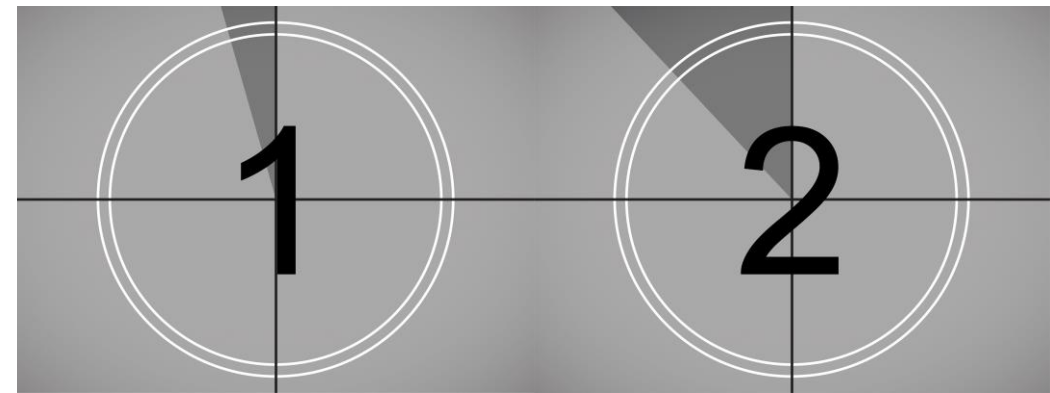
- “Benefit year” means a period of 52 consecutive weeks beginning on the Sunday immediately preceding the day that family, medical, or safe leave commences for the claimant, except that the benefit year shall be 53 weeks if a 52-week benefit year would result in an overlap of any quarter of the base year of a previously filed valid claim. A claimant may only have one valid benefit year at a time.
- OAR 471-070-1000(4)

Sun	Mon	Tue	Wed	Thu	Fri	Sat
Always starts on a Sunday						
It continues for 52 consecutive weeks						
One Paid Leave benefit year at a time						



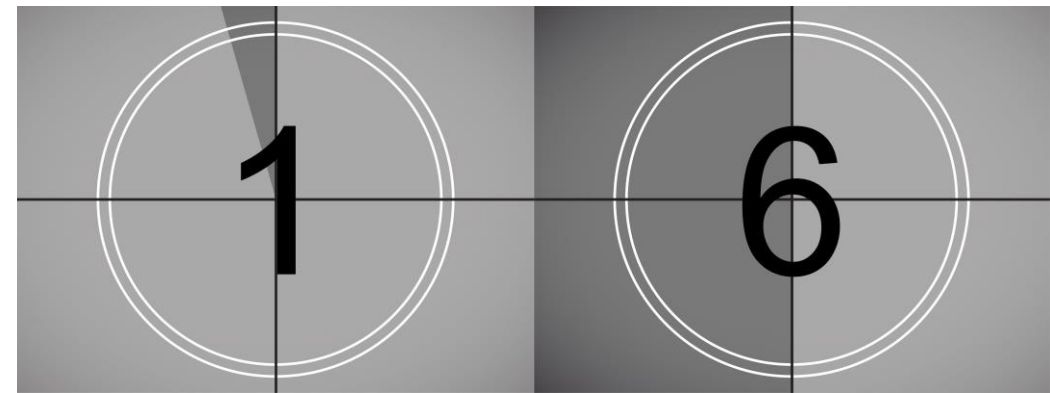
Key concept #2: Amount of leave in a Paid Leave benefit year

- 657B.020 Qualifying purposes for benefits; duration of benefits.
- (1) A covered individual may qualify for up to 12 weeks of family and medical leave insurance benefits per benefit year for leave taken for any of the following purposes, in any combination:
 - (a) Family leave;
 - (b) Medical leave; or
 - (c) Safe leave.



Key concept #3: If the employee is eligible for OFLA...

- ORS 657B.020
 - A covered individual who has taken any amount of paid leave available under subsection (1) of this section may take a total of 16 weeks* of leave in the benefit year in any combination of the paid leave available under subsection (1) of this section, not to exceed 12 weeks, and unpaid leave under ORS 659A.159 for which the covered individual is eligible under ORS 659A.156. The leave may be taken for any purpose for which leave is allowable under the respective leave programs.
- * Plus, up to an additional 2 weeks for pregnancy complications.



In a Paid Leave benefit year an employee may take 16 weeks-no more than 12 as Paid Leave

1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	
1 wk	+ 15 weeks of OFLA leave															= 16
Paid Lv 2 wk		+ 14 weeks of OFLA														= 16
Paid Leave 3 wks			+ 13 weeks of OFLA													= 16
Paid Leave 4 weeks				+ 12 weeks of OFLA												= 16
Paid Leave 5 weeks					+ 11 weeks of OFLA											= 16
Paid Leave 6 weeks						+ 10 weeks of OFLA										= 16
Paid Leave 7 weeks							+ 9 weeks of OFLA									= 16
Paid Leave 8 weeks								+ 8 weeks of OFLA								= 16
Paid Leave 9 weeks									+ 7 weeks of OFLA							= 16
Paid Leave 10 weeks										+ 6 weeks of OFLA						= 16
Paid Leave 11 weeks											+ 5 weeks of OFLA					= 16
Paid Leave 12 weeks												+ 4 weeks of OFLA				= 16

New employee is hired in late May, 2023

Hire

Month

2023								2024												2025			
M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A



New employee takes 12 weeks of Paid Leave due to their own serious health condition (not pregnancy)

Hire

	2023												2024												2025										
Month	M	J	J	A	S	Oct				Nov				Dec				J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A		
Paid Leave						1	2	3	4	5	6	7	8	9	10	11	12																		
						Paid Leave benefit year																													
ORS 657B.020																																			



No concurrency with OFLA or FMLA for the first 8 weeks, why?

Hire

	2023												2024												2025					
Month	M	J	J	A	S	Oct			Nov			Dec			J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A
Paid Leave						1	2	3	4	5	6	7	8	9	10	11	12													
						Paid Leave benefit year																								

ORS 657B.025

Assumption: Employee becomes eligible for OFLA in late November 2023

Hire

2023

2024

2025

Month	M	J	J	A	S	Oct	Nov	Dec	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A				
Paid Leave						1	2	3	4	5	6	7	8	9	10	11	12											
						Paid Leave benefit year																						
OAR 839-009-0210(9)																												

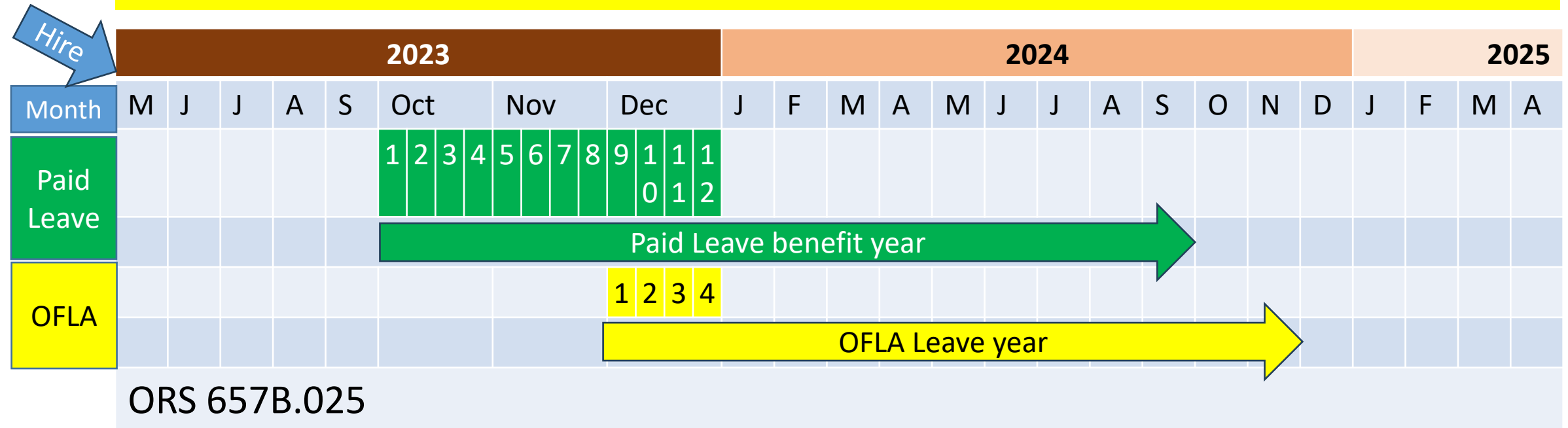
Assumption: OFLA leave year =
12-month measuring forward

Hire

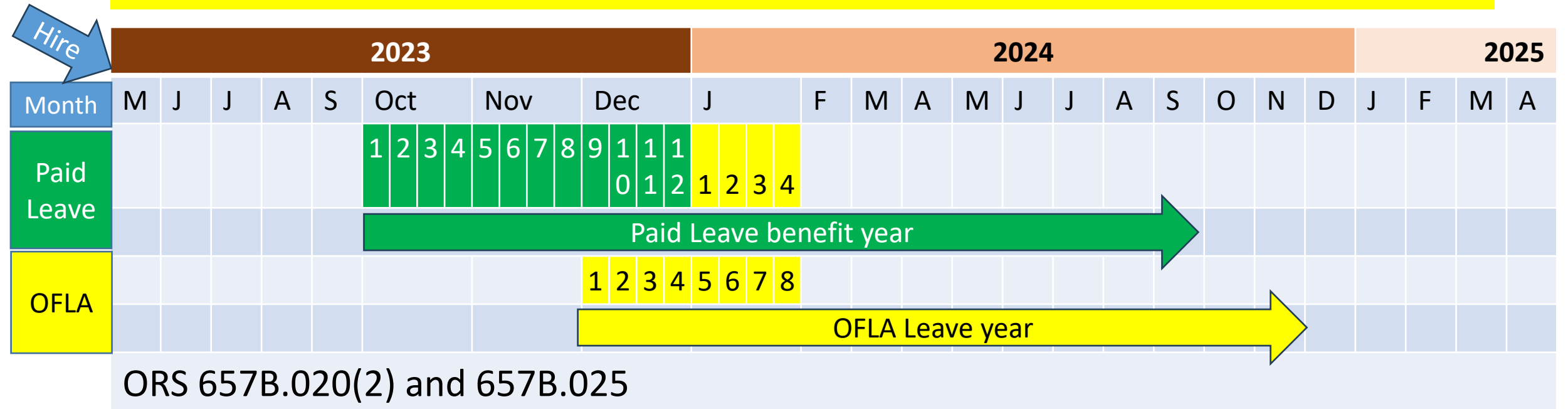
	2023												2024												2025																
Month	M	J	J	A	S	Oct			Nov			Dec			J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A											
Paid Leave						1	2	3	4	5	6	7	8	9	10	11	12																								
						Paid Leave benefit year																																			
						OFLA Leave year																																			

Senate Bill 999 Sec. 2

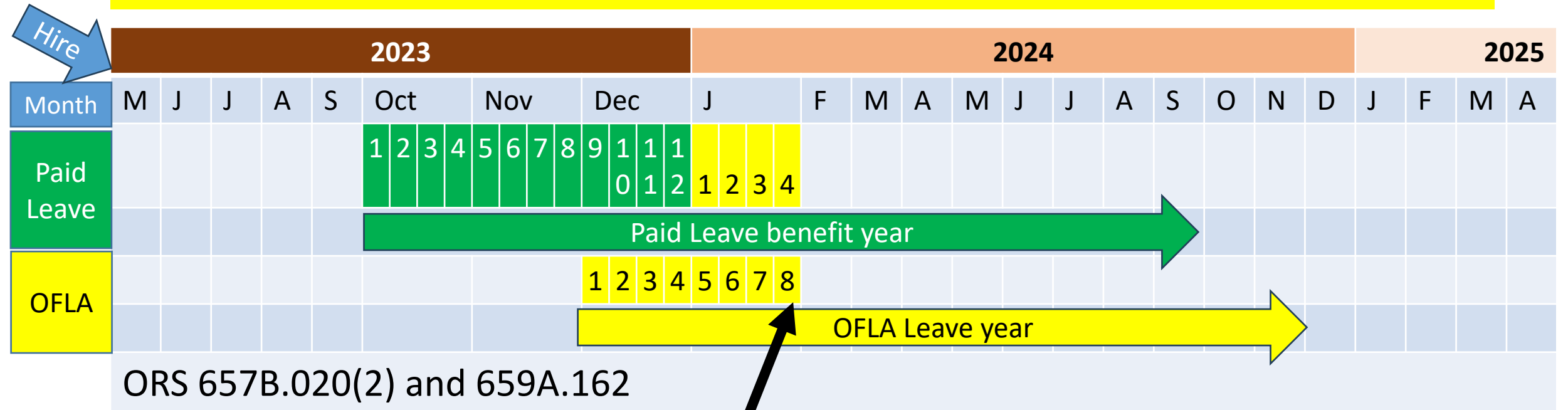
Weeks 9 to 12 of Paid Leave are counted concurrently as OFLA



Employee may take 4 more weeks of OFLA in the Paid Leave benefit year



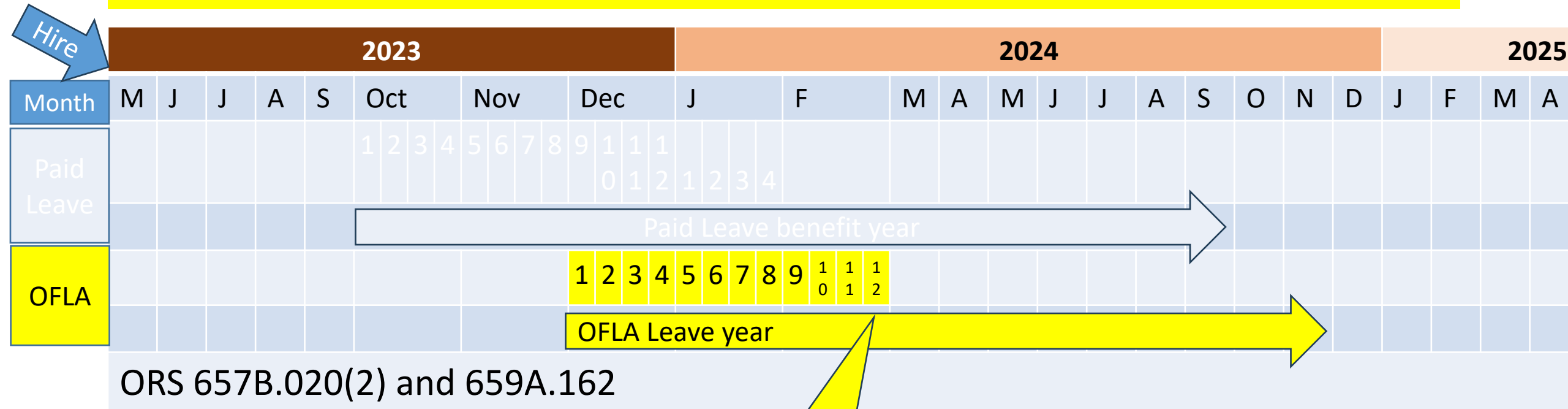
Wait, wait, isn't an employee eligible for 12 weeks of OFLA in a leave year?



Why only 8 weeks?



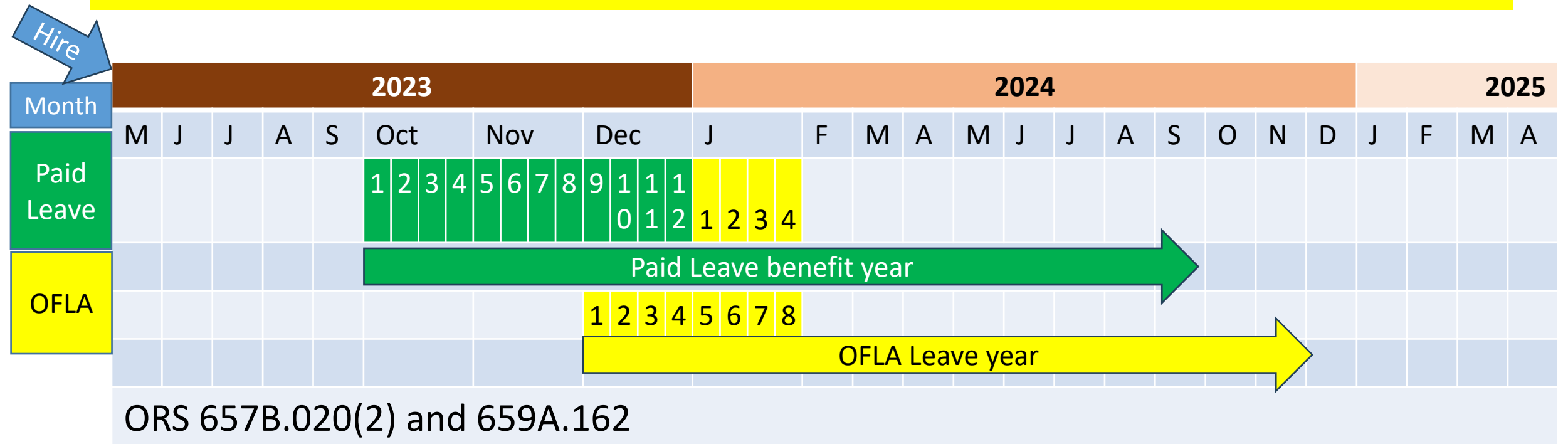
Ans. Yes, if an employee does not apply for Paid Leave benefit



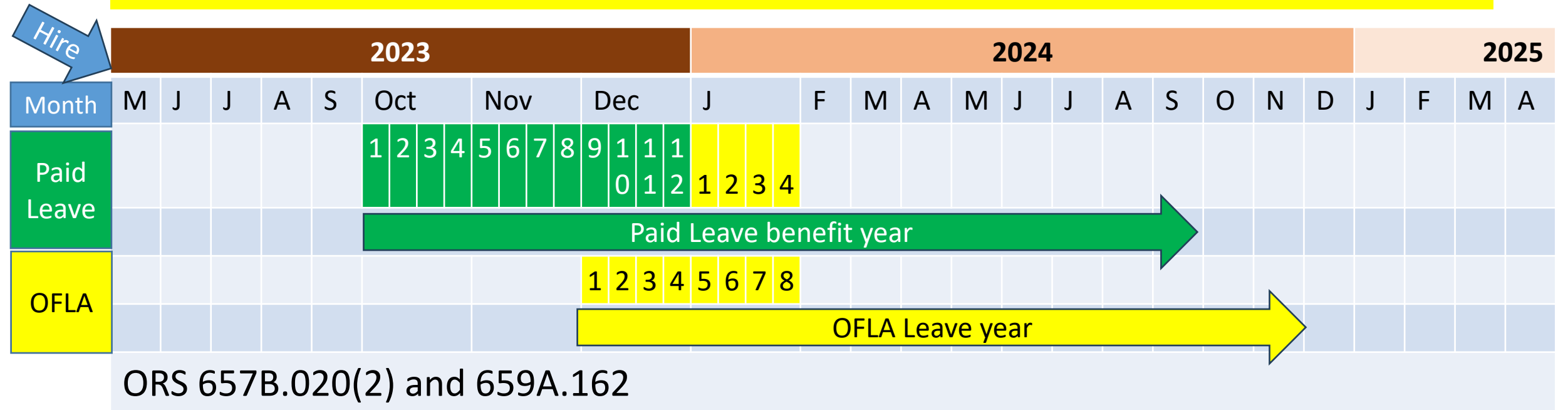
12 weeks of OFLA
in a leave year



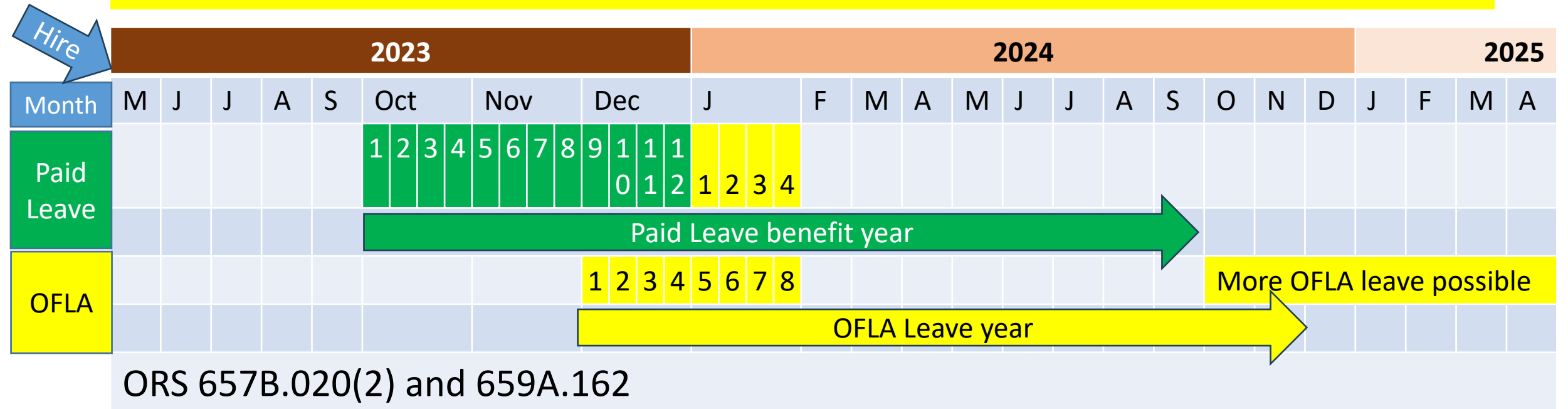
Ans. But, once an employee takes Paid Leave, they are capped at a combined total of 16 weeks



Q: When can this employee take more OFLA leave?



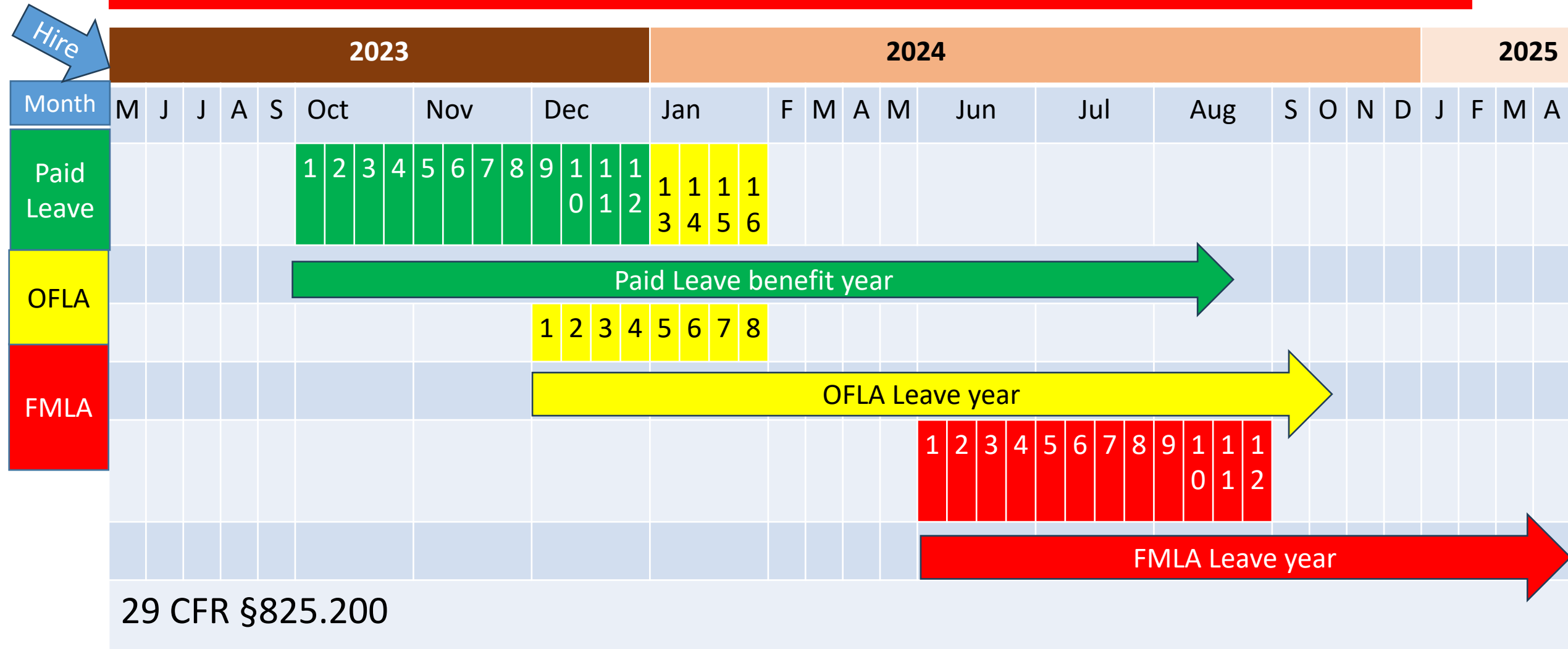
A: This employee has to wait for the benefit year to end before taking more OFLA leave



Assumption: Employee becomes eligible for FMLA in late May 2024



Employee may take up to 12 weeks of FMLA leave in a FMLA leave year



This is an illustration of a “stacking” of leave based on the “eligibility gap”



For established employees, Paid Leave is tracked concurrently with OFLA/FMLA

	2023												2024								2025															
Month	M	J	J	A	Sep				Oct				Nov				D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A			
Paid Leave					1	2	3	4	5	6	7	8	9	10	11	12																				
OFLA					Paid Leave benefit year																															
FMLA					1	2	3	4	5	6	7	8	9	10	11	12																				
					OFLA Leave year																															
					1	2	3	4	5	6	7	8	9	10	11	12																				
					FMLA Leave year																															
	ORS 657B.025																																			



OFLA/FMLA interplay with Paid Leave Qualifying Circumstances

SECRET OF SUCCESS IN TRACKING

For each leave request, ask the following questions:

	FMLA	OFLA	Paid Leave
1. Is the employee eligible?	Yes/No	Yes/No	Yes/No
2. Does the employee have a qualifying event?	Yes/No	Yes/No	Yes/No



There are nine qualifying circumstances

**There are nine ways to enter the
“House of Leave”**



**An employee must meet the eligibility
requirements before entering**



Nine qualifying circumstances:

For all eligible employees:

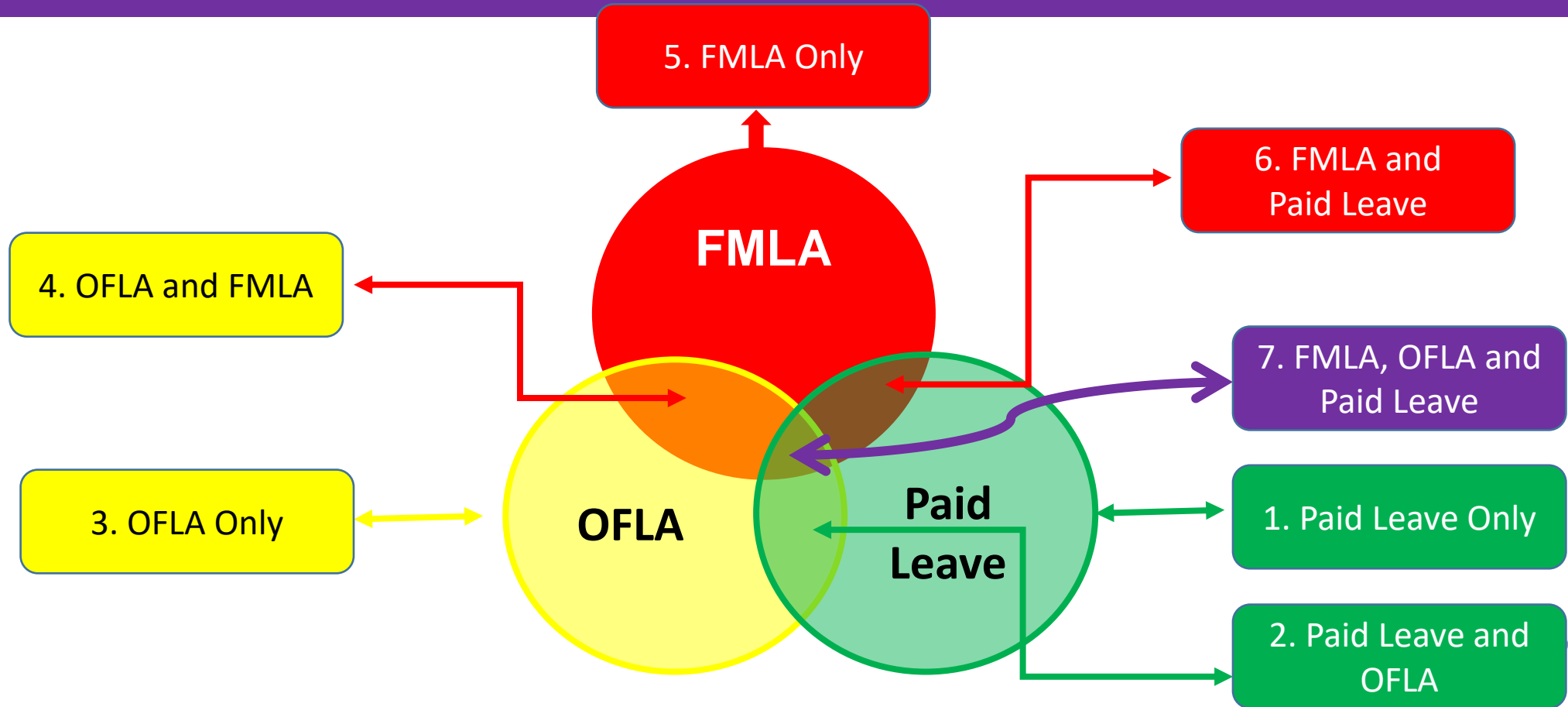
1. Pregnancy disability leave
2. Parental leave
3. Sick child leave
4. Serious health condition leave
 - a) EE's serious health condition
 - b) Family member's serious health condition leave
5. Bereavement leave
6. Safe Leave

For military families only:

7. Oregon military family leave
8. Military caregiver leave
9. Qualifying exigency leave



Remember: there are 7 possibilities





OFLA/FMLA interplay with some of the
Paid Leave Definitions

Serious Health Conditions and Family Members

- Mercifully, the definitions of “serious health condition” under OFLA/FMLA and Paid Leave Oregon are virtually identical (exceptions for organ/tissue donation and incapacity plus treatment)
- “Family” is defined very narrowly under FMLA: parents, spouses and children (plus next of kin but only for military caregiver leave)
- OFLA and Paid Leave Oregon include domestic partners and their parents and children, siblings and their spouses/domestic partners, grandparents and grandchildren and their spouses/domestic partners, parents in law, and individuals related by blood or affinity that is the equivalent of a family member



How will the new definitions impact FMLA tracking?

- FMLA does not recognize many of the family members defined under Paid Leave and OFLA.
- When an employee takes Paid Leave and/or OFLA leave to care for a family member, who is not recognized under FMLA, such as a domestic partner, the employer may not count the duration of leave concurrently as FMLA.





Leave Year & Benefit Year



One leave year & one benefit year at a time

FMLA	OFLA	Paid Leave
An eligible employee's FMLA leave entitlement is limited to a total of 12 workweeks of leave during any 12-month period (except military caregiver leave)	An eligible employee is entitled to up to a total of 12 weeks of family leave within any one-year period . (except pregnancy disability plus and 12 weeks of parental leave plus sick child leave)	A claimant may only have one valid benefit year at a time under Paid Leave Oregon
29 CFR 825.200(a)	ORS 659A.162(1)	OAR 471-070-1000(3)

Note: It depends on what leave year your employer has selected. A FMLA/OFLA leave year may or may not align with a Paid Leave benefit year

FMLA / OFLA leave year

2023					2024						
	Sept	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	July
	5 options										

From 9-3-23 to 6-30-2024, there are 5 options:

- (1) Calendar year,
- (2) Fixed 12 months,
- (3) 12-month moving forward,
- (4) Rolling backward 12 months, or
- (5) A period of 52 consecutive weeks beginning on the Sunday immediately preceding the date on which OFLA/FMLA leave commences.

OFLA leave year

2023					2024						
Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	July
											1 method

No later than 7-1-24, employers must change their OFLA leave year to a period of 52 consecutive weeks beginning on the Sunday immediately preceding the date on which OFLA leave commences.

The *definition* of an OFLA leave year will be identical to the Paid Leave benefit year but in some cases, an employee may start a benefit year before they begin an OFLA leave year or vice versa.

FMLA rule for the transition

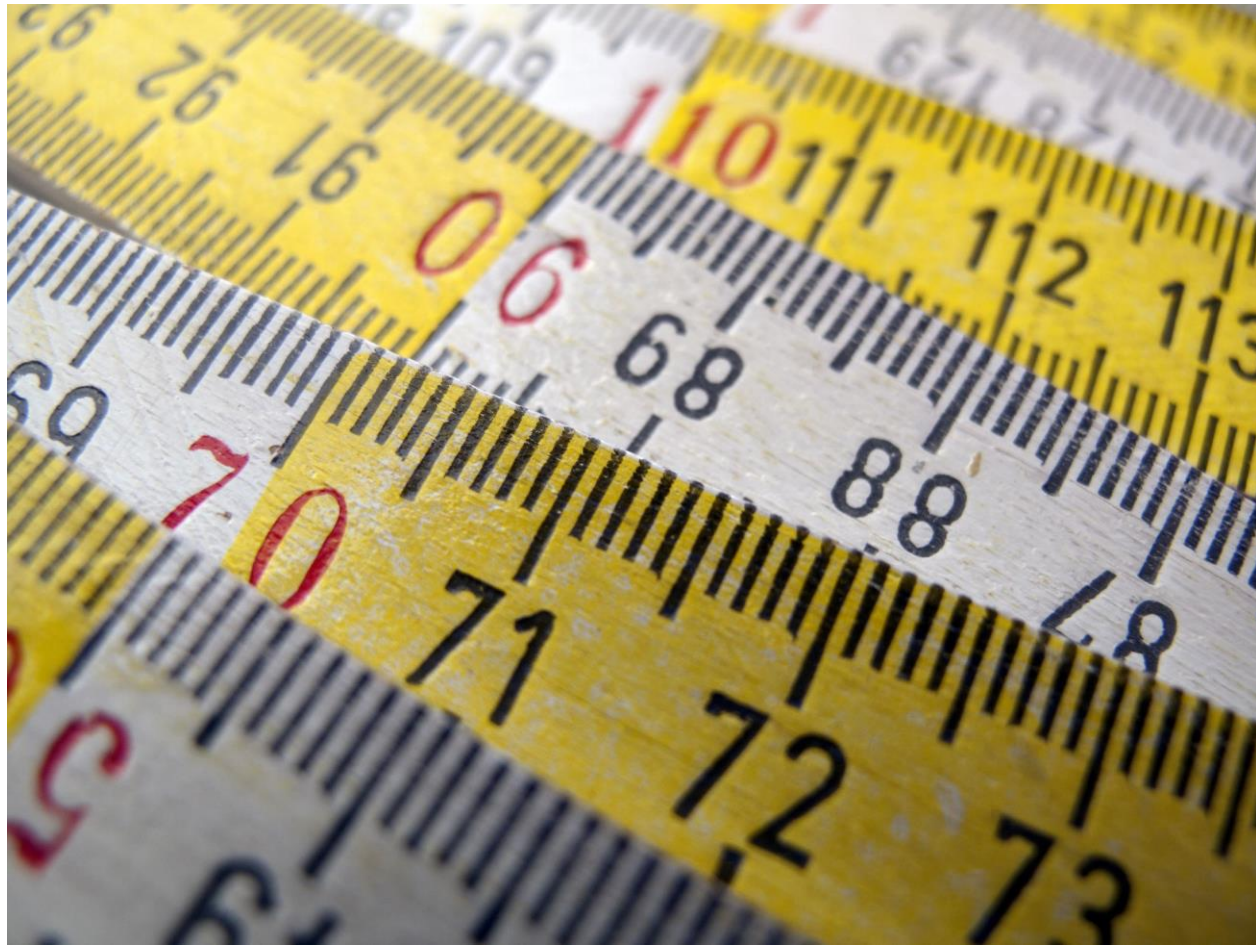
- An employer wishing to change to another alternative is required to give at least 60 days notice to all employees, and the transition must take place in such a way that the employees retain the full benefit of 12 weeks of leave under whichever method affords the greatest benefit to the employee. Under no circumstances may a new method be implemented in order to avoid the Act's leave requirements.
- [29 CFR 825.200\(d\)\(1\)](#)



How does the new leave year impact leave tracking?

- The span of an employee's "benefit year" under Paid Leave Oregon may or may not coincide with your employer's OFLA/FMLA "leave year" in every case.
- An employer should ascertain the beginning and end dates for Paid Leave benefit year and OFLA/FMLA leave year and track the amount of leave taken by an employee under each law accordingly.





OFLA/FMLA Interplay with Paid Leave in the Length of Leave

Duration of leave



Effective
9-3-2023



The amount of FMLA/OFLA leave taken prior to the commencement of a Paid Leave benefit year will not diminish an employee's Paid Leave entitlement in a benefit year.



If the employee takes FMLA military caregiver leave

Exception #1:



Effective
9-3-2023



If an eligible employee does not apply for Paid Leave benefits

Exception #2:



If an eligible employee does not apply for Paid Leave benefits

Exception #3:



If an eligible employee does not apply for Paid Leave benefits

Exception #4:



Key Concept #1

- The amount of FMLA or OFLA leave taken by an eligible employee prior to the commencement of a Paid Leave benefit year does not diminish the employee's entitlement under the Paid Leave program if they apply for Paid Leave benefits later.
- Among the HR professionals, this is commonly known as “stacking” of leaves.



Key Concept #2

- Paid Leave is a voluntary program.
- Employers may not require their employee to apply for Paid Leave benefits.

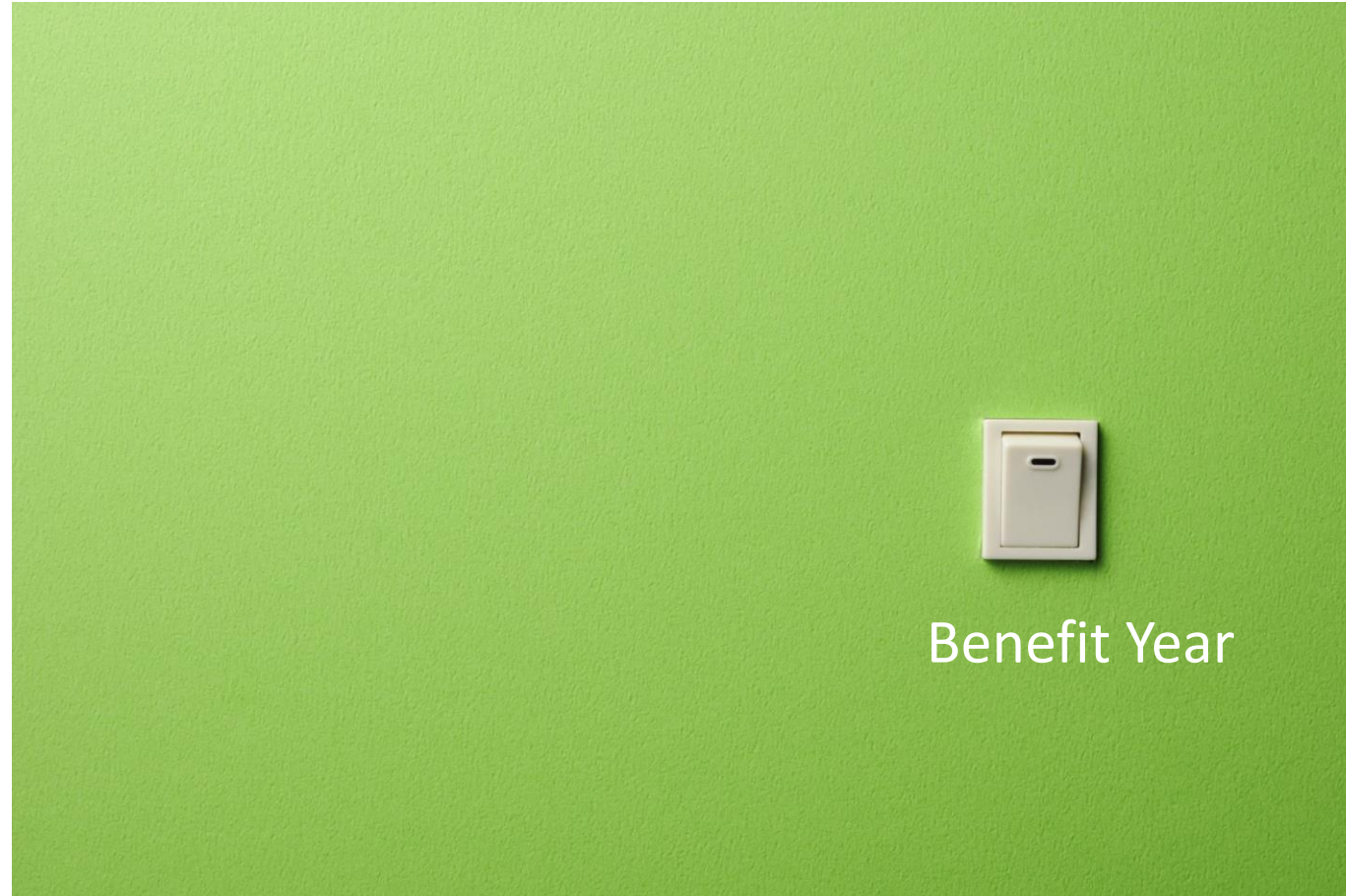


Key Concept #3

Follow the OFLA/FMLA procedures, with a minor adjustment, when applicable

- If your employer is covered under OFLA or FMLA, follow your employer's procedures for notice requirements and the requirement for medical certification.
- Your employer may have to adjust its policy on the use of paid time off in case the employee, who has requested OFLA/FMLA leave, applies and is approved for Paid Leave benefits. See the fact sheet posted on Paid Leave Oregon's website on *Use of Paid Time Off, OFLA and Paid Leave Oregon*: <https://paidleave.oregon.gov/resources/resources.html>

Once an employee files a Paid Leave claim and the claim is approved...



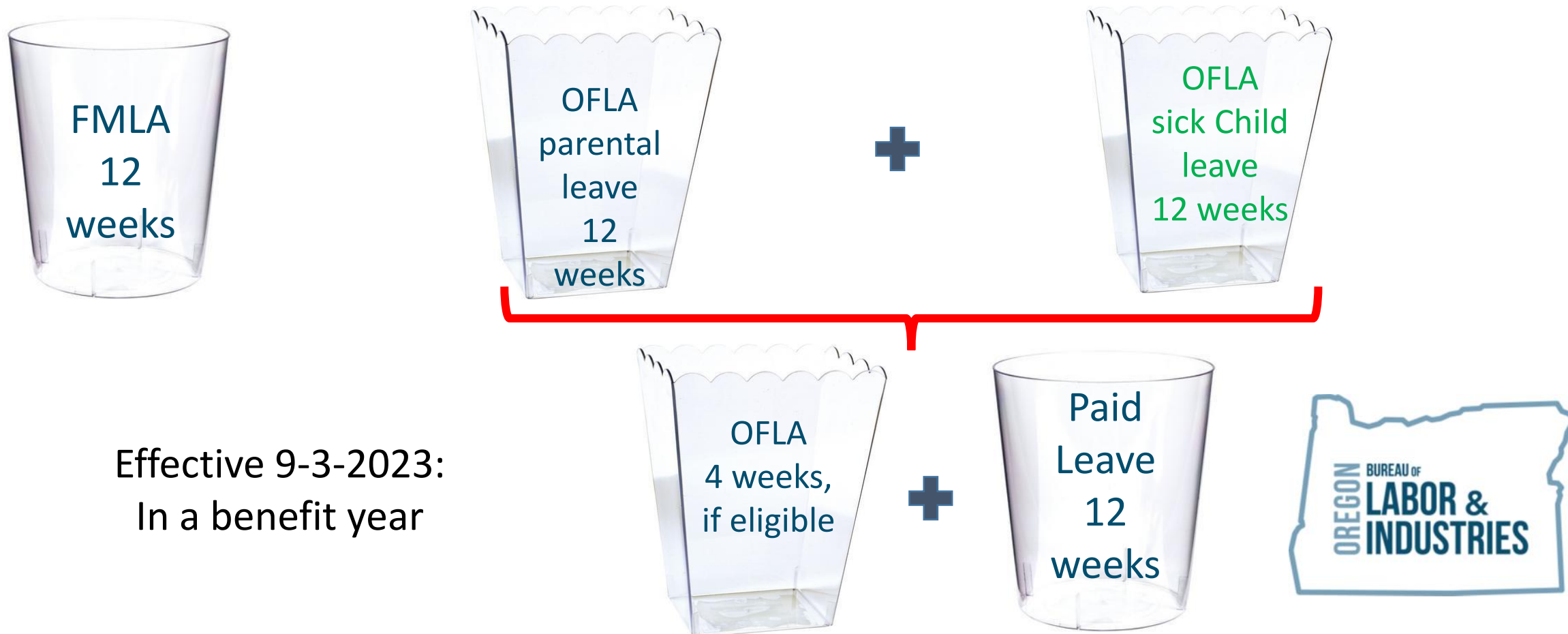
If an eligible employee applies and is approved for Paid Leave benefits

Exception #5:



If an eligible employee applies and is approved for Paid Leave benefits

Exception #6:



If an eligible employee applies and is approved for Paid Leave benefits

Exception #7:



Effective 9-3-2023:
In a benefit year

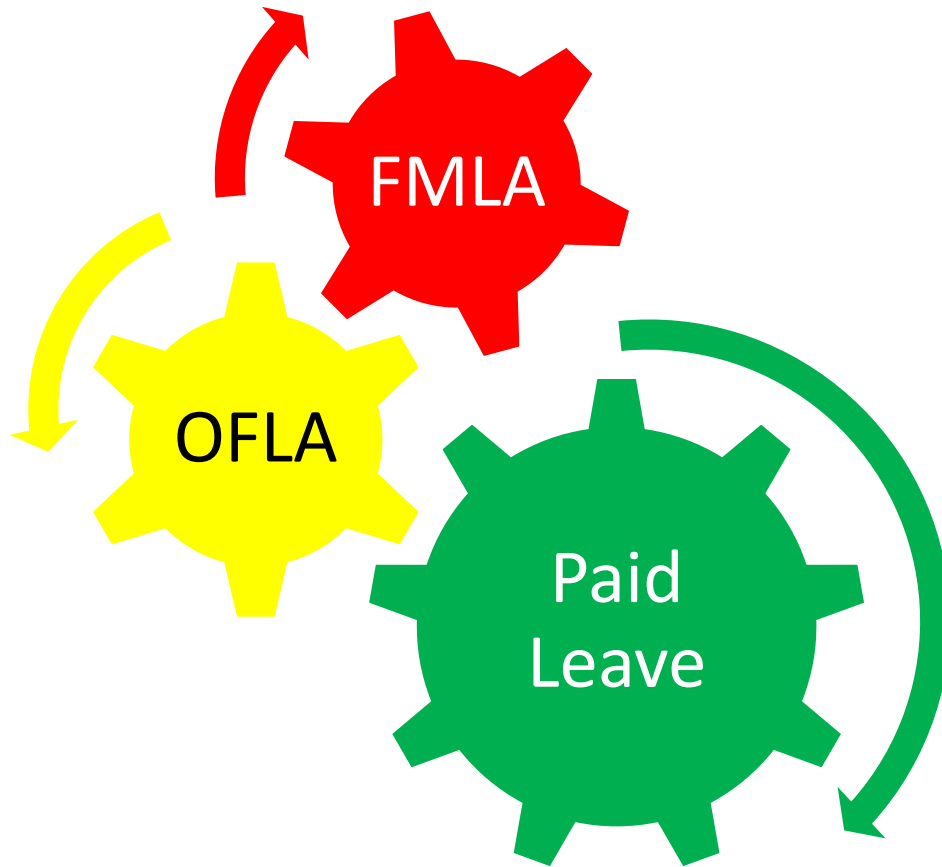


Concurrency

FMLA	OFLA	Paid Leave Oregon
If leave qualifies for FMLA leave and leave under State law (e.g., OFLA or Paid Leave*), the leave used counts against the employee's entitlement under both laws.	OFLA leave taken must be taken concurrently with, not in addition to, any leave taken under the FMLA and Paid Leave*, if the employee is eligible for FMLA and the reason for leave is qualified under all three laws.	Any family leave or medical leave taken under Paid Leave Oregon must be taken concurrently with any leave taken by an eligible employee under OFLA or under the FMLA for the same purposes.
*If the employee applies and is approved for Paid Leave benefits.		
29 CFR §825.701(a)	Senate Bill 999 Sec. 8(2)	ORS 657B.025

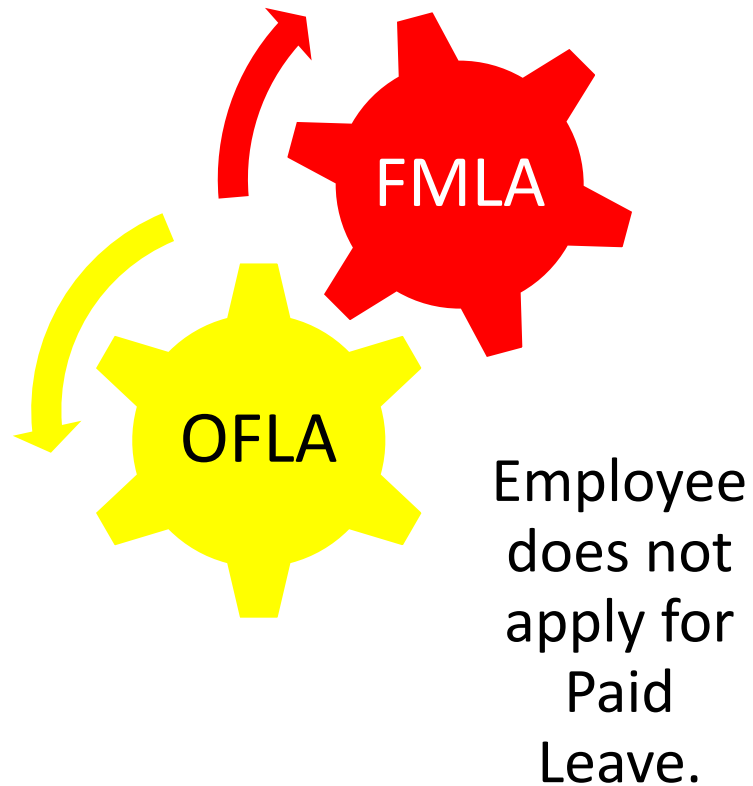
Concurrency:

SB 999 Section 8 (2), ORS 657B.025



- Once an employee applies and is approved for family leave or medical leave under the Paid Leave program, they will set OFLA and FMLA in motion, meaning the three leaves will be counted concurrently if the employee meets the respective eligibility requirements and the qualifying event is covered under all three laws.

If an eligible employee does not apply for Paid Leave benefits



- If an employee, who is eligible for Paid Leave, chooses not to apply for Paid Leave benefits, the employer will **not** be able to count the three leaves concurrently. The leave will only be counted as OFLA and FMLA concurrently if the employee meets the eligibility requirements and the qualifying event is covered the two laws. It could potentially create “stacking” of leave.

No concurrency when safe leave is taken

- Any family leave or medical leave taken under Paid Leave Oregon must be taken concurrently with any leave taken by an eligible employee under OFLA or under the FMLA for the same purposes.
ORS 657B.025



Let's examine a typical scenario



Employer's current OFLA/FMLA leave year

	2023							2024				
	Jun	Jul	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May
	Assumption: The employer uses the 12-month measuring forward year.											
	OFLA leave year											
	FMLA leave year											



An employee becomes pregnant and requests 8 weeks of OFLA pregnancy disability leave

[illegible]

The employee gives birth in August



The employee requests 12 weeks of OFLA parental leave after giving birth

	2023																2024										
	Jun				Jul				Aug				Sept				Oct				Nov	Dec	Jan	Feb	Mar	Apr	May
OFLA	1	2	3	4	5	6	7	8									1	1	1								
									1	2	3	4	5	6	7	8	9	0	1	2							
	OFLA measuring forward year																										
FMLA	1	2	3	4	5	6	7	8																			
	FMLA measuring forward year																										

Only 4 of the 12 weeks of parental leave are counted concurrently as FMLA

	2023																2024										
	Jun				Jul				Aug				Sept				Oct				Nov	Dec	Jan	Feb	Mar	Apr	May
OFLA	1	2	3	4	5	6	7	8									1	1	1								
									1	2	3	4	5	6	7	8	9	0	1	2							
	OFLA measuring forward year																										
FMLA	1	2	3	4	5	6	7	8	9	0	1	2															
	FMLA measuring forward year																										

Option 1: On 9-3-23 employee applies and receives Paid Leave benefits (2+12 weeks)

	2023																2024										
	Jun				Jul				Aug				Sept				Oct				Nov	Dec	Jan	Feb	Mar	Apr	May
OFLA	1	2	3	4	5	6	7	8									1	1	1								
									1	2	3	4	5	6	7	8	9	0	1	2							
	OFLA measuring forward year																										
FMLA	1	2	3	4	5	6	7	8	9	1	1	1															
										0	1	2															
	FMLA measuring forward year																										
Paid Leave										1	2	3	4	5	6	7	8	9	1	1	1	1	1				
											0	1	2	3	4												
	Paid Leave benefit year: 9-3-23 to 8-31-24																										

ORS 657B.020(1) and (3)

The employee may take 4 more weeks of OFLA leave in the Paid Leave benefit year

	2023																2024												
	Jun				Jul				Aug				Sept				Oct				Nov	Dec	Jan	Feb	Mar	Apr	May		
OFLA	1	2	3	4	5	6	7	8									1	1	1										
									1	2	3	4	5	6	7	8	9	0	1	2									
	OFLA measuring forward year																												
FMLA	1	2	3	4	5	6	7	8	9	1	1	1																	
										0	1	2																	
	FMLA measuring forward year																												
Paid Leave													1	2	3	4	5	6	7	8	9	1	1	1	1	1			
																					0	1	2	3	4	1	2	3	4
	Paid Leave benefit year: 9-3-23 to 8-31-24																												

Q. Why is the employee entitled to take 4 more weeks of OFLA leave after 26 weeks of leave?

	2023																2024																	
	Jun				Jul				Aug				Sept				Oct				Nov		Dec		Jan		Feb		Mar		Apr		May	
OFLA	1	2	3	4	5	6	7	8									1	1	1															
									1	2	3	4	5	6	7	8	9	0	1	2														
	OFLA measuring forward year																																	
FMLA	1	2	3	4	5	6	7	8	9	1	1	1																						
										0	1	2																						
	FMLA measuring forward year																																	
Paid Leave													1	2	3	4	5	6	7	8	9	1	1	1	1	1								
																					0	1	2	3	4	1	2	3	4					
	Paid Leave benefit year: 9-3-23 to 8-31-24																																	

ORS 657B.020(2)

Ans. A combined total of 16/18 weeks of Paid Leave and OFLA in a benefit year

	2023																2024																	
	Jun				Jul				Aug				Sept				Oct				Nov		Dec		Jan		Feb		Mar		Apr		May	
OFLA	1	2	3	4	5	6	7	8										1	1	1														
									1	2	3	4	5	6	7	8	9	0	1	2														
	OFLA measuring forward year																																	
FMLA	1	2	3	4	5	6	7	8	9	1	1	1																						
										0	1	2																						
	FMLA measuring forward year																																	
Paid Leave													1	2	3	4	5	6	7	8	9	1	1	1	1	1								
																					0	1	2	3	4	1	2	3	4					
	Paid Leave benefit year: 9-3-23 to 8-31-24																																	

ORS 657B.020(2)

Option 2: employee applies for
2+12=14 weeks of Paid Leave in November

	2023																				2024																	
	Jun				Jul				Aug				Sept				Oct			Nov		Dec		Jan			Feb			Mar			Apr			May		
OFLA	1	2	3	4	5	6	7	8									1	1	1																			
									1	2	3	4	5	6	7	8	9	0	1	2																		
	OFLA measuring forward year																																					
FMLA	1	2	3	4	5	6	7	8	9	1	1	1																										
									0	1	2																											
	FMLA measuring forward year																																					
Paid Leave																	1	2	3	4	5	6	7	8	9	1	1	1	1	1								
																	0	1	2	3	4																	
				Birth													Paid Leave benefit year																					

Employee may take 4 more weeks of OFLA
within the same benefit year

	2023																2024																	
	Jun				Jul				Aug				Sept				Oct				Nov		Dec		Jan		Feb		Mar		Apr		May	
OFLA	1	2	3	4	5	6	7	8									1	1	1															
									1	2	3	4	5	6	7	8	9	0	1	2														
	OFLA measuring forward year																																	
FMLA	1	2	3	4	5	6	7	8	9	1	1	1																						
										0	1	2																						
	FMLA measuring forward year																																	
Paid Leave																	1	2	3	4	5	6	7	8	9	0	1	1	1	1	1			
	Paid Leave benefit year																																	
	An example of stacking of leaves																																	

Let's examine another scenario



One week of serious health condition leave: OFLA/FMLA and Paid Leave run concurrently



ORS 657B.025 and 659A.186, 29 CFR §825.701

Employee takes 8 weeks of bereavement leave (unpaid leave)

	2023									2024								
	Sep			Oct			Nov		Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep
Paid Leave	1	2	3	4	5	6	7	8	9									
	Paid Leave benefit year																	
OFLA	1																	
	OFLA Leave year																	
FMLA	1																	
	FMLA Leave year																	
ORS 657B.020(2)																		



Remember this earlier: 16 weeks in a benefit year

1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	
1 wk	+ 15 weeks of OFLA leave															= 16
Paid Lv 2 wk		+ 14 weeks of OFLA														= 16
Paid Leave 3 wks			+ 13 weeks of OFLA													= 16
Paid Leave 4 weeks				+ 12 weeks of OFLA												= 16
Paid Leave 5 weeks					+ 11 weeks of OFLA											= 16
Paid Leave 6 weeks						+ 10 weeks of OFLA										= 16
Paid Leave 7 weeks							+ 9 weeks of OFLA									= 16
Paid Leave 8 weeks								+ 8 weeks of OFLA								= 16
Paid Leave 9 weeks									+ 7 weeks of OFLA							= 16
Paid Leave 10 weeks										+ 6 weeks of OFLA						= 16
Paid Leave 11 weeks											+ 5 weeks of OFLA					= 16
Paid Leave 12 weeks												+ 4 weeks of OFLA				= 16

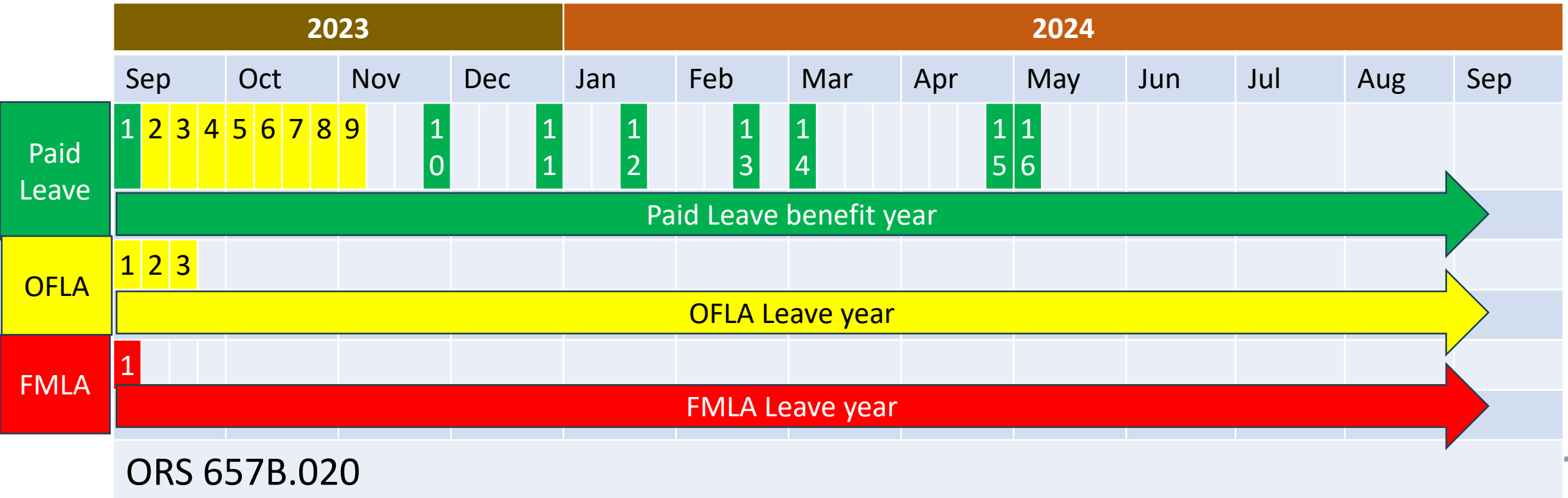
Concurrency with OFLA: 2 weeks of OFLA bereavement leave in an OFLA leave year

	2023									2024									
	Sep			Oct			Nov			Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep
Paid Leave	1	2	3	4	5	6	7	8	9										
	Paid Leave benefit year																		
OFLA	1	2	3																
	OFLA Leave year																		
FMLA	1																		
	FMLA Leave year																		
ORS 657B.025 and OAR 839-009-0240(6)																			

No concurrency with FMLA: Bereavement leave is not a FMLA qualifying event



Later: Intermittent flare-ups for mental health – seven more weeks of Paid Leave



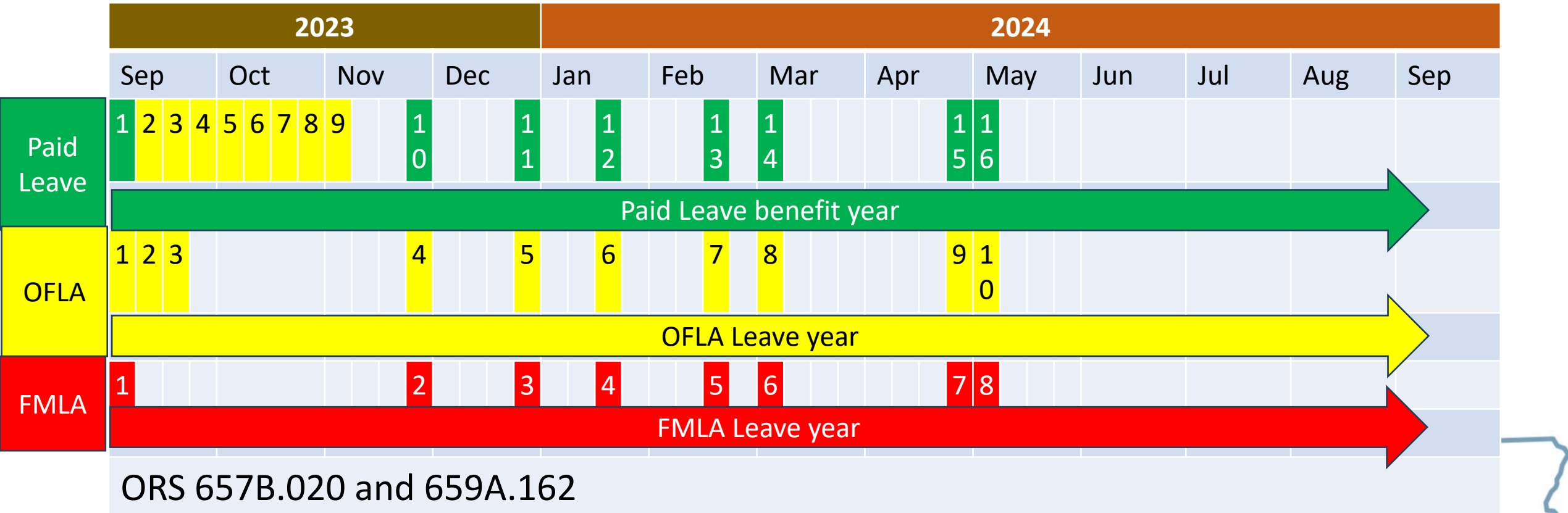
Concurrency with OFLA and FMLA based on the serious health condition leave

	2023										2024																	
	Sep				Oct				Nov		Dec		Jan		Feb		Mar		Apr		May		Jun	Jul	Aug	Sep		
Paid Leave	1	2	3	4	5	6	7	8	9		10		11		12		13	14		15	16							
	Paid Leave benefit year																											
OFLA	1	2	3							4		5		6		7	8				9	10						
	OFLA Leave year																											
FMLA	1									2		3		4		5	6				7	8						
	FMLA Leave year																											
ORS 657B.025 and 29 CFR §825.701																												

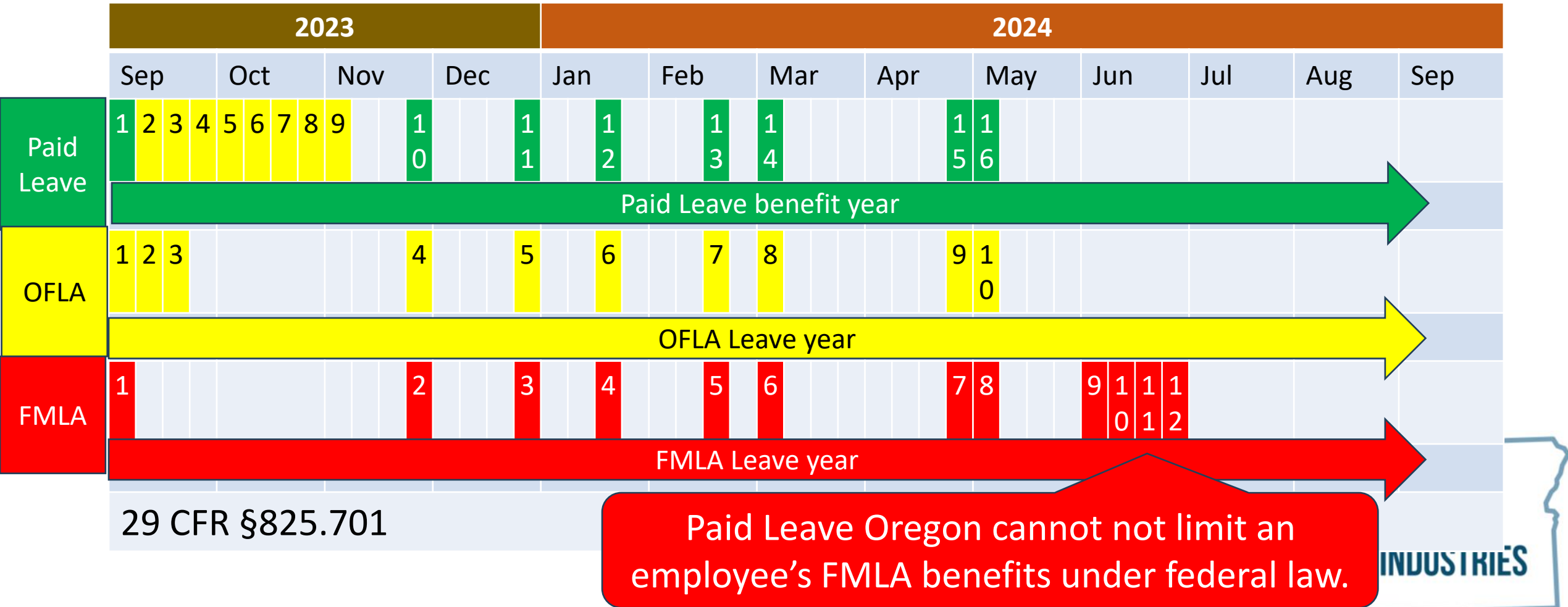
Paid Leave: No more for the balance of the benefit year (except for pregnancy)

2023										2024																		
Sep		Oct			Nov		Dec			Jan		Feb		Mar		Apr		May		Jun		Jul		Aug		Sep		
1	2	3	4	5	6	7	8	9		10			11			12			13	14								
Paid Leave benefit year																												
1	2	3							4			5			6			7	8					9	10			
OFLA Leave year																												
1									2			3			4			5	6					7	8			
FMLA Leave year																												
ORS 657B.020																												

OFLA : No more for the balance of the OFLA leave year or Paid Leave benefit year



FMLA: Four more weeks for the balance of the FMLA leave year





INTERMITTENT LEAVE



Major difference

Absences	FMLA	OFLA	Paid Leave
Full day	Yes	Yes	Yes
Partial day	Yes	Yes	No



Example (1): Prenatal appointment

- A pregnant employee may take a partial day off for a pre-natal appointment. They are not eligible for Paid Leave benefits for a partial day off.
- The employer will only count the intermittent leave (or reduced schedule leave) as OFLA and FMLA, if the employee is eligible for OFLA/FMLA.
- If this is the employee's first time using OFLA and FMLA, they will start an OFLA/FMLA leave year but will not set a Paid Leave benefit year.



Example (2): Migraine headaches

- An employee with migraines may take intermittent leave whenever there is a flare-up. They may miss a full day of work and may apply for Paid Leave. If approved, the full day absence can be counted concurrently as OFLA and FMLA, if the employee is eligible for OFLA/FMLA.
- Or the employee may leave work early with a flare-up and miss a partial day. If so, the partial day absence can only be counted as OFLA and FMLA, if eligible, but may not apply for Paid Leave because it was not a full-day absence.



Intermittent Parental Leave when only Paid Leave is applicable

		PAID LEAVE
FMLA is generally not applicable	OFLA is generally not applicable	An eligible employee is entitled to take intermittent parental leave (family leave). OAR 471-070-1420(1)



Who grants the leave?

FMLA	OFLA	PAID LEAVE
The employer decides whether to grant FMLA or OFLA leave and may choose to grant it intermittently to run concurrently with Paid Leave.		Oregon Employment Department decides whether to grant Paid Leave.
29 CFR 825.300(d)(1)	OAR 839-009-0250(6)	ORS 657B.090





The End

Employer Assistance

(971) 361-8400

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Thank you for joining us! Please give us a call or send us an email if you have questions.

