
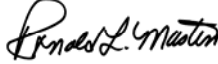


FAIRFAX COUNTY FIRE AND RESCUE DEPARTMENT STANDARD OPERATING PROCEDURE

	SUBJECT: FAMILY AND MEDICAL LEAVE		S.O.P 02.01.12
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	CATEGORY: Personnel	SUBCATEGORY: Leave and Overtime	
	APPROVED BY: <div style="text-align: center;">  Ronald L. Mastin CHIEF, FIRE AND RESCUE DEPARTMENT </div>	EFFECTIVE DATE: August 10, 1998 REVISION DATE: September 1, 2008	
	FORMS REQUIRED: HR-06, Certification of Health Care Provider FRD-007, Off-Duty Employment Report FRD-087, Request for Family and Medical Leave FRD-158, Work Status Notification		
NOTE: Current forms are located on the department's Intranet			

PURPOSE:

To provide procedures for administering the county's family leave and medical leave policies as defined in Chapter 10 of the Personnel Regulations.

I. POLICY

Family and medical leave provide employees with leave in connection with the birth or placement of a child for adoption or foster care, to care for a sick or disabled family member, or for an employee's serious health condition. An employee who follows the procedures outlined herein is entitled to 12 weeks of family or medical leave within a 12-month period.

II. DEFINITIONS

- A. *Family leave* will mean leave used in connection with the birth or placement of a child for adoption or foster care.
- B. *Medical leave* will mean leave used for the care of ill or disabled children, spouse, parents or parents-in-law, or for recuperation from a serious health condition that renders the employee unable to perform the functions of his or her position.
- C. *Child* will mean a biological, adopted or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis, who is less than 18 years of age, or 18 years of age or older and incapable of self-care because of a mental or physical disability.
- D. *Spouse* will mean a husband or wife of an employee as defined or recognized under Virginia law for purposes of marriage.
- E. *Parent* will mean a biological parent of an employee or an individual who stands or stood in loco parentis to an employee when the employee was a child.
- F. *Parents-in-law* will mean a biological parent of an employee's spouse.

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- G. *In loco parentis* will mean those persons with day-to-day responsibilities to care for and financially support a child or, in the case of an employee, who had such responsibility for the employee when the employee was a child. A biological or legal relationship is not necessary.
- H. *Serious health condition* will mean one that requires either inpatient care, or a continuing regimen of treatment by a health care provider.
- I. *Continuing regimens of treatment* will mean treatment, which usually includes:
- Two or more visits to a health care provider.
 - Two or more treatments by a health care practitioner on referral form, or under the direction of a health care provider.
 - A single visit to a health care provider that results in a regimen of continuing treatment under the supervision of a health care provider (for example, a course of medication or therapy to resolve the health condition or pregnancy or prenatal care).
- J. *Incapable of self-care* will mean that the individual requires active assistance or supervision to provide daily self-care in several of the activities of daily living (ADL). ADL includes adaptive activities such as caring appropriately for one's grooming and hygiene, bathing, dressing, eating, cooking, cleaning, shopping, taking public transportation, paying bills, maintaining a residence, using telephones and directories, and using a post office, etc.
- K. *Physical or mental disability* will mean a physical or mental impairment that substantially limits one or more of the major life activities of an individual (as defined in 29 C.F.R., Part 1630).
- L. *A health care provider* will mean a doctor of medicine or osteopathy, podiatrist, clinical psychologist, optometrist, chiropractor, nurse practitioner, nurse-midwife, clinical social worker, or Christian Science practitioner.
- M. *Workweek* is defined as the hours an employee is regularly scheduled to work in a 7 consecutive day period; 12 weeks is equivalent to: 24-hour shift = 672 hours; 12-hour shift = 504 hours; 8-hour shift = 480 hours annually.
- N. *Intermittent time off* is time off taken in segments or blocks of time interspersed with periods of work.
- O. *Servicemember Family and Medical Leave* is a qualifying exigency of a family member servicing in the Armed Forces arising out of active duty or impending call to active duty or the care of a family service member in an outpatient status, with a temporary disability, serious injury or illness.
- P. *Parental Leave* is paid leave granted for the birth, adoption, or foster care placement of a child. Merit employees are provided a maximum of 80 hours (120 hours for 24-hour shift

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employees) hours. Merit employees scheduled to work other than 80 hours per pay period shall have parental leave credited on a pro-rated basis.

III. PROCEDURE

Employee Requests for Leave/Notification of Non-Return

- A. Whenever the need for family and/or medical leave is foreseeable, the employee shall submit FRD-087, Request for Family and Medical Leave, to the Fire and Rescue Department's (FRD) Human Resources Manager with a copy to the chain of command and the department's Human Resources Coordinator. The request should be sent at least 30 days in advance whenever possible. The employee shall complete all fields of Form Number, Form Name prior to submission.

The employee will receive notification of eligibility from FRD's Human Resources Division. A written medical statement (HR-06) from a health care provider will be required in connection with a request for medical leave. Additionally, medical documentation from the employee regarding the continuing necessity for medical leave in connection with any issue concerning the employee's ability to return to work at the expiration of the medical leave may be required.

- B. In the event that the employee does not provide advance notification of the need for Family Medical Leave, once the department learns that an absence meets the criteria for the Family Medical Leave Act (FMLA), the immediate supervisor shall request that the FRD Human Resources Manager with a copy to the chain of command and the department's Human Resources Coordinator. Designate the absence as FMLA leave even if the employee does not want to designate the absence.
- C. The FRD Human Resources Manager or his or her designee is responsible for approving family and medical leave and for notifying the employee in writing. Approval is based on the leave request meeting the criteria established in this procedure. For medical leave requests, once the completed HR-06, Certification of Health Care Provider Form is received by the FML Coordinator, provided that the information supplied on the form supports the request for FML, an approval letter will be sent to the employee with a copy to the chain of command. When the employee begins to exhaust their allotted FMLA hours, a letter will be from the FML coordinator to the employee with a copy to the chain of command.
- D. Employees who do not plan to return to work at the expiration of family and/or medical leave shall notify their supervisor no less than (2) two days prior to the expiration of the leave. Failure to return to work without giving adequate notice at the expiration of the leave may result in the conversion of the resignation to an unsatisfactory service separation under Section 9.5 of the Personnel Regulations.
- E. Either the department or the employee may choose to have FMLA-leave entitlement run concurrent with a workers' compensation absence.

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- F. An employee cannot be forced to perform a “light duty” job under workers’ compensation if either the employee or the department elects to use part of the absence as FMLA leave entitlement, even if the employee is able to perform the light duty.
- G. During the time frame that an employee is on family medical leave, the employee is not eligible to work overtime for the department unless prior written approval has been obtained from the division head. In addition, all off-duty employment previously approved is revoked and must be re-submitted for current approval using the FRD-007, Off-Duty Employment Form. Approved forms shall be sent to the department’s Human Resources Division.

IV. LEAVE ENTITLEMENT/USAGE

- A. If family medical leave is approved based on supporting documentation, a period of up to 12 work weeks (480 hours for 40-hour employees, 672 hours for 56-hour employees) over a 12-month period shall be granted. The 12-month period for family and medical leave will commence with the first use of family or medical leave.
- B. Nothing in this standard operating procedure (SOP) will prohibit the employee from requesting and the supervisor approving leave in excess of 12 weeks. Approval shall be based on the business needs of the agency and supporting documentation provided by the employee, in accordance with existing leave regulations contained in Chapter 10 of the Personnel Regulations. **Additional leave beyond the 12 weeks will not count as family and medical leave for continuation of benefits purposes.**
- C. Family and medical leave may include any combination of sick, annual, or family medical leave without pay is subject to the parameters noted in D and F below. Use of parental leave is addressed in Section E below. Use of compensatory leave is addressed in Section F below.
- D. Sick leave usage is governed by the existing regulations contained in Chapter 10 of the Personnel Regulations. Specifically, women who take family leave following the birth of a child may take six (6) weeks of sick leave immediately following the birth of her child. The father may take four (4) weeks of sick leave immediately following the birth of his child. Mothers and/or fathers may take four (4) weeks of sick leave immediately following placement of a child for adoption or foster care. Use of any additional sick leave time above the maximum allowable as outlined above, requires a completed HR-06, Certification of Health Care Provider Form.
- E. Mothers, fathers, or legal guardians are entitled to take up to 80 hours of paid parental leave (120 hours for 24-hour shift employees) during the first 12 months following the birth, adoption, or foster care placement of a child. In some instances when deemed medically necessary, parental leave may be taken prior to the birth.
 - 1. The parental leave must be applied towards the employee’s Family and Medical Leave (FML) entitlement to the extent that FML is available to the employee (i.e.; parental leave will run concurrently with FML in most cases).

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2. If an employee has already exhausted FML for the qualifying period (first 12 months following the birth, adoption, or foster care placement of a child), the mother, father, or legal guardian is still eligible to take the 80 hours (120 hours for 24-hour shift employees) of parental leave.
3. Parental leave may be taken intermittently during the 12-week FML entitlement period, subject to the Agency's Leave Approval process.

F. Employees requesting family and/or medical leave may be required to use accrued annual or sick leave, as appropriate, prior to the use of leave without pay.

1. Employees who are not exempt from the Fair Labor Standards Act (FLSA) may not be required to use accrued compensatory leave, but may do so at their option.
2. Employees who are not exempt from FLSA may not have use of accrued compensatory leave counted against the 12-week FMLA entitlement.
3. Employees who are exempt from FLSA may not be required to use accrued compensatory leave prior to the use of leave without pay; however, if the exempt employee requests the use of accrued compensatory leave in lieu of other paid leave or leave without pay for FMLA purposes, the compensatory leave will count toward the 12-week FMLA entitlement.

G. Nothing in this SOP prohibits an employee from requesting additional leave for which he or she may be entitled, including advanced sick leave, extraordinary sick leave, transferred leave, or sick leave bank.

V. FAMILY LEAVE

- A. Family leave used in connection with the birth or the placement of a child for adoption or foster care must be completed within 12 months of the date of the birth or placement of the child.
- B. Employees may request family leave as needed under this procedure, as long as the cumulative total of family and medical leave absences do not exceed 12 weeks during a 12-month period.
- C. When taking intermittent leave for the birth of a child or the placement of a child with you for adoption or foster care, the leave must be approved through the Agency's Leave Request process. The employee must follow Standard Operating Procedure 02.01.03, Requesting and Granting Leave for Department Personnel.
- D. Intermittent Leave is not guaranteed leave. It is based on available leave slots and must be scheduled in ADVANCE.

VI. MEDICAL LEAVE

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- A. As a general rule, where inpatient care is not involved, absences of more than three (3) calendar days (and requiring the continuing treatment of a health care provider) for the employee's serious health condition or for the care of a sick family member will be considered eligible for medical leave.
- B. Prenatal care is explicitly included; routine physical exams are explicitly excluded.
- C. Employees may request medical leave as needed under this procedure, but are guaranteed medical leave only so long as the cumulative total of family and medical leave absences does not exceed 12 weeks during a 12-month period.
- D. Nothing in this SOP limits the rights of employees to request sick leave in order to provide necessary care and attendance to a sick family member under existing sick leave policies.
- E. An employee will be required to provide medical certification from a health care provider indicating the need for medical leave, the continuation of medical leave, and/or the ability of the employee to return to work. Medical Leave may be denied if the form is not returned by the specified date.
 - 1. The HR-06, Certification of Health Care Provider Form, must state in the case of the employee's serious health condition that he or she is unable to perform the functions of the position. The completed HR-06 Form will be returned to the FML Coordinator, who will then forward the original to the Employee Relations Division of the Department of Human Resources and a copy to the Health Section of the Health and Safety Division (HSD) to be placed in a separate file and treated as confidential.
 - 2. Once the certification has been completed, contact with the employee's health care provider is limited to **clarification and verification** of information contained in the medical certification. No additional information can be requested.
 - 3. In the case of Medical Leave taken for an employee's serious health condition, prior to returning to duty, the employee must first contact the Public Safety Occupational Health Center to set-up an appointment and obtain a completed Work Status Notification (FRD-158).
 - 4. Where the employee is requesting Family Medical leave to care for a seriously ill family member, the health care provider must either certify that the third-party care is required or that the employee's presence would be beneficial to the patient. Such certification, in conjunction with an employee's statement of the care he or she will provide, will be sufficient to satisfy this requirement.
- F. Medical leave will be granted on an intermittent basis or on a reduced work schedule if certified as necessary by the health care provider.
 - 1. Intermittent leave or working a reduced schedule may be approved when medically necessary to care for a seriously ill family member or because of the employee's serious health condition, if certified by the employee's doctor on the HR06, Certification of

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Health Care Provider Form. Once approved, personnel would use their sick leave for this request (they can also use annual or compensatory time). This leave needs to be requested through the employee's supervisor.

2. Employees needing intermittent/reduced schedule leave for foreseeable medical treatment must work with their supervisors to schedule the leave so as not to unduly disrupt business operations, subject to the approval of the employee's health care provider.
3. If intermittent leave or leave on a reduced schedule is required, the medical certification must describe the treatment regimen and duration, i.e.; doctors' visits, therapy, etc..

VII. SERVICEMEMBER FAMILY AND MEDICAL LEAVE

- A. Servicemember FMLA provides eligible employees unpaid leave for any one, or for a combination of, the following reasons:
 1. A "qualifying exigency" arising out of a covered family member's active duty or call to active duty in the Armed Forces in support of a contingency plan;
 - a. Eligible employees may take up to 12 work weeks of leave during any 12-month period.
 2. To care for a covered family member who has incurred an injury or illness in the line of duty while on active duty in the Armed Forces provided that such injury or illness may render the family member medically unfit to perform duties of the member's office, grade, rank, or rating.
 - a. Eligible employees may take up to 26 work weeks of leave during a single 12-month period to care for the servicemember. Leave to care for an injured or ill servicemember, when combined with other FMLA-qualifying leave, may not exceed 26 weeks in a single 12-month period.
- B. Servicemember FMLA runs concurrent with other leave entitlements provided under federal, state and local law.

VIII. CONTINUATION OF BENEFITS

- A. During the leave period, the county will continue coverage under the health insurance plan in which the employee is participating prior to going on leave at the level and under the conditions coverage would have been provided if the employee had not gone on leave. If an employee uses leave without pay during the 12-week family and medical leave entitlement, the county will continue to contribute the county's share of the employee's health insurance premium.
- B. Employees on family or medical leave whose health insurance coverage level changes, i.e.; individual to two-party are responsible for filing the appropriate health insurance forms within

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the specified time period. Employees whose coverage level increases are responsible for the increased employee contribution.

- C. Employees on family or medical leave are responsible for the payment of the employee's contribution for health insurance.
 - 1. If the employee is in a paid leave status, the employee's share will continue to be paid through a payroll deduction.
 - 2. Employees on family or medical leave who are in a leave without pay status will be billed each month for their health, life, dental, hospital confinement, and long-term disability premiums under existing rules for payment by employees on leave without pay.
 - 3. Payment must be made by personal check or money order. Special arrangements for premium payments can be made by contacting the Department of Human Resources Benefits Division.
- D. Health insurance coverage will be canceled after a required payment is more than 30 days late.
- E. If health insurance coverage lapses due to nonpayment of the required premium or employee's cancellation of coverage, the employee may request restoration of health insurance upon return from leave. Health insurance coverage will be restored effective the date the employee returns from family or medical leave. A written request to restore health insurance must be received by the Department of Human Resources Benefits Division within 60 days of the employee returning to work.
- F. Any contributions to health insurance made by the county during family and medical leave, while the employee was in leave without pay status, may be recovered from the employee should he or she not return to work at the expiration of the family or medical leave. Such repayment is not required if the employee's failure to return is due to his or her serious health condition or the care of an ill family member or other circumstances beyond the control of the employee.
- G. Employees who terminate employment while on family or medical leave will be eligible for COBRA (continuation of health insurance coverage) if they meet COBRA eligibility requirements. The effective date for COBRA coverage will be based on the date of termination.

IX. RETURN TO FORMER POSITION

- A. An employee on family or medical leave must be returned to his or her former position.
- B. Any exception to this provision requires the approval of the Director of the Department of Human Resources prior to the employee's return to work. The request to return an employee to a different but equivalent position must provide the Director of the Department of Human

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Resources with a detailed justification of the reason(s) why the employee cannot be returned to his or her former position.

X. RECORD KEEPING/TIME AND ATTENDANCE

- A. The Fire and Rescue Department’s Personnel/Payroll Section is responsible for maintaining records of family and medical leave and for tracking the amount of family and medical leave used within the 12-month period.
- B. In addition to the type of leave requested (annual, sick, compensatory, or leave without pay), the leave request form shall include a notation that the absence is for family and/or medical leave (for record keeping purposes only) utilizing job number 11FMLA.
- C. Time sheets shall be coded with the routine codes for sick leave, annual leave, or compensatory leave, as applicable. Leave without pay for family or medical leave should be coded as subobject code 164 (464 for 24-hour shift personnel) to ensure that health insurance benefits are not interrupted.
- D. When leave is taken intermittently or is on a reduced schedule, only the time actually taken as family and medical leave may be charged against the employee’s entitlement. It is the employees/supervisors responsibility to code time sheets with the appropriate job number (i.e.; 11FMLA).

XI. MISCELLANEOUS

- A. An employee will not accrue any additional seniority credit during unpaid family or medical leave and will be treated the same as employees who are on leave without pay for any other purpose.
- B. The department may request an employee to work on any given day during approved family medical leave. There is no requirement for the employee to work on the requested day(s).