

GOVERNMENT OF THE DISTRICT OF COLUMBIA
D.C. Department of Human Resources

District Personnel Manual Issuance System

This instruction should be filed
behind the divider for Part III of
DPM Chapter (s) 12

DPM Instruction No. 12-42

SUBJECT: Procedures on Family and Medical
Leave under the District of Columbia
Family and Medical Leave Act of 1990;
and Applicability of the Federal Family
and Medical Leave Act of 1993

Date: October 27, 2008

NOTE: This District Personnel Manual (DPM) Instruction supersedes DPM Instruction No. 12-16, *Procedures on Family and Medical Leave under the D.C. Family and Medical Leave Act*, dated December 10, 2001.

1. Scope

The purpose of this DPM instruction is to set forth procedures for subordinate agencies to follow in granting leave to employees under the provisions of the District of Columbia Family and Medical Leave Act of 1990 (*D.C. FMLA*); and address the applicability to the District government of the Family and Medical Leave Act of 1993 (*Federal FMLA*).

2. Authority

- The District of Columbia Family and Medical Leave Act of 1990, effective October 3, 1990 (D.C. Law 8-181; D.C. Official Code § 32-501 *et seq.*), and Chapter 16, Title 4, District of Columbia Municipal Regulations; and
- ***Federal FMLA***: The Family and Medical Leave Act of 1993, approved August 5, 1993 (29 U.S.C. § 2611 *et seq.* and 29 C.F.R. 825 *et seq.* (2000)), as amended.

3. Applicability

a. D.C. FMLA

- (1) The *D.C. FMLA* is applicable to all employers in the District of Columbia employing 20 or more employees. For the purposes of the *D.C. FMLA*, the District government is considered a single-employer. Therefore, the *D.C. FMLA* is applicable to every District government agency without regard to its individual size.

Note: DPM Instructions that are strictly procedural in nature have direct applicability only to agencies and employees under the personnel authority of the Mayor. Other personnel authorities or independent agencies may adopt any or all of these procedures or guidance materials for agencies and employee under their respective jurisdictions. [See DPM Chapter 2, Part II, Subpart 1, §1.3]

Inquiries: Policy and Planning Administration, DCHR (202) 442-9644

Distribution: Heads of Department and Agencies, HR Advisors, and DPM Subscribers

Retain Until Superseded

- (2) Under the *D.C. FMLA*, the District government is required to provide up to 16 weeks of unpaid family leave during any 24-month period to eligible employees. Additionally, an eligible employee who becomes unable to perform the functions of his or her position because of a serious health condition is entitled to up to 16 weeks of unpaid medical leave during any 24-month period.
- (3) At the employee's or employer's option, certain kinds of paid leave may be substituted for unpaid leave.

b. Federal FMLA

- (1) District government employees are covered by the *Federal FMLA*.
- (2) Under the *Federal FMLA*, covered employers are required to provide up to 12 weeks of unpaid, "job-protected" leave (family or medical) to eligible employees during any 12-month period. See 29 U.S.C. § 2612
- (3) At the employee's or employer's option, certain kinds of paid leave may be substituted for unpaid leave.
- (4) **Military Family Leave under the Federal FMLA: the Federal FMLA was recently amended¹ to provide eligible employees 2 new leave rights related to military service.²**
- (5) Additional information on the *Federal FMLA* may be obtained by contacting the local office of the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division.*

[*Website: www.dol.gov/dol/esa/]

- (6) The *Federal FMLA* **does not supersede** any provision of the *D.C. FMLA* that affords greater family or medical leave rights. See 29 U.S.C. § 2651-2653 and 29 C.F.R. 825.700.

¹ National Defense Authorization Act for FY 2008 (NDAA), Pub. L. 110-181, approved January 28, 2008.

² Under the *Federal FMLA* as amended by the NDAA, there is a new "qualifying reason" for leave; and a new leave entitlement. Under the new qualifying reason for leave, eligible employees are entitled to up to 12 weeks of leave because of "any qualifying exigency" arising out of the fact that the spouse, son, daughter, or parent of the employee is on active duty, or has been notified of an impending call to active duty status, in support of a contingency operation. Under the new leave entitlement, an eligible employee who is the spouse, son, daughter, parent, or next of kin of a covered service member who is recovering from a serious illness or injury sustained in the line of duty on active duty is entitled to up to 26 weeks of leave in a single 12-month period to care for the service member ("military caregiver leave"). This military caregiver leave is available during "a single 12-month period" during which an eligible employee is entitled to a combined total of 26 weeks of all types of *Federal FMLA* leave. Additional information pertaining to the amendment pursuant to the NDAA is available on the Department of Labor's FMLA amendments Website at: http://www.dol.gov/esa/whd/fmla/NDAA_fmla.htm.

4. Coverage Determinations (*D.C. FMLA* or *Federal FMLA*)

- a. Because both the *D.C. FMLA* and *Federal FMLA* apply to the District government employees, an eligible District government employee in need of family or medical leave shall be allowed to choose under which statute he or she will be covered.
- b. Once the employee chooses the statute under which he or she will be covered for family or medical leave qualifying purposes, the request will be processed under the chosen statute.
- c. If leave qualifies under both the *D.C. FMLA* and *Federal FMLA*, the leave used counts against the employee's entitlement under both laws.
- d. Because the *D.C. FMLA* provides 16 weeks of medical leave entitlement over a 24-month period, an "eligible employee" may be entitled to use 16 workweeks of medical leave for the 1st year under the *D.C. FMLA* and 12 weeks for the 2nd year under the *Federal FMLA*. See 29 C.F.R. 825.701.
- e. **Example of coverage determination between the *D.C. FMLA* and *Federal FMLA*:**

Use of military family leave in accordance with the NDAA – Because the *D.C. FMLA* does not specifically provide the leave entitlement related to military service provided under the NDAA (see paragraph 3 (b)(4) above and footnotes 1 and 2), a District government employee who is eligible for the military service-related leave entitlements provided by the NDAA and who needs leave for such purposes would have to be placed under the *Federal FMLA*, not the *D.C. FMLA*.
- f. Unless otherwise specified, the provisions of paragraphs 5, 7 through 18; definitions in paragraph 6; and chart and forms attached to this DPM instruction are based on the provisions of the *D.C. FMLA*.

5. Employee Eligibility for Family and Medical Leave – *D.C. FMLA*

- a. For the purposes of family and medical leave under the *D.C. FMLA*, an "eligible employee" is an individual who:
 - (1) Has been employed by the District government for 1 year without a break in service except for regular holidays or leave; and
 - (2) Has worked at least 1,000 hours during the 12-month period immediately preceding the request for family or medical leave.
- b. A uniformed member of the Metropolitan Police Department (MPD) or the Fire and Emergency Medical Services Department (FEMSD) is eligible for family and medical leave to the same extent as any other District government employee. However, rights provided under *D.C. FMLA* may be suspended temporarily if the employee is required

by rules or regulations of the MPD or FEMSD, or by the provisions of a collective bargaining agreement, to return to duty because of an emergency declared by the agency head or the Mayor.

6. **Definitions – D.C. FMLA**

The following terms shall have the meaning ascribed:

Committed relationship – a familial relationship between 2 individuals demonstrated by such factors as, but not limited to, mutual economic interdependence including joint bank accounts, shared lease, joint tenancy, and joint and mutual financial obligations such as loans, domestic interdependence including close association, public presentment of the relationship, exclusiveness of the relationship, length of the relationship, and the intent of the relationship as evidenced by a will or life insurance.

Child – any person under 21 years of age; also any person who, though 21 years of age or older, is substantially dependent upon the eligible employee by reason of physical or mental disability; and any person under 23 years of age who is a full-time student at an accredited college or university.

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

Health care provider – any person licensed under federal, state, or District law to provide health care services.

Reduced leave schedule – family leave that, based on the mutual agreement of the employee and his or her agency, is scheduled for a fewer number of hours than an employee is officially scheduled to work each workweek or workday. Family leave on a reduced leave schedule must be taken within a period that does not exceed 24 consecutive workweeks.

Serious health condition – a physical or mental illness, injury, or impairment that involves inpatient care in a hospital, hospice, or residential health care facility, or continuing treatment or supervision at home by a health care provider or other competent individual. Examples of a serious health condition include, but are not limited to, heart attacks, heart conditions requiring heart bypass or valve operations, most cancers, back conditions requiring extensive therapy or surgical procedures, strokes, severe respiratory conditions, spinal injuries, appendicitis, pneumonia, emphysema, severe arthritis, severe nervous disorders, lupus, AIDS, injuries caused by serious accidents off the job, ongoing pregnancy, miscarriages, complications or illnesses related to pregnancy, prenatal care, childbirth, and recovery from childbirth.

7. General – D.C. FMLA

a. Family Leave

The *D.C. FMLA* entitles eligible employees to up to 16 workweeks of unpaid family leave over a 24-month period for:

- (1) The birth of a child of the employee;
- (2) The placement of a child with the employee for adoption or foster care;
- (3) The placement of a child with the employee for whom the employee permanently assumes and discharges parental responsibility; or
- (4) The care of a family member of the employee who has a serious health condition. The request for family leave must be supported by a medical certification of the serious health condition issued by the family member's health care provider (see sample optional *Medical Certification Form* attached).
- (5) Family leave may be taken intermittently when medically necessary to care for a family member who has a serious health condition.

b. Medical Leave

- (1) The *D.C. FMLA* entitles eligible employees to up to 16 workweeks of unpaid medical leave over a 24-month period to an employee who becomes unable to perform his or her duties because of a serious health condition.
- (2) Medical leave may be taken intermittently when medically necessary because of the employee's serious health condition.
- (3) Medical leave may be taken on a reduce leave schedule, upon supervisor's approval, during which the 16 workweeks of family leave may be taken over a period not to exceed 24 consecutive workweeks.
- (4) Unpaid medical leave may be substituted with annual, personal or compensatory leave.

- c. An employee who is on family or medical leave is considered in a leave without pay (LWOP) status, except as otherwise provided in this instruction.
- d. The 24-month utilization period for the family or medical leave begins on the date an employee begins using family or medical leave under the *D.C. FMLA*.
- e. When an employee is on family or medical leave and is carried in a LWOP status, his or her employee health benefits will continue, provided the employee continues to make his or her contributions to the group health plan.

- f. When an employee is on family or medical leave intermittently, the person in the employing agency designated to handle FMLA requests should notify the employee of the total number of remaining hours available for his or her use under FMLA leave; and may provide the employee with a copy of the *Family/Medical Leave Use Report* (copy attached).
- g. Upon return to duty following an absence on family or medical leave, an employee is entitled to occupy the same position he or she occupied immediately before the absence on family or medical leave, or an equivalent position.

8. Tour of Duty – D.C. FMLA

- a. For the purpose of this instruction, the 16-week entitlement to family and medical leave is to be reduced to an hourly equivalent based on each employee's tour of duty (TOD) as specified in the employee's personnel records in PeopleSoft.
- b. For a full-time employee who works 40 hours per week, the 16-week hourly equivalent is 640 hours (40 hours x 16 weeks = 640 hours).
- c. For TODs other than full-time, including part-time TODs, the hourly equivalent is to be prorated by multiplying the employee's weekly TOD times the 16-week entitlement (see *Proration Chart* attached). For example:

For a part-time employee whose weekly TOD is 32 hours, the 16-week hourly equivalent is 512 hours (32 hours x 16 weeks = 512 hours (32 hours x 16 = 512 hours))

- d. During the 24-month utilization period, an employee's regularly scheduled TOD may change and, as a result, the total number of hours of leave to which the employee is entitled will also change.

Example:

Employee A is a part-time employee who works 20 hours per week. **Employee A** uses 6 consecutive weeks (120 hours) of medical leave and then returns to his part-time position. (The 24-month medical leave utilization period for **Employee A** began on the first day of absence on medical leave.) Shortly after returning to his position from the 6 weeks of medical leave, **Employee A** applies for and accepts employment to a full-time, 40-hour-per-week position. Several months after beginning his full-time tour of duty, **Employee A** has another medical need, and requests and uses the remaining 10 weeks of medical leave to which entitled. **Employee A's** medical leave as a full-time, 40-hour-per-week employee now has an hourly equivalent value of 400 hours (40 hours times 10 weeks equals 400 hours). Upon return to his full-time position following the 10 weeks of medical leave, **Employee A** has exhausted his 24-month entitlement to medical leave.

Employee A used 6 weeks (120 hours) of medical leave as a part-time employee and 10 weeks of medical leave (400 hours) as a full-time employee. In this example, **Employee A** used all 16 weeks of medical leave to which entitled, even though he only used 520 hours of medical leave. **Employee A** has no further entitlement to medical leave under the *D.C. FMLA* during the 24-month period that began on the 1st day of his initial 6-week absence.

9. Specific Provisions on Family Leave – *D.C. FMLA*

- a. Family leave for the birth of a child, the placement of a child with the employee for adoption or foster care, or the placement of a child with the employee for whom the employee permanently assumes and discharges parental responsibility must commence within 12 months of the birth of the child or placement of the child with the employee. If family leave does not commence within 12 months of the birth of a child or placement of a child with the employee, the employee's entitlement to family leave for that event is forfeited.
- b. Family leave may be taken:
 - (1) As a block of time (*i.e.*, 2 weeks, 13 consecutive days, 6 weeks, *etc.*); or
 - (2) On a reduced leave schedule upon mutual agreement of the employee and his or her agency.

A reduced leave schedule represents a temporary change to an employee's regular work schedule so as to accommodate the employee's regular and recurring need for family leave on a less than full-time basis. For example, a full-time employee's Monday through Friday regular work schedule may be changed to Monday, Wednesday, and Friday, to accommodate the employee's need for family leave on Tuesday and Thursday. A reduced leave schedule does not represent a change to the employee's regularly scheduled tour of duty. However, when taken on a reduced leave schedule, the 16 weeks of family leave must be taken within a period that does not exceed 24 consecutive workweeks.

- c. If 2 family members are employed in the same office, division, subdivision, or other organizational subdivision of an agency and both employees have the same or inter-related duties so that the absence of the employees would unduly disrupt agency business, the agency may limit the aggregate family leave to 16 workweeks within a 24-month period. Likewise, the agency may limit the aggregate family leave that the employees may take simultaneously to 4 workweeks during a 24-month period. The family leave taken under the provisions of this paragraph may be taken as a block of time, on a reduced leave schedule, or intermittently. This is a statutory provision that is not likely to have an effect on the District government.
- d. An employee who is on family leave will be considered in a LWOP status except as provided below:

- (1) An employee may elect to use any annual leave or compensatory time to his or her credit for family leave. However, should the employee elect to use annual leave or compensatory time for family leave, that leave will count against the 16-workweek family leave entitlement.
- (2) An employee may make application to receive annual leave pursuant to the provisions of the *Annual Leave Bank Program* administered by the D.C. Department of Human Resources (DCHR), the employing agency's *Voluntary Leave Transfer Program*, or pursuant to the provisions of a leave bank program contained in a collective bargaining agreement (CBA), because of a medical emergency. However, any leave credited to an employee pursuant to the provisions of such programs will count against the 16-workweek family leave entitlement.

10. Specific Provisions on Medical Leave – D.C. FMLA

- a. An employee who is unable to perform the functions of his or her position because of a serious health condition is entitled to medical leave for as long as the employee is unable to perform his or her job functions; except that the medical leave must not exceed 16 workweeks during any 24-month period. The request for medical leave must be supported by a medical certification of the serious health condition issued by the employee's health care provider.
- b. An employee who is on medical leave is considered in a LWOP status except as provided below:
 - (1) An employee may elect to use any sick leave to his or her credit for medical leave. However, should the employee elect to use sick leave for medical leave, that leave will count against the 16-workweek family leave entitlement.
 - (2) Based on the mutual agreement of the employee and his or her agency, the employee may use any annual leave or compensatory time to his or her credit for medical leave. However, should the employee use annual leave or compensatory time for medical leave, that leave will count against the 16-workweek medical leave entitlement.
 - (3) An employee may make application to receive annual leave pursuant to the provisions of provisions of the *Annual Leave Bank Program* administered by the DCHR, the employing agency's *Voluntary Leave Transfer Program*, or pursuant to the provisions of a leave bank program contained in a CBA, because of a medical emergency. However, any leave credited to an employee pursuant to the provisions of such program will count against the 16-workweek medical leave entitlement.

- c. Medical leave may be taken as a block of time (*i.e.*, 4 weeks, 6 weeks, 16 weeks, *etc.*) or intermittently when medically necessary. Medical leave taken intermittently may be taken over a 24-month period. *See* paragraph 7 (b) of this instruction

11. Medical Certification of Serious Health Condition – *D.C. FMLA*

- a. As appropriate, an employee's request for family or medical leave must be supported by a medical certification issued by the family member's health care provider or the employee's health care provider (see sample optional *Medical Certification Form* attached). The employee must provide the request for family or medical leave, and the medical certification when appropriate, to the person in the employing agency designated to coordinate or process such requests.
- b. The medical certification may only be used for the purpose of making a decision with regard to requests for family and medical leave; and all information obtained from the medical certification must be kept confidential.
- c. The medical certification must state:
 - (1) The date on which the serious health condition commenced;
 - (2) The probable duration of the condition;
 - (3) The appropriate medical facts within the knowledge of the health care provider that would necessitate the employee to take family or medical leave; and
 - (4) For the purposes of family leave, an estimate of the amount of time that the employee is needed to care for the family member; or
 - (5) For the purposes of medical leave, a statement that the employee is unable to perform the functions of his or her position.

[NOTE: Should the agency and employee mutually agree to alternative employment for the duration of the employee's serious health condition, the agency may request that the medical certification for medical leave also include an explanation of the extent to which the employee is unable to perform the functions of his or her position.]

- d. The employing agency may require the employee to obtain the opinion of a 2nd health care provider. The opinion of the 2nd health care provider will be at the expense of the employing agency.
- e. If the 2nd opinion required by the employing agency differs from the medical certification provided by the employee, the employee may obtain the opinion of a 3rd health care provider who has been mutually agreed upon by the employee and the

employer. The opinion of the 3rd health care provider will be at the expense of the agency and is binding on the employee and the employing agency.

- f. The health care provider mutually agreed upon for 2nd and 3rd opinions must not be retained on a regular basis by the District government or the employee, or otherwise bear a close relationship to the District government or the employee, so as to give the appearance that the medical certification is biased.
- g. The agency may require the employee to obtain subsequent re-certifications on a reasonable basis, to include a fitness-for-duty certificate from the employee's health care provider indicating that he or she is able to resume work.

12. Requests for Family and Medical Leave – D.C. FMLA

a. Requirement for Advanced Written Request for Family or Medical Leave

When the need for family or medical leave is foreseeable (that is, the employee knew or should have known of the need) because of planned medical treatment or supervision, the employee must:

- (1) Provide his or her agency with a written request for family or medical leave 30 days prior to the beginning date of the leave; and
- (2) Make a reasonable effort to schedule medical treatment or supervision, subject to the approval of the health care provider of the employee or family member, in a manner that does not unduly disrupt the operations of the agency.

b. Requests in Cases in which the Need for Family or Medical Leave cannot be Reasonably Foreseen

When the circumstances leading to the need for family or medical leave cannot be reasonably foreseen, the employee must provide his or her agency with either an oral or written request as soon as possible, but not more than two business days after the date the family or medical leave began. An oral request must be followed up with a written request at the earliest practicable date.

- c. Written requests for family and medical leave are to be made on the *Request for Family/Medical Leave Form* attached to this instruction. The employee must submit the original form and 3 copies to the agency director (or designee). The agency will approve or disapprove the application as expeditiously as possible.
- d. The employing agency shall preserve the confidentiality of information relating to the circumstances and the particular reasons for the employee's request for family or medical leave.

13. Agency Responsibility in Responding to *D.C. FMLA* Requests

- a. Each agency shall designate an individual or individuals to serve as *FMLA Coordinator(s)*. The agency *FMLA Coordinator* must be knowledgeable of the requirements of the program to ensure proper handling and processing of *FMLA* requests.
- b. **Confidentiality of *FMLA*-Related Information**
 - (1) The employing agency shall preserve the confidentiality of *FMLA*-related information received and the reason(s) for employees' requests for family or medical leave.
 - (2) Only individuals with a demonstrated need to know about a *FMLA* request should be informed about the employee's request, and even then, information that is contained in *FMLA* forms and supporting medical certification shall not be disclosed or shared with a supervisor, manager, or other agency official, unless it is determined that the supervisor, manager, or other agency official has a demonstrated need to know about the information.
 - (3) Given the confidential nature of *FMLA* requests, *FMLA* forms and supporting medical certifications shall be maintained in a segregated file, and the documents shall be stored separate and apart from the agency's human resources files.

14. Recording Family and Medical Leave – *D.C. FMLA*

- a. Records must be kept of each employee's use of family or medical leave; and of any alternative employment in lieu of medical leave. The employee *Family/Medical Leave Use Report Form* attached to this instruction must be used by agencies to record each employee's family and medical leave usage. The report should indicate the beginning and end of the 24-month entitlement period.
- b. Each agency is responsible for maintaining the following employee records documenting:
 - (1) The cost to the agency for any expense incurred to temporarily replace an employee, if any, during the time the employee is absent on family or medical leave;
 - (2) The cost to the agency for the employer's share of employee health benefits, if any, during the time the employee is absent on family or medical leave;
 - (3) The length of family or medical leave taken by the employee;
 - (4) The salary and grade level of the employee who has taken family or medical leave;
 - (5) The reason(s) the employee took family or medical leave;

- (6) The employee's request and supporting documentation for family and medical leave; and
- (7) If applicable, the alternative employment, and the length of the alternative employment, provided to the employee in the place of medical leave (see Attachment).

15. Employment and Benefits Protection – D.C. FMLA

- a. Upon return to duty following an absence on family or medical leave, an employee is entitled to occupy the same position he or she occupied immediately before the absence on family or medical leave, or an equivalent position.
- b. The employee's coverage under his or her group health insurance program will continue during the period of absence under family or medical leave; provided that the employee continues to pay the employee-contribution.
- c. An employee who formally elects to cancel his or her health benefits cannot re-enroll in a health benefit program until the earlier of the next health benefits "Open Season," or upon satisfying a health benefits enrollment event. The employee must provide written notice of his or her election to either continue or terminate his or her health benefits (see attachment: "*Employee Health Benefits (FEHB & DCEHB) Options while in Non-Pay Status*" form).

16. Alternative Employment – D.C. FMLA

- a. An agency may provide alternative employment to an employee with a serious health condition, provided:
 - (1) The employee and the agency mutually agree to the alternative employment;
 - (2) The employee provides supporting medical certification from his or her health care provider that provides an explanation of the extent that the employee is unable to perform the functions of his or her position; and
 - (3) Such alternative employment is for the duration of the employee's serious health condition.
- b. When an employee and his or her agency agree to alternative employment, the period of alternative employment will not cause a reduction in the amount of medical leave to which the employee is entitled.
- c. When the employee is able to perform the functions of his or her original position, the employee must return to his or her original position, or to an equivalent position.
- d. An agency is to document the alternative employment and the duration of it provided to an employee in lieu of medical leave. The alternative employment is to be documented on the *Alternative Employment Record* form attached to this instruction.

17. Administrative Enforcement Procedure and Mediation – *D.C. FMLA*

- a. Any employee who has a complaint concerning a denial of rights under the *D.C. FMLA* may file a written complaint with the Office of Human Rights; but the complaint must be filed by the employee within one year of the occurrence or discovery of the alleged violation of the *D.C. FMLA*.
- b. An employee who is filing a complaint may elect to have the complaint mediated pursuant to the provisions of section 1603 of Title 4 of the District of Columbia Municipal Regulations (DCMR) as an alternative to the investigative process provided for in section 1604 of Title 4 of the DCMR.
- c. The enforcement procedure contained in Chapter 16 of Title 4 of the DCMR is the only administrative procedure that may be utilized to resolve an alleged violation of the *D.C. FMLA*. No other complaint resolution procedure, including grievances pursuant to Chapter 16 of the D.C. personnel regulations, General Discipline and Grievances; or negotiated grievance procedures contained in collective bargaining agreements may be used to resolve an alleged violation of the *D.C. FMLA*.

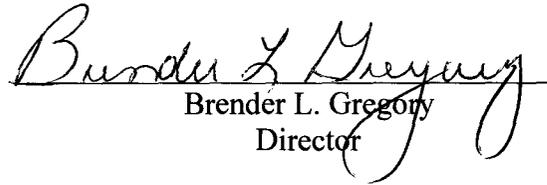
18. Notice of Employee Rights – *D.C. FMLA*

Each agency must conspicuously post and maintain a notice to employees providing pertinent information on the *D.C. FMLA*. The notice attached to this instruction is to be used for this purpose. Copies may be obtained by contacting the Office of Human Rights at (202) 727-4559.

19. Agency Records – *D.C. FMLA*

- a. Each agency shall maintain records to document, on an annual basis, the following:
 - (1) The total number of employees who have taken family or medical leave;
 - (2) The total cost to the agency for any expense incurred to temporarily replace employees, if any, during the time the employees were absent on family or medical leave;
 - (3) The total cost to the agency for the employer's share of employee health benefits, if any, during the time the employees were absent on family or medical leave;
 - (4) The total length of family leave taken by employees;
 - (5) The total length of medical leave taken by employees;
 - (6) The total salary and the grade levels of employees who have taken family or medical leave; and

- (7) The total number of employees who were provided alternative employment, and the total length of the alternative employment, in the place of medical leave.
- b. Agency records relating to family and medical leave requests shall be available for inspection by a representative of the Office of Human Rights (OHR) during regular business hours at the agency's place of business.
- c. Agencies shall report on an annual basis a summary of leave action taken. The report shall be in such form as the OHR prescribes.


Brender L. Gregory
Director

Attachments:

- Proration Chart
- Sample Medical Certification Form
- Request for Family/Medical Leave Form
- Alternative Employment Record Form
- Employee Health Benefits (FEHB and DCEHB) Options while in Non-Pay Status Form
- Notice: "Employees' Rights Under the District of Columbia Family and Leave Act of 1990"

PRORATION CHART
District of Columbia Family and Medical Leave Act of 1990

Hours Worked Per Week	24-Month Entitlement (Hours)
1	16
2	32
3	48
4	64
5	80
6	96
7	112
8	128
9	144
10	160
11	176
12	192
13	208
14	224
15	240
16	256
17	272
18	288
19	304
20	320
21	336
22	352
23	368
24	384
25	400
26	416
27	432
28	448
29	464
30	480
31	496
32	512
33	528
34	544
35	560
36	576
37	592
38	608
39	624
40	640

Note: the hourly equivalent is determined based on the employee's tour of duty at the time the family or medical leave commences.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
D.C. Department of Human Resources

Medical Certification by Health Care Provider

D.C. Family and Medical Leave Act of 1990

(When completed, this form goes to the employee)

1. Employee's Name	2. Patient's Name (if different from employee)
--------------------	------------------------------------------------

3. Page 4 describes what is meant by a "serious health condition" under the D.C. Family and Medical Leave Act of 1990. Does the patient's condition¹ qualify under any of the categories described? If so, please check the applicable category.

(1) _____ (2) _____ (3) _____ (4) _____ (5) _____ (6) _____, or None of the above _____

4. Describe the **medical facts** which support your certification, including a brief statement as to how the medical facts meet the criteria of one of these categories:

5. a. State the approximate **date** the condition commenced, and the probable duration of the condition (and also the probable duration of the patient's present **incapacity**² if different):

b. Will it be necessary for the employee to take work **only intermittently** or **to work on a less than full schedule** as a result of the condition (including for treatment described in Item 6 below)?

If yes, give the probable duration:

c. If the condition is a **chronic condition** (condition # 4) or **pregnancy**, state whether the patient is presently incapacitated² and the likely duration and frequency of **episodes of incapacity**²:

¹ Here and elsewhere on this form, the information sought relates only to the condition for which the employee is taking FMLA leave.

² For the purposes of family or medical leave the term "incapacity" is defined to mean the inability to work, attend school, or perform other regular daily activities due to the serious health condition, treatment therefore or recovery therefrom.

-
6. a. If **additional treatments** will be required for the condition, provide an estimate of the probable number of such treatments.

If the patient will be absent from work or other daily activities because of **treatment** on an **intermittent** or **part-time basis**, also provide an estimate of the probable number of and interval between such treatments, actual or estimated dates of treatment if known, and period required for recovery if any:

- b. If any of these treatments will be provided by **another provider of health services** (e.g., physical therapist), please state the nature of the treatments:
- c. If a **regimen of continuing treatment** by the patient is required under your supervision, provide a general description of such regimen (e.g., prescription drugs, physical therapy requiring special equipment):

-
7. a. If medical leave is required for the employee's **absence from work** because of the **employee's own condition** (including absences due to pregnancy or a chronic condition), is the employee **unable to perform work** of any kind?

- b. If able to perform some work, is the employee **unable to perform any one (1) or more of the essential functions of the employee's job** (the employee or the employer should supply you with information about the essential job functions)? If yes, please list the essential functions the employee is unable to perform:

- c. If neither a. nor b. applies, is it necessary for the employee to be **absent from work for treatment**?

-
8. a. If leave is required to care for a family member of the employee with a serious health condition, does the patient require assistance for basic medical or personal needs or safety, or for transportation?
- b. If no, would the employee's presence to provide psychological comfort be beneficial to the patient or assist in the patient's recovery?
- c. If the patient will need care only intermittently or on a part-time basis, please indicate the probable duration of this need:

Signature of Health Care Provider

Type of Practice

Address

Telephone Number

Date

To be completed by the employee needing family leave to care for a family member:

State the care you will provide and an estimate of the period during which care will be provided, including a schedule if leave is to be taken intermittently or if it will be necessary for you to work less than a full schedule:

Employee Signature

Date

DCSF-1290 (Rev. 10/08)

A “**Serious Health Condition**” means an illness, injury, impairment, or physical or mental condition that involves one of the following:

1. **Inpatient Care** – in a hospital, hospice, or residential health care facility (*e.g.*, an overnight stay).
2. **Continuing Treatment** Required by a Health Care Provider³ (*e.g.*, physical therapy)
3. **Pregnancy** (*e.g.*, ongoing pregnancy, miscarriages, complications or illnesses related to pregnancy, prenatal care, childbirth, recovery from childbirth).
4. **Chronic Conditions** Requiring Treatments by a Health Care Provider (*e.g.*, asthma, diabetes, epilepsy).
5. **Permanent/Long-term Conditions** Requiring Supervision by a Health Care Provider (*e.g.*, Alzheimer’s, a severe stroke, terminal stages of a disease)
6. **Multiple Treatments (Non-Chronic Conditions)** Required by a Health Care Provider (*e.g.*, chemotherapy, radiation, dialysis)

This optional form may be used by employees to satisfy a mandatory requirement to furnish a medical certification (when requested) from a health care provider, including second (2nd) or third (3rd) opinions and recertification.

[COMPLETED FORM GOES TO THE EMPLOYEE]

³ Treatment includes examinations to determine if a serious health condition exists and evaluations of the condition. 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. A regimen of treatment does not include 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.

Intermittently, in accordance with paragraph ___ of DPM Instruction No. 12-40.

Do you wish to continue your health benefits during the unpaid period of your family leave entitlement?

Yes (I understand that I am responsible for continuing to pay my share of the health benefit premium.)

No (Attach declination of benefits form). I understand that by canceling my health benefits enrollment I cannot re-enroll in the health benefits program until the earlier of (1) the next health benefits "Open Season," or (2) upon satisfying a health benefits enrollment event.

4. TO BE COMPLETED IF APPLYING FOR MEDICAL LEAVE

A. I hereby request _____ hours of medical leave because of a serious health condition.

B. I am requesting the following type(s) of leave for medical leave. (I understand that I may elect to use my accrued sick leave and, if agreed to by my agency, accrued annual leave, and/or compensatory time; and, in so using this leave, any sick leave, annual leave, and/or compensatory time will count against my total 16-workweek entitlement to medical leave.)

*Sick leave: Number of hours _____

*Annual leave: Number of hours _____

*Compensatory time: Number of hours _____

Exempt Time Off: Number of Hours _____

Leave bank hours: Number of hours _____

Leave without pay: Number of hours _____

Voluntary Leave Transferred: Number of Hours _____

TOTAL NUMBER OF HOURS _____

* (You must file and attach form SF-71, "Application for Leave," when requesting this type of leave.)

C. The period of medical leave requested in Section 4A above is to be taken:

In a continuous block of time from _____ to _____.

Intermittently as medically necessary.

Do you wish to continue your health benefits during the unpaid period of your medical leave entitlement?

Yes (I understand that I am responsible for continuing to pay my share of the health benefit premium.)

No (Attach declination of benefits form). I understand that by canceling my health benefits enrollment I cannot re-enroll in the health benefits program until the earlier of (1) the next health benefits "Open Season," or (2) upon satisfying a health benefits enrollment event.

A medical certification of your "serious health condition," issued by your health care provider, must be attached to this application.

5. EMPLOYEE CERTIFICATION

I certify that the above statements are true to the best of my knowledge and belief, and that I am eligible to participate in the District of Columbia Family and Medical Leave Act of 1990.

Signature

Date

TO BE COMPLETED BY THE EMPLOYING AGENCY:

Approved Disapproved

(Signature of Approving Official)

Date

FAMILY/MEDICAL LEAVE USE REPORT

EMPLOYING AGENCY: D.C. Department of Human Resources REPORTING PERIOD: 01/01/2007 TO 12/31/2007

NAME OF EMPLOYEE: Jane Doe EMPLOYEE ID#: 00444444

TITLE/SERIES: Human Resources Specialist, CS-201 GRADE/STEP: 11/2 SALARY: \$52,134 HOURLY RATE: \$15.06

IF LEAVE WITHOUT PAY, CONTINUE HEALTH BENEFITS: YES NO HEALTH BENEFIT CODE: HM1 AGENCY WEEKLY COST: \$31.08

TYPE OF LEAVE: FAMILY MEDICAL REASON FOR LEAVE: adoption of child

DCFMLA 24-MONTH PERIOD: 02/25/2005 TO 02/24/2007 TOUR OF DUTY HOURS / FMLA ENTITLEMENT HOURS: 40 / 640

WEEK ENDING PERIOD	LEAVE					FMLA LEAVE				AGENCY COSTS				NOTES	
	ANNUAL LEAVE	SICK LEAVE	LEAVE WITHOUT PAY	COMPENSATORY TIME	LEAVE BANK HOURS	TOTAL HOURS USED	FMLA HOURS PREVIOUSLY USED	FMLA HOURS USED TO DATE	TOTAL FMLA HOURS REMAINING	TOTAL WEEKS USED TO DATE	HOURLY RATE TIMES NUMBER OF HOURS USED THIS WEEK	AGENCY HEALTH BENEFIT COST	COST INCURRED TO TEMPORARILY REPLACE EMPLOYEE		TOTAL COST THIS WEEK
01/07/2007	8			32		40	520	560	80	14	\$726.40	\$31.08		\$757.48	\$757.48
01/21/2007			20	20		40	560	600	40	15	\$726.40	\$31.08		\$757.48	\$1,514.96
02/04/2007			40			40	600	640	0	16	\$726.40	\$31.08		\$757.48	\$2,272.44
SAMPLE															

NUMBER OF WEEKS USED FOR THIS REPORTING PERIOD: 3

(NUMBER OF HOURS) REGULARLY SCHEDULED TOUR OF DUTY = WEEKS USED.) (FRACTIONAL WEEKS MUST BE INCLUDED.)

NOTE: THIS FORM IS TO BE USED FOR EACH PERIOD OF LEAVE TAKEN. THE PERIOD OF LEAVE MAY BE 1 WEEK, 1 HOUR, 3 WEEKS, ETC.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
D.C. Department of Human Resources

EMPLOYEE HEALTH BENEFITS (FEHB AND DCEHB) OPTIONS WHILE IN NONPAY STATUS

Name of Employee: _____ Date: _____

You must respond within 31 days (45 days for employees residing overseas) of this notice, or your health benefits enrollment will automatically terminate.

Each pay period you are enrolled in either the Federal Employee Health Benefits (FEHB) Program or the D.C. Employee Health Benefits (DCEHB) Program, you are responsible for payment of the employee share of the premium. When you enter into a nonpay status, or your pay is insufficient to cover the premium, you must either:

- Terminate the enrollment; or
- Continue the enrollment and agree to pay the premium or incur a debt.

TERMINATING THE ENROLLMENT

If you elect to terminate your enrollment (or the enrollment automatically terminates), the termination will take effect at the end of the last pay period in which premiums were withheld from pay. FEHB or DCEHB coverage, as applicable, will continue at no cost to you for an additional 31 days after the date of termination. During the 31 days, you and your covered family members may convert to a nongroup contract. Termination is not considered a break in the continuous coverage necessary for continuing FEHB or DCEHB coverage into retirement. However, the period during which the termination is in effect does not count toward satisfying the required 5 years of continuous coverage. When you return to pay and duty status, or at the end of the first (1st) pay period your pay becomes sufficient to cover your premium, you must reenroll within 31 days if you want FEHB or DCEHB coverage.

CONTINUING THE ENROLLMENT AND AGREEING TO PAY THE PREMIUM; INCURRING A DEBT

If you elect to continue your coverage, you must elect to pay the premiums directly, or to incur a debt in the amount of the unpaid premiums. If you elect to pay directly, you must mail a check or money order payable to the "D.C. Treasury." Include on the check your name, social security number, a note that the payment is for "FEHB premium" or "DCEHB premium," as appropriate, and the pay period for which the payment is being made. Mail to your Human Resource office.

If you elect to incur a debt, or if you elect to pay directly but fail to pay the entire amount due, you will receive a notice stating the total amount due. The notice will be sent when you return to a pay status, your pay becomes sufficient, or you separate from employment. By electing to continue coverage, you agree to repay the resulting debt in full and to allow the debt to be collected by withholdings from any salary payments to you from the District government. If the amount due cannot be withheld in full from your salary, it will be recovered from a lump sum payment of accrued annual leave, income tax refunds, amounts payable under the Civil Service Retirement System or Federal Employees Retirement System, or any other source normally available for the recovery of a debt due the United States.

Please check the appropriate space(s) below, sign, and return this notice to your employing agency.

After reading and understanding the above, I elect to:

Continue the enrollment (Check one): _____ Submit direct payments _____ Incur a debt

Signature: _____ Date: _____

Terminate the enrollment. Signature: _____ Date: _____

Refer questions to: D.C. Department of Human Resources, Benefits and Retirement Administration, at (202) 442-9655.

To be completed by the agency:

Employee ID Number: _____ Employing Agency: _____

Employee's Health Benefit Code: _____ Leave Without Pay Beginning Date: _____

DISTRICT OF COLUMBIA GOVERNMENT EMPLOYEES

NOTICE OF NON-DISCRIMINATION

In accordance with the District of Columbia Human Rights Act of 1977, as amended, District of Columbia Official Code Section 2-1401.01 *et seq.*, (Act) the District of Columbia does not discriminate on the basis of actual or perceived:

Race	Religion	Sexual Orientation	Matriculation
Color	Age	Gender Identity or	Political Affiliation
Sex (Gender or sexual	Marital Status	Expression	Genetic Information
harassment)	Personal Appearance	Family Responsibilities	Disability
National Origin			

Sexual harassment is a form of sex discrimination which is prohibited by the Act. In addition, harassment based on any of the above protected categories is also prohibited by the Act. Discrimination in violation of the Act will not be tolerated. Violators will be subject to disciplinary action.

Equal Employment Opportunity Rules Governing Complaints of Discrimination in the District of Columbia Government, Title 4 DCMR Chapter 1 and Chapter 5 protects your job-related benefits which include but are not limited to:

Hiring	Training	Reassignment
Promotion	Recruitment	Separation/Termination

If you feel you have been discriminated against in any of the above areas you may elect to either go directly to the court to file a complaint within one year of the alleged discrimination or you may report the act within 180 days to your departmental EEO counselor who has 21 days to resolve the matter. If you are not satisfied with the results, you have 15 days to file a formal complaint with the EEO Director at the Office of Human Rights. For complaints of sexual harassment, you may file directly with the Office of Human Rights.

If you have any questions regarding this process you may contact the Intake Unit at the Office of Human Rights; Telephone number (202) 727-4559.

Employees' Rights Under the District of Columbia

FAMILY AND MEDICAL LEAVE ACT OF 1990

The District of Columbia Family and Medical Leave Act of 1990, D.C. Law 8-181, requires, effective April 1, 1991, all employers of 20 or more employees in the District of Columbia to provide up to 16 weeks of unpaid family leave:

- for the birth of a child, adoption or foster care
- to care for a seriously ill family member

And up to 16 weeks of unpaid medical leave:

- to recover from a serious illness rendering the employee unable to work for a total of 32 weeks during a 24-month period

During the period of leave, an employee shall not lose any employment benefits such as seniority or group health plan coverage.

The employer may require medical certification and reasonable prior notice when applicable.

The Act applies to employees who have worked for the employer for one year without a break in service and who have worked at least 1000 hours during the last 12 months. Employers may have leave policies which are more generous than those required by the Act.

A COMPLAINT CONCERNING A DENIAL OF RIGHTS UNDER THIS ACT MUST BE FILED WITHIN ONE YEAR OF THE OCCURRENCE OR DISCOVERY OF THE VIOLATION.

If you feel you have been discriminated against in any of the above areas you may elect to either go directly to the court to file a complaint within one year of the alleged discrimination or you may report the act within 180 days to your departmental EEO counselor who has 21 days to resolve the matter. If you are not satisfied with the results, you have 15 days to file a formal complaint with the EEO Director at the Office of Human Rights.

If you have any questions regarding this process you may contact the Intake Unit at the Office of Human Rights; Telephone number (202) 727-4559.

*Source of income and place of residence or business are not protected categories in employment.

PARENTAL LEAVE ACT OF 1994

In accordance with District of Columbia Law 10-146, effective August 17, 1994, an employee who is a parent shall be entitled to a total of 24 hours leave* during any 12 month period to attend or participate in school-related events for his or her child.

- "Parent" means natural mother or father of child;
- A person who has legal custody of a child;
- A person who acts as a guardian of a child regardless of legal appointment;
- An aunt, uncle, or grandparent of a child; or
- A person married to a person listed above.
- "School-related event" means an activity sponsored by either a school or an associated organization.

*The leave provided by this Act may consist of unpaid leave unless the parent elects to use any paid family, vacation, personal, compensatory, or leave bank leave that has been provided by the employer.

If you feel you have been discriminated against in any of the above areas you may elect to either go directly to the court to file a complaint within one year of the alleged discrimination or you may report the act within 180 days to your departmental EEO counselor who has 21 days to resolve the matter. If you are not satisfied with the results, you have 15 days to file a formal complaint with the EEO Director.

If you have any questions regarding this process you may contact the Intake Unit at the Office of Human Rights; Telephone number (202)727-4559.

Department _____

EEO Counselor _____

Location _____

Telephone _____

For answers to questions concerning the Act or to file a complaint under the Act, contact:

Government of the District of Columbia | Office of Human Rights
441 4th Street, N.W., 570N
Washington, D.C. 20001
Telephone (202) 727-4559 • Fax (202) 727-9589
www.ohr.dc.gov
Adrian Fenty, Mayor