



Series 400 Personnel	Effective Date 12/16/2022	Review Date Annually	Directive Number 403.7
Chapter 401 – Employee Wellness			
Reviewing Office Police Medical			<input type="checkbox"/> New Directive <input checked="" type="checkbox"/> Revised <small>Revisions in <i>italics</i></small>
References			

FAMILY MEDICAL LEAVE ACT (FMLA)

403.7 - 1 PURPOSE

The purpose of this directive is to establish a uniform procedure for requesting, recording, and reporting personnel utilizing the provisions of the Family Medical Leave Act (FMLA).

403.7 - 2 POLICY

The Family Medical Leave Act of 1993 entitles eligible members up to twelve (12) weeks of paid or unpaid family/medical leave(in a twelve [12] month period beginning with the date an employee starts a period of FMLA leave) or specified family and medical reasons. The FMLA does not diminish any contractual rights or reduce existing leave of absence benefits exceeding the twelve (12) week mandated leave. Therefore, except as expanded by the FMLA, all existing *Department* leave policies remain in effect.

Police Medical and the Human Resources Bureau will review all written requests for a member’s own medical/*family* purposes and make a determination of whether the leave being sought qualifies as FMLA leave. Human Resources Bureau will review all written requests for family purposes and will make a determination of whether the leave being sought qualifies as FMLA leave. The Director of the Human Resources Bureau, as the Police Chief’s designee, will make final determination of FMLA approval. If the leave is determined to qualify under FMLA, the leave cannot be denied under any circumstances.

Any absence designated as FMLA leave shall not be considered for the purposes of sick time counseling or disciplinary action. Additionally, such absences shall not be considered for the purposes of determining if a member qualifies for a perfect attendance award.

403.7 - 3 Definitions

403.7- 4.1 Serious Health Condition

Any illness, injury, impairment, or physical or mental condition that involves:

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1. Illness or injury that involves an overnight stay in a hospital, hospice or residential medical care facility, including any subsequent treatment;
2. Illness or injury that causes three (3) or more consecutive days of incapacity and two (2) or more treatments by a health care provider;
3. Illness or injury that causes three (3) or more consecutive days of incapacity and involves at least one (1) treatment by a health care provider and a regimen of continuing treatment under a health care provider's supervision; or
4. Any period of incapacity due to pregnancy/prenatal care, a chronic serious health condition, or a permanent or long-term health condition that will likely result in a period of incapacity of more than three (3) days.

403.7 - 4 PROCEDURES

403.7- 4.1 Member Entitlement

To be eligible for a leave under the FMLA, members must have been employed by the *City of Detroit* for a total of twelve (12) months and worked at least 1,250 hours during the previous twelve (12) month period (1,250 hours of work means actual hours worked, including overtime, and does not include time on holiday, vacation, sick leave, or other paid leaves). An eligible member who currently has health care benefits is entitled to have his or her health care benefits continued during the twelve (12) week FMLA period, regardless of whether the member elects to take a paid or unpaid leave, in the same manner as if he or she remained on active duty. This includes hospital, medical, dental, vision, and prescription drug programs. The member remains responsible for all insurance co-payments.

Members extending an unpaid leave of absence beyond the twelve (12) week FMLA period, who also elect to continue health care coverage during this period, will be responsible for co-payments and all insurance premium payments (employer and employee portion of the insurance premium).

403.7- 4.1 Notifying Members of FMLA Leave Designation

Commanding officers are responsible for notifying members that leave being taken is designated and will be counted as FMLA leave. Verbal or written notification shall be given once it has been determined that the member's absence is a FMLA qualifying event. If verbal notification is given, it shall be confirmed in writing. A copy of the approved request form will be forwarded to the member.

403.7- 4.1 Reasons for Leave

A member may take a family/medical leave for any of the following reasons:

1. Birth of a child and in order to care for such child;
2. Placement of a child with the member for adoption or foster care and in order to care for the newly placed child;

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3. Care for a spouse, son, daughter, or parent (covered relation) with a serious health condition; or
4. A member's own serious health condition that renders him/her unable to perform an essential function of his/her position.

Leave for either of the first two (2) reasons shall be completed in the twelve (12) month period beginning on the date of birth or placement. In addition, cases where a married couple is employed by the *Department*, the two spouses together may take a combined total of twelve (12) weeks leave during any twelve (12) month period for reasons one (1) and two (2), or to care for the same individual pursuant to reason three (3).

403.7- 4.1 Notice of Leave

If the need for family/medical leave is foreseeable, a member shall give the *Department* a minimum thirty (30) day prior written notice. In the event the need for family/medical leave is not foreseeable, the member shall give notice to his or her immediate supervisor within one (1) to two (2) days of learning of the need for family/medical leave. The member shall explain the reason for the requested leave in order for the supervisor to determine if the leave qualifies under the FMLA. In extraordinary circumstances, the member shall notify his or her immediate supervisor as soon as practicable. Failure to provide such notice may be grounds for delay of leave.

Additionally, prior to planning medical treatment, the member shall consult with the *Department* regarding the dates of such treatment. The required *Department* forms are available on the *Department's* Intranet.

In many instances, members will not refer to FMLA per se. It is the responsibility of the supervisor to obtain the pertinent information to determine whether an absence is an FMLA qualifying event.

403.7- 4.1 Reporting Requirements

A member shall give notice to his or her immediate supervisor as soon as practicable (generally, within two (2) business days) if the dates of leave change (i.e., leave beginning earlier or later than anticipated), are extended, or are initially unknown. The notice shall be in writing on the Leave Periodic Status Report (DPD FMLA 334-B) and forwarded to Police Medical. This form is available on the *Department's* Intranet.

403.7- 4.1 Timekeeping

A member's usage of approved FMLA leave shall be recorded on the FMLA Timekeeping Tracking Log (DPD 334-D) which is available on the *Department* intranet. Timekeepers shall indicate the date of the approved FMLA leave, the hours used on that date and indicate the type of paid time that was deducted from the member's

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bank. Timekeepers shall maintain the original log with the member's Timecard (DPD-590). Timekeepers shall deliver, either via facsimile or by hand, a copy of the FMLA Timekeeping Tracking Log of all members assigned to their command with an approved open FMLA status, to the Human Resources Bureau, upon the completion of each twenty-eight (28) day work period. Timekeepers shall submit the FMLA Timekeepers Tracking Log no later than five (5) days following the completion of each twenty-eight (28) day work period.

403.7- 4.1 Medical Leave

The first twelve (12) weeks of an absence for maternity will count towards the member's annual FMLA allotment. A twelve (12) week maternity leave may be extended in conjunction with an approved FMLA request. The member can request an extended maternity leave by forwarding an Inter-Office Memorandum (DPD 568) through channels to the Chief of Police. A copy of the Inter-Office Memorandum should be forwarded to Police Medical and Police Personnel. The dates of the approved FMLA leave shall be included on the Inter-Office Memorandum.

403.7- 4.1 Family Care

Members are entitled to an annual allotment of up to twelve (12) weeks FMLA for the care of a family member classified as a covered relative. Pursuant to current labor contracts, the member may request to utilize sick time for the first 3 days of family care leave to care for an immediate family member. Thereafter, at the member's option, other non-sick accumulated time (i.e., compensatory, vacation, furlough, etc.) may be used during all or part of the remaining twelve (12) week leave for the care of a family member classified as a covered relative. In the alternative, a member may elect to be carried absent no pay during the leave period.

403.7- 4.1 Medical Certification

If a member is requesting leave because of his/her own or a covered relation's serious health condition, the member and the relevant health care provider shall supply appropriate medical certification. If the member is requesting a leave for him or herself, the "Certification of Health Care Provider for Employee's Serious Health Condition" shall be completed. If the member is requesting a leave for a covered family relation's serious health condition, the "Certification of Health Care Provider for Family Member's Serious Health Condition" shall be completed. These are two separate forms available on the *Department* Intranet.

When requesting leave, the *Department* will notify the member of the requirement for medical certification and when it is due. If a member provides at least thirty (30) calendar days' notice of medical leave, the member shall also provide the medical certification before the leave begins. Failure to provide requested medical certification in a timely manner may result in denial of leave until it is provided.

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The *Department*, at its expense, may require an examination by a second health care provider designated by the *Department*, if it reasonably doubts the medical certification initially provided. If the second health care provider's opinion conflicts with the original medical certification, the *Department*, at its expense, may require a third, mutually agreeable health care provider to conduct an examination and provide a final and binding opinion.

The *Department* may require subsequent recertification. Failure to provide requested certification within fifteen (15) calendar days, except in extraordinary circumstances, may result in delay of further leave until it is provided.

If it is not practical under the particular circumstances to provide the requested certification no later than the fifteen (15) calendar days after the date requested, the member shall provide the medical certification within a reasonable period of time under the circumstances involved, but no later than thirty (30) calendar days after the initial request. Further, the failure to provide medical certification as requested will result in the member being carried as absent without leave. An absence without leave for a period of five consecutive days shall be deemed a resignation.

403.7- 4.1 Documentation

In certain instances, further documentation may be required to be submitted upon request, i.e., marriage certificate, birth certificate, court documents, etc.

403.7- 4.1 Benefits

During an approved medical/family leave, the *Department* will maintain a member's health care benefits as if the member continued to be actively employed. If the paid leave is substituted for unpaid family/medical leave, the *Department* will deduct the member's portion of health care premiums as a regular payroll deduction. If the leave is unpaid, the member shall pay his/her portion of health care premiums through the City of Detroit's Benefits Division. To facilitate this process, the member shall submit the form "Request for Continuation of Health Care Coverage/Deduction Authority" to Police Personnel. This form is available on the *Department's* Intranet.

A member may elect not to have his/her health care benefits continued while on unpaid FMLA leave. Such election shall be made on the form "Request for Continuation of Health Care Coverage/Deduction Authority" and submitted to Police Personnel.

403.7- 4.1 Intermittent Scheduled Leave

Leave taken due to a serious health condition may be taken intermittently, i.e., reducing the usual number of hours of work per week or day, if medically necessary. If leave taken is paid, the number of hours taken will be deducted from the member's

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appropriate banks (i.e., compensatory, furlough, sick, etc.). If leave taken is unpaid, the *Department* will reduce the member's pay based on the amount of time actually worked.

While a member is on intermittent or reduced schedule leave, the *Department* may temporarily transfer him/her to an available alternative position that better accommodates the member's recurring leave and which has equal pay and benefits.

Additionally, the requested intermittent schedule shall contain the specific days and/or hours of leave medically necessary. An intermittent schedule shall be renewed every six months.

403.7- 4.1 Notice Posting

A notice describing the provisions of the Family Medical Leave Act shall be posted in a conspicuous location at all commands. The form can be accessed via the *Department's* Intranet or the Department of Labor's website at <http://www.dol.gov/esa/regs/compliance/posters/fmla.htm>.

403.7 - 5 Department Designated FMLA Leave

When a member notifies a supervisor of the need to utilize leave benefits for him or herself, or a family member that appears would be for an FMLA purpose, i.e., a member is hospitalized, has a serious health condition, or a covered relative has serious health problems, the responsibility lies with that supervisor to notify the member that the leave will be preliminarily designated as FMLA qualifying leave and designate it as such.

If the member does not provide sufficient information for the supervisor to make a determination as to whether the reason for leave qualifies, the supervisor shall make further inquiry to ascertain the information. If it is determined that the absence qualifies as an FMLA absence, the supervisor shall provide a Request for FMLA form, Medical Certification form, and other required documents to the member. The reports are to be completed and returned by the member no later than fifteen (15) calendar days after the date received.

Additionally, the supervisor shall ensure that Police Medical and Police Personnel are notified by telephone no later than the following business day and are provided written documentation concerning the member's preliminary status (i.e., fax, *Department* mail, *electronic mail*, hand delivered). Written notice shall be provided to the member and the member's command once it has been determined that the leave qualifies under the FMLA.

403.7 - 6 Return to Work

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When a member returns to work from an FMLA approved absence for his or her own serious health condition, the *Department* requires a Fitness for Duty Certification from the member's physician. An etiology form is required for a member to return to restricted duty. A 24-function form is required for a member to return to full duty. These forms are available *via* Police Medical.

When a probationary member is on FMLA leave for more than thirty (30) calendar days, his or her commanding officer shall request that a Probationary Evaluation Board be convened to determine whether the member's probationary period should be extended to cover the member's period of absence from the *Department*.

403.7 - 7 Failure to Return

If a member fails to return to work after a period of five (5) consecutive days after the expiration of an approved FMLA leave, the absence shall be deemed a resignation. FMLA regulations provide that if a member does not return to work after an unpaid FMLA absence during which the city maintained health care benefits, the *City* can take steps to recover the costs of the premiums paid by the City for such benefits. Exceptions are when the failure to return to work is due to a continuing serious illness of the member, the immediate family, or for special circumstances beyond the control of the member which prevent him/her from returning to work. In such cases, a request to the Chief of Police for a medical leave of absence shall be completed and forwarded through channels. No recovery of insurance premiums can be made for a paid absence.

403.7 - 8 Record Keeping

Any records and documents relating to medical certification, recertification or medical histories of members, or their family members, shall be maintained in separate files and treated as confidential medical records. Police Personnel shall act as the *Department's* repository for all FMLA related approved requests for sworn personnel of the *Department*. Records relating to FMLA leave shall be retained for three (3) years. All such records shall be available for inspection by representatives of the United States Department of Labor.

Related Forms:

- Leave Periodic Status Report, DPD FMLA 334-B
- FMLA Timekeeping tracking log, DPD 334-D
- Certification of Health Care Provider for Employee's Serious Health Condition
- Certification of Health Care Provider for Family Member's Serious Health Condition
- Request for Continuation of Health Care Coverage/Deduction Authority