

**DISTRICT OF COLUMBIA
FIRE AND EMERGENCY MEDICAL SERVICES DEPARTMENT**

BULLETIN NO. 30

Revised October 2018

FAMILY AND MEDICAL LEAVE

1.0 POLICY

It is the policy of the District of Columbia Fire and Emergency Medical Services Department to provide eligible employees requested leave under the District of Columbia's Family and Medical Leave Act (DCFMLA), Paid Family Leave Act (PFL), and the Federal Family and Medical Leave Act of 1993 (FMLA). Additional guidance regarding DCFMLA, FMLA and PFL are contained in the District Personnel Manual (DPM).

2.0 PURPOSE

The purpose of this Bulletin is to establish rules and procedures for the Department relating to the request and use of leave under the DCFMLA, FMLA, and PFL.

3.0 SCOPE

This Bulletin applies to uniformed operational employees in the IAFF Local 36 and AFGE Local 3721 bargaining units who can establish that they are qualified to receive leave under the DCFMLA, FMLA, and PFL. When the terms "family leave," "FMLA," or "DCFMLA" are used in this policy, it shall include PFL unless noted otherwise. Non-operational employees are covered by Chapter 12 of the District Personnel Manual.

4.0 FAMILY AND MEDICAL LEAVE PROGRAMS

4.1 DC Family and Medical Leave (DCFMLA)

- (a) An employee is eligible for leave under DCFMLA if:
 - (i) He or she has at least one (1) year of continuous District service, and that constant year of service occurred within the last seven (7) years;
 - (ii) He or she has received pay for at least 1,000 hours in the previous 12 months preceding the leave (including hours worked or compensated by annual, sick or other paid leave); and
 - (iii) He or she has not exhausted the allowable 16 weeks of family or medical leave over the last 24 months.

- (b) An eligible employee is entitled to take up to 16 weeks of his or her own leave (accrued or leave without pay) during a 24 month period for family leave (birth of a child, adoption, care for family member). An eligible employee is also entitled to take up to 16 weeks of his or her own leave (accrued or leave without pay) during a 24 month period for medical leave (employee's own serious health condition).
- (c) If an employee is assigned to a 42 hour work week immediately preceding the use of DCFMLA, the employee shall be eligible to use up to 672 hours of leave over a two year period. If an employee is assigned to a 40 hour work week immediately preceding the use of DCFMLA, the employee shall be eligible to use up to 640 hours of leave over a two year period.
- (d) Notwithstanding §4.1 and §4.2, an employee may elect to use accrued, advanced, or donated paid leave (annual, sick, or compensatory leave). Any use of paid leave shall count against the 16 weeks of allowable DCFMLA.

4.2 Federal Family and Medical Leave (FMLA)

- (a) An employee is eligible for leave under Federal FMLA if:
 - (i) He or she has been paid for 1,250 hours actually worked in the 12 months preceding the leave (paid leave is not used for qualifying the employee);
 - (ii) He or she has been employed with the District government for at least one year; and
 - (iii) He or she has not exhausted the allowable 12 weeks of family leave over the preceding 12 months.
- (b) In addition to DCFMLA, employees are covered by the Family and Medical Leave Act of 1993, 29 U.S.C. § 2611 *et seq.* and 29 C.F.R. 825 *et seq.* (2000), as amended (FMLA). Under the FMLA, an employee who has satisfied the eligibility requirements is entitled to a total (both family and medical) of 12 workweeks of leave during a 12 month period. If leave qualifies under both the DCFMLA and FMLA, the leave used counts against the employee's entitlement under both laws, and must be used concurrently. Also, because the DCFMLA provides, for example, 16 workweeks of medical leave entitlement over a 24 month period, an eligible employee may be entitled to use 16 weeks of medical leave for the first year under DCFMLA and 12 weeks for the second year under the FMLA.
- (c) If an employee is assigned to a 42 hour workweek immediately preceding the use of FMLA, the employee shall be eligible to use up to 504 hours of

unpaid leave over a one year period. If an employee is assigned to a 40 hour work week immediately preceding the use of FMLA, the employee shall be eligible to use up to 480 hours of unpaid leave over a one year period.

- (d) An employee may elect to use accrued, advanced, or donated paid leave (annual, sick, or compensatory leave). Any use of paid leave shall count against the 12 workweeks of allowable FMLA.
- (e) *Military Family Leave under Federal FMLA*
 - (i) Under the Federal FMLA, a spouse, son, daughter, parent, or next of kin may take up to a total of 26 workweeks of leave to care for a “member of the Armed Forces, including a member of the National Guard or Reserves, who is undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list, for a serious injury or illness.”
 - (ii) An eligible employee may take family/medical leave under the FMLA for “any qualifying exigency” (as determined by applicable federal regulations) rising out of the fact that the spouse, or a son, daughter, or parent of the employee is on active duty (or has been notified of an impending call or order to active duty in the armed forces in support of a contingency operations.

4.3 Paid Family Leave (PFL)

- (a) An employee is eligible for paid family leave if:
 - (i) He or she is neither a temporary employee (an employee appointed for 90 days or less) nor works an intermittent schedule; and
 - (ii) He or she has not been approved for PFL that commenced in the last 12 months.
 - *For Example:* If an employee gives birth to a child on December 1, 2018, and then takes PFL starting on February 1, 2019, the employee is not eligible for PFL again until February 1, 2020 (Qualifying event: December 1, 2018. Date of first use: February 1, 2019).
- (b) The calculation for the number of hours available for an employee’s eight week entitlement is based on an employee’s regular work week. If the normal work week is 42 hours/week, the employee is eligible for 336 hours. If the normal work week is 40 hours/week, the employee is eligible for 320 hours.

- (c) A probationary employee who receives PFL shall have his or her probationary period extended by the length of the PFL.

5.0 **PROCEDURES**

5.1 District government employees may qualify for family leave to welcome a new child or youth to their family or to provide needed care to a family member with a serious health condition. Family leave may be used for –

- (a) The birth of a child of the employee;
- (b) The legal placement of a child with the employee;
- (c) The placement of a child with the employee for whom the employee permanently assumes and discharges parental responsibility; or
- (d) The care of a family member of the employee who has a serious health condition.

5.2 **Family Member**

A person to whom the employee is related by blood, legal custody, domestic partnership or marriage; a foster child; a child who lives with the employee and for whom the employee permanently assumes and discharges parental responsibility; or a person with whom the employee shares or has shared, within the last year, a mutual residence and with whom the employee maintains a committed relationship.

5.3 **Birth or Placement of a Child**

The entitlement to family leave under §5.1(a)-(c) above shall expire 12 months after the birth of the child or placement of the child with the employee. An employee using PFL may use leave intermittently consistent with these rules. An employee shall not “call in” to utilize intermittent leave under PFL for the birth or placement of a child.

5.4 **Health Conditions**

- (a) A serious health condition is defined as:
 - (i) Inpatient care, or a condition requiring one or more nights in a hospital, hospice, or residential treatment facility;
 - (ii) Treatment related to incapacity;
 - (iii) Treatment to prevent incapacity; or
 - (iv) Restorative surgery following the injury.

(b) *Treatment*

- (i) A regimen of continuing treatment that includes the taking of over-the-counter medications such as aspirin, antihistamines, or salves; or bed-rest, drinking fluids, exercise, and other similar activities that can be initiated without a visit to a health care provider, is not, by itself, sufficient to constitute a regimen of continuing treatment for purposes of leave.
- (ii) *Treatment does not include:* routine physical examinations, eye examinations, or dental examinations. A regimen of continuing treatment includes, for example, a course of prescription medication (e.g., an antibiotic) or therapy requiring special equipment to resolve or alleviate the health condition (e.g., oxygen).

(c) *Treatment Related to Incapacity*

- (i) Incapacity means the inability to work, attend school or perform other regular daily activities due to the underlying serious health condition, including treatment and recovery.
- (ii) Longer durations of incapacity may indicate the characteristics of a serious health condition.
 - *For example:* A period of incapacity of three days or more which also involves: (a) two or more treatments by a health care provider, or (b) one treatment followed by a regimen of continuing treatment, may qualify.

(iii) Serious Chronic Condition

- Permanent or long-term incapacity due to condition for which treatment may not be sufficient, such as Alzheimer's disease, a severe stroke, or terminal stages of a disease.
- Requires periodic visits (at least two per year), is continuing in nature, and may cause episodic incapacity (such as epilepsy).

(d) *Treatment to Prevent Incapacity:* Absences for –

- (i) *Multiple treatments* (and recovery) that
- (ii) Will likely result in *incapacitation* of *three or more* days.

- (e) In general, a “serious health condition” does not include (not an exhaustive list): Common cold; earaches; routine headaches; routine medical or dental visits; plastic surgery for cosmetic purposes; influenza; upset stomach; minor ulcers; breastfeeding; stress (unless related to serious medical condition); or funerals.
- 5.5 An employee seeking approval for eligibility under DCFMLA or FMLA shall submit an application to the FMLA Coordinator at least 30 days in advance of the qualifying event, if the event is scheduled or known in advance. All medical signatures and relevant documentation must accompany the application packet.
- 5.6 As part of the application, the employee shall provide:
- (a) Complete the District “Family and Medical Leave Application Form;”
 - (b) Documentation required to establish proof of eligibility, consistent with the provisions of §5.7, including a certification from a health care provider of the employee or family member for all family or medical leave eligibility requests; and
 - (c) A completed Form 11-FML noting the known dates of requested use of leave.
- 5.7 Proof of Eligibility
- (a) It is the employee’s responsibility to provide sufficient documentation to establish a qualifying event for Paid Family Leave. If an employee fails to provide adequate evidence of a qualifying event, including the necessary family relationship, the request will be denied.
 - (b) *For the birth of a child* – a certificate of live birth or similar government (or legal) document listing the employee as a legal parent, or notification from a treating physician of the estimated delivery date of a child;
 - (c) *For the legal placement of a child* – a certified copy of a court order granting the employee legal custody of the child;
 - (d) *For the non-legal placement of a child* –
 - (i) Two (2) official records establishing the employee as a named caregiver to the child (e.g., school enrollment, insurance records, or medical records); and
 - (ii) Reliable documentation confirming the date when the placement occurred (e.g., insurance records and certificates of death).

- (e) *For the care of a family member with a serious health condition –*
- (i) Government or other reasonable documentation requested by the agency to establish a family relationship (including, but not limited to, a birth certificate, marriage license, court order, joint lease, or joint bank account statement); and
 - (ii) A completed “Certificate of Health Care Provider for Family Member’s Serious Health Condition” (DOL-WH380-F).
- 5.8 Employees shall electronically submit a complete application packet requesting family or medical leave to the FMLA Coordinator at fems.fmla@dc.gov. When possible, the employee should submit the request from his or her D.C. Government email address.
- 5.9 Recertification: When using family leave to care for a family member with a serious health condition or medical leave, the Department will require that the employee obtain recertification every six months. Approval of family or medical leave ends when the reasons for family or medical leave ends (medical condition resolves, covered family member is deceased, child is not in the employee’s custody, etc.).
- 5.10 Confidentiality: Certification information requested under this section shall be used only to make a decision in regard to the employee’s request for family or medical leave. The Department shall keep any medical information obtained from a certification request confidential.
- 5.11 Use of Leave
- (a) **The expectation of the Department is that regularly scheduled appointments related to family and medical leave will be scheduled at times other than during a member’s regular tour of duty.** PFL is a leave benefit like sick or annual leave and is subject to the rules and regulations of the Department. The operational needs of the Department will be considered when approving leave.
 - (b) PFL shall not be used for an employee’s medical condition.
 - (c) The use of family or medical leave must be consistent with the medical documentation used to support the approval of the employee’s PFL, DCFMLA, or FMLA request. If an employee takes leave that is inconsistent with the medical documentation or abuses leave pursuant to the PFL, DCFMLA, and FMLA, the employee may be subject to additional management safeguards verifying appropriate use of leave, up to and including discipline.

- (d) Following a determination of eligibility for PFL by the Department, members shall submit requests for PFL leave using Form 11-FML with their Battalion Chief or immediate supervisor (non-operations).
- (e) *Family Leave Request Form (Form 11-FML)*: Form 11-FML shall be submitted –
- (i) At the time of application for eligibility, for all known scheduled appointments for the duration of the leave period, disclosing the dates or duration of dates of tours of duty, pursuant to § 5.6(c); and
- (ii) **At the time of each subsequent request to use PFL not previously requested. Supervisors may request documentation of the need for the leave, but not of the qualifying event.**
- (f) *Planned Medical Treatment*
- (i) An employee shall provide the Department with eight (8) days' notice of medical treatment or supervision during a tour of duty.
- (ii) **The employee shall make reasonable efforts to schedule medical treatment or supervision outside his/her tour of duty**, subject to consultation with the health care provider of the employee or of the family member, and in a manner that does not unduly disrupt the operations of the Department.
- (g) *Unscheduled or Emergency Medical Treatment*
- (i) In the case of an employee or family member who has a serious health condition, family or medical leave may be taken intermittently when **medically necessary**, i.e., as recommended by the treating physician.
- (ii) If the medical treatment or supervision is unscheduled, or for an emergency and the employee is unable to provide eight days' notice, the employee must provide notice as soon as is practicable. After the unscheduled appointment or emergency, the employee must provide a Form 11-FML, and documentation of both the appointment and its unscheduled/emergency nature, to their supervisor before the employee's next tour of duty.
- *For Example:* A supervisor shall require Employee A to provide both a Form 11-FML as well as documentation that the employee escorted his/her qualifying family member to an unscheduled medical appointment (without any further

medical information) before Employee A's next tour of duty.

- (h) The Department may reassign the employee to another position within the Department that will better accommodate recurring periodic absences. When the employee's use of intermittent leave ends, the Department shall reinstate the employee to the same or equivalent position as the job that he or she left when the use of family or medical leave began.
- (i) Employees who are approved to use leave under PFL, DCFMLA, or FMLA shall comply with the Department's rules and regulations regarding the use of leave. **Failure to comply with these requirements, absent unusual circumstances to justify the failure to comply, FMLA-protected leave may be delayed, denied, or granted and classified as Absent Without Leave (AWOL).**
- *For Example:* If the leave is not scheduled in advance, the employee shall comply with Order Book, Article IX § 7 (EAL), Order Book, Article XI § 2 Part II (Minor Illness Program for Uniformed All-Hazards Employees), or Order Book, Article XI § 2 (Part III) (Sick Leave), as applicable. If an employee fails to comply, the employee shall be granted family or medical leave but shall be carried on Absent Without Leave (AWOL).
- 5.12 Uniformed all-hazards employees on medical leave shall inform the Police and Fire Clinic (PFC) and follow all recommendations or requirements.
- 5.13 Return to Duty (DCFMLA/FMLA only): Upon return to duty as a result of medical leave under DCFMLA or FMLA, the employee must submit a certification of fitness from his/her physician to return to work to the Police and Fire Clinic for clearance to return to duty. The Department reserves the right to have any employee submit to a Fitness for Duty Exam on his or her return to duty.
- 5.14 Employees may use family leave when ordered to remain in continuation of duty. If an employee exercises his or her ability to use approved family or medical leave, the employee's timekeeper shall enter the leave in both PeopleSoft (Family LWOP) and TeleStaff (Family Leave) for a period of 12 hours. When an employee uses family or medical leave for period of mandatory overtime, it shall count against the workweeks of allowable leave under the DCFMLA and FMLA.

5.15 Leave Limitations

- (a) **The Department may require periodic re-certification of the ongoing need for leave, or additional safeguards to determine that use of leave is appropriate and consistent with underlying approval.**
- (b) *Impermissible Stacking*
 - (i) Use of PFL hours also reduces the same amount of DCFMLA and FMLA hours available to an employee. An employee is entitled to a maximum of 16 weeks/year, consisting of any type of family leave. Any leave use counts against the employee's entitlement of up to 16 weeks/year, so PFL and FMLA (if eligible for both), will be deducted concurrently.
 - (ii) An employee may not expand his or her DCFMLA protections beyond the 16 weeks by applying for PFL for the same qualifying event in which the DCFMLA was previously approved.
 - (iii) In the event an employee requests and is approved for PFL following the use of DCFMLA, the employee must work with the agency FMLA Coordinator to effect a leave adjustment.
- (c) An employee shall not work for another employer while on medical leave or engaging in any productive work of compensable or non-compensable nature.
- (d) An employee who elects to use LWOP for family or medical leave shall complete a D.C. Form 1199. Periods of LWOP shall not count as creditable service. For example, an employee's grade or step increase date may be adjusted when an employee is on LWOP.

6.0 **APPROVAL PROCESS AND STANDARD OPERATING PROCEDURES**

- 6.1 Eligibility: Upon submission of an application indicating the need or request for DCFMLA or FMLA, the FMLA Coordinator shall send the employee a "Notice of Eligibility" within five (5) business days. The coordinator shall also issue a notice if the employee has been absent for a period of three (3) or more tours of duty for family or medical reasons, but has not yet applied for Paid Family Leave.
- 6.2 Leave Designation: Upon determination of a leave designation, the FMLA Coordinator will notify an employee whether his or her requested leave has been: (1) approved; (2) deferred because more information is needed, or (3) not approved.

- (a) The FMLA Coordination will issue a “Notice of Leave Designation” to an applicant within five business days after receiving the required documentation.
 - (b) If an employee’s supporting documentation is insufficient to establish a qualifying event, a designation letter deferring a decision will be issued to enable the employee to provide additional information as required.
 - (c) If an employee fails to submit either an application and supporting documentation within 21 days of the notice of eligibility, the employee shall be notified that his or her request is not approved and/or that the employee’s application file has been closed.
- 6.3 The FMLA Coordinator may consult with the Medical Director or Assistant Medical Director whenever the denial requires an assessment of the medical condition.
- 6.4 Notifications under this section, excluding supporting documentation and medical documents, shall be sent to the employee by Certified U.S. Mail.
- 6.5 Notification of approvals, excluding supporting documentation and medical documents, shall also be emailed to the employee’s supervisor or, for operational employees, the employee’s Deputy Fire Chief (DFC), DFC Aide, TeleStaff Administrator (continuous block and intermittent for birth or placement of a child), and the employee. The DFC or DFC Aide shall forward the email to employee’s timekeeper and immediate supervisor. The email shall be titled “FMLA (PFL or Non-PFL)-Employee’s Name-Approved or Not Approved (Operation’s Assignment, if applicable).”
- 6.6 The FMLA Coordinator shall create an electronic file for each employee’s application packet. The electronic file shall be stored on the shared drive in the “FMLA-Approvals” folder. This file shall include scanned copies of 1) DCSF FML-04, 2) notification packet (DCSF FML-04, Application, and Approval/Not Approved Notice), and 3) a complete application packet. Access is restricted to the FMLA Coordinator and his/her designee(s).
- 6.7 The FMLA Coordinator shall submit the DCSF FML-04, on the same day the application is approved, to DCHR so that the approval notification may be sent to the Office of Pay and Retirement Services (OPRS).
- 6.8 The FMLA Coordinator shall upload each employee’s complete application, including medical documents and supporting documentation, to DCHR’s FMLA SharePoint site. The documents shall be uploaded within two business days of submitting the DCSF FML-04 to DCHR.

- 6.9 The FMLA Coordinator shall maintain a spreadsheet or database to track the use of DCFMLA, FMLA, and PFL. This information is available to Battalion Level supervisors on the Shared Drive in the FMLA-BFC Folder. After an employee's information from his or her application has been added to the spreadsheet or database and the employee's electronic file is complete, the paper copy of the application packet may be destroyed.
- 6.10 Time Reporting
- (a) Timekeepers for employees shall monitor the use of leave under the DCFMLA and FMLA. Timekeepers shall also accurately record the use of leave used under the DCFMLA and FMLA in both TeleStaff and PeopleSoft. Family or Medical Leave posted in PeopleSoft shall be recorded as "Family Annual," "Family Sick," "Family Comp," "Family LWOP," or "PFLT."
 - (b) Once leave dates are approved for operational employees, the dates shall be entered in TeleStaff by either the Operations Deputy Fire Chief's Aide or the TeleStaff Administrator.
 - (c) After the PFL approval is received by the Office of Pay and Retirement Services (OPRS), OPRS will activate the PFL Time Reporting Code (TRC) for that employee in PeopleSoft. Until the TRC is activated, the employee will be required to use his or her own leave. After the TRC is activated for the employee, the employee's timekeeper will be required to make the adjustments in PeopleSoft and submit a leave adjustment form for the employee.
 - (d) Employees are required to exhaust PFL before using donated leave for that qualifying event.
 - (e) FMLA and DCFMLA may be used in one-hour increments except as outlined in Section 8.10 above; however, PFL shall only be used in increments of eight hours (40-hour week/administrative employees) or 12 hours (42-hour week/operational employees).

7.0 RESPONSIBILITY

7.1 Employee

- (a) The eligible employee shall comply with procedures to schedule leave for PFL in accordance with Sections 5 and 6 of this Bulletin.
- (b) For leave requests, each employee shall monitor his or her work email for communication regarding his or her family or medical leave request.
- (c) The employee shall ensure his or her use of family or medical leave is accurately recorded in both PeopleSoft and TeleStaff.
- (d) If an employee abuses or fraudulently uses family or medical leave, he or she may be disciplined, up to and including termination.

7.2 FMLA Coordinator

- (a) The FMLA Coordinator is responsible for the general administration of family and medical leave eligibility. The FMLA Coordinator will work with the District Family and Medical Leave Coordinator to ensure compliance with District and federal law.
- (b) When the FMLA Coordinator receives a request for family or medical leave he or she shall make a determination consistent with District law, and inform the employee's supervisor or Deputy for Operations.

7.3 Supervisors and Timekeepers

- (a) Supervisors and timekeepers shall ensure the employee's use of family or medical leave is accurately recorded in both PeopleSoft and TeleStaff.
- (b) If a supervisor believes an employee is abusing the family or medical leave, the supervisor shall notify the appropriate Division Commander through their chain of command, who shall notify the FMLA Coordinator.

8.0 APPEALS

8.1 Medical Certification Determination

- (a) The Department may require that the employee obtain, at the expense of the Department, the opinion of a second health care provider approved by the Department, regarding any information required to be certified at the time of application.

- (b) If the second opinion provided under this subsection differs from the original certification provided, the employee may obtain the opinion of a third health care provider mutually agreed upon by the Department and the employee, regarding any information required to be certified under this section. The Department shall pay the cost of the opinion of the third health care provider.
- (c) The opinion of the third health care provider regarding the information certified under this section shall be final and binding on the Department and employee.
- (d) The health care provider approved or mutually agreed upon under this section will not be retained on a regular basis by the Department or otherwise, bear a close relationship to the Department or the employee that would give the appearance that the certification is biased.

8.2 Leave Determination

- (a) If the employee is not satisfied with the initial determination of the FMLA Coordinator, the employee may file a grievance under the terms of the applicable collective bargaining agreement. For this purpose, the EEO and Diversity Manager is the designated Grievance Official.
- (b) If an employee believes that the Department has violated DCFMLA, he or she may file a complaint with the District of Columbia's Office of Human Rights.
- (c) If an employee believes that the Department has violated FMLA, he or she may file a complaint with the U.S. Department of Labor.
- (d) If an employee believes that the Department has violated PFL, he or she may file a complaint with DCHR.

9.0 FMLA COORDINATOR

Refer to the roster for the FMLA Coordinator. Application packets shall be submitted to fems.fmla@dc.gov.

10.0 EFFECTIVE

This policy is effective immediately.