

FAMILY AND MEDICAL LEAVE	Document Number	GO 504
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1. PURPOSE

In instances of family medical emergencies, the birth and adoption of children, the need to care for family members with serious health conditions or an employee's own serious health condition, the need to care for a covered service member, and other qualifying military exigencies, the department recognizes the concern of employees in these matters and has thus established these guidelines for the administration and application of family and medical leave in accordance with State and Federal laws.

2. PERSONS AFFECTED

All department personnel.

3. POLICY

It shall be the policy of the Hawai'i Police Department that eligible employees will be granted family and medical leave under State and/or Federal guidelines as deemed appropriate by the provisions of the applicable leave policy.

4. DEFINITIONS

4.1. State Family Leave Provisions (FL)

- 4.1.1. Child - An individual who is a biological, step, adopted, or a foster son or daughter of an employee.
- 4.1.2. Employee - A person who has worked for the County of Hawai'i at least six (6) consecutive months with at least 50% full time equivalency (FTE).
- 4.1.3. Employer - The Hawai'i Police Department.
- 4.1.4. Health Care Provider - A physician as defined under section 386-1 of the Hawai'i Revised Statutes.
- 4.1.5. Parent - A biological, foster, or adoptive parent, a parent-in-law, a step-parent, a legal guardian, a grandparent or grandparent-in-law.

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4.1.6. Serious Health Condition - An acute, traumatic or life-threatening illness, injury, or impairment which involves treatment or supervision by a health care provider.

4.1.7. Certification - A statement from a health care provider, family court, recognized adoption agency, an attorney handling an adoption, or an individual officially designated by a birth parent to select and approve the adoptive family, which certifies an impending birth or adoption of a child or the health status of a family member who requires care by family members.

4.2. Federal Family and Medical Leave Provisions (FML)

4.2.1. FMLA – Federal Family & Medical Leave Act

4.2.2. Employee - A person who has worked for the County of Hawai‘i for at least 12 months (need not be consecutive) and at least 1250 hours of work during the 12-month period immediately preceding the commencement of leave.

4.2.3. Employer - The Hawai‘i Police Department.

4.2.4. Health Care Provider - An individual as defined under section 101 (6) of the Federal Family & Medical Leave Act (FMLA).

4.2.5. Intermittent Leave - Leave taken in separate blocks of time due to a single illness or injury, rather than for one continuous period of time, and may include leave of periods from an hour or more to several weeks. Examples of intermittent leave would include leave taken on an occasional basis for medical appointments, or leave taken several days at a time spread over a period of six months, such as for chemotherapy.

4.2.6. Parent - A biological parent or an individual who stands or stood in loco parentis or in the case of an employee, a person who had such responsibility for the employee when the employee was a child. Parent does not include parent-in-law.

4.2.7. Reduced Leave Schedule - Leave schedule that reduces an employee’s usual number of working hours per workweek, or hours per workday.

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- 4.2.8. Serious Health Condition - An illness, injury, impairment, or physical or mental condition that involves:
- a. In-patient care in a hospital, or residential medical care facility, or
 - b. Continuous treatment by a health care provider. Continuing treatment 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 the health care provider.
- 4.2.9. Son or Daughter - A biological, adopted child, or foster child, a step-child, a legal ward, or a child of a person standing in loco parentis who is either under the age of 18, or age 18 or older and incapable of self care because of a mental or physical disability.
- 4.2.10. Leave to care for covered service member who is injured – Leave that permits an employee to take up to 26 weeks of leave to care for a current member of the Armed Forces, including a member of the National Guard or Reserves, who has a serious injury or illness incurred in the line of duty on active duty that may render the servicemember medically unfit to perform duties for which the servicemember is undergoing medical treatment, recuperation, or therapy; or is in outpatient status; or is on the temporary disability list.
- 4.2.11. Military exigency leave – Leave that permits an employee with a spouse, son, daughter, or parent on active duty or call to active duty status in the National Guard or Reserves in support of a contingency operation, to use their 12-week leave entitlement to address certain qualifying exigencies. Qualifying exigencies may

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include attending certain military events, arranging for alternative child care, addressing certain financial and legal arrangements, attending certain counseling sessions, and attending post-deployment reintegration briefings.

5. RESPONSIBILITIES

5.1. Personnel Officer - The department's Personnel Officer (Assistant Chief of the Administrative Bureau) is responsible for administering family and medical leaves as provided for by State and Federal law. Any questions or concerns regarding family and medical leave should be addressed to the Personnel Officer or his representative.

5.2. Application

5.2.1. Forms - The following forms are available from the Personnel Officer or his representative and shall be utilized in the application and administration of FL and FML:

- a. County of Hawai'i Application for Leave of Absence form
- b. DHR-1, Family Leave Form
- c. DHR AAD-008, Application for Family Leave under the Federal Family & Medical Leave Act (FMLA)
- d. DHR AAD-009, Notification and Other Information for Employees Asserting Rights Under the Family and Medical Leave Act (FMLA)
- e. DHR AAD-010, Fitness-For-Duty Certification

5.2.2. Notification

- a. Employee shall notify the department of the need for FL or FML as soon as it is practicable or when circumstances permit. This notice may be provided in person or by telephone, telegraph, facsimile machine or other electronic means.

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- b. Notice may be given by an employee's representative if the employee is unable to notify the department personally.
- c. For leave that is reasonably foreseeable, employee must provide the department with 30 days' notice of the leave.
- d. The department may delay the onset of a leave when an employee fails to provide the required notice.
- e. At the time an employee gives notification of FL or FML, the department shall provide the employee with a copy of FL or FML guidelines which informs employee of the specific expectations, obligations and consequences of the failure to meet FL or FMLA requirements.
- f. The department shall inform employee whether requested leave qualifies as FL, FML, or both. The department's designation should be made before the leave starts, or before an extension of leave is granted.

5.2.3. Leave Options - With the approval of the Police Chief, FL and FML shall be taken in the form of the following types of leave:

- a. Leave without pay
- b. Leave with pay:
 - Vacation Leave
 - Sick Leave – Sick leave may be utilized for FML only for an employee's own serious health condition.
 - Compensatory leave (C.T.O.)
- c. Combinations of leave with/without pay
- d. The minimum amount of paid leave that may be substituted or utilized for FL or FML shall be for no less than one (1) hour.

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5.2.4. FL Application Requirements

- a. Employee requesting FL is required to submit a completed Family Leave Form (Form DHR-1) along with a certification stating the specific reason for the request.
- b. The Family Leave Form should be attached to a completed Application for Leave of Absence form with the type of leave noted as family leave. Employee must indicate whether the period of family leave is for leave of absence without pay and whether all or any part of the leaves with pay is to be charged towards the family leave. A breakdown must be provided in the “hours” and “date” sections.
- c. Both forms shall be forwarded through proper channels for approval, upon which it will be returned to the respective commands to be attached to the requesting employee’s Time and Attendance Report for the requested time period.

5.2.5. FML Application Requirements

- a. For FML not involving substitution of State Family Leave, the following application procedures shall apply:
 - Employee shall complete an Application for Leave of Absence form and submit it to their immediate supervisors.
 - The type of leave shall be indicated as “FML.”
 - Employee shall also indicate whether the period of FML is for leave of absence without pay, or whether any or all of the leave period (not to exceed 12 weeks) is to be charged to vacation or sick leave or compensatory time off. A breakdown must be provided in the “hours” and “date” sections of the form.
 - Employee shall also complete the Application for Family Leave under the FMLA form (Form DHR

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AAD-008) and attach it to the Application for Leave of Absence form.

- b. If State Family Leave is being substituted during any period of FML, the following shall apply:
- Employee shall complete an Application for Leave of Absence form and submit it to their immediate supervisors.
 - “FML/FL” is to be indicated for the type of leave.
 - Employee shall indicate whether the period of concurrent State Family Leave and FML is for leave of absence without pay, or whether any or all of the leave period (not to exceed 12 weeks) is to be charged to vacation or sick leave or compensatory time off. A breakdown must be provided in the “hours” and “date” section of the form.
 - Employee shall complete the Family Medical Leave Packet (Attachment A) provided by the Human Resources Specialist.

5.3. Change in Status Notification

5.3.1. When a change occurs to an employee’s planned date of return, the employee shall report to the department the status of the employee’s leave and intent to return to work.

5.3.2. When an employee unequivocally notifies the department of the intent not to return to work from FL or FML, the employment relationship is deemed terminated. The employee’s entitlement to reinstatement, continued leave and health benefits (subject to COBRA) ceases.

5.4. Return to Work Requirements - An employee on FML for the employee’s own serious health condition shall submit a Fitness-For-Duty Certification (Form DHR AAD-010) before returning to work if the absence was for five

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or more working days. The department may deny the employee restoration to the employee's job until the required certificate is submitted.

6. PROCEDURES

6.1. Joint Application - The provisions of the State Family Leave (FL) and the Federal Family and Medical Leave (FML) have both similarities and differences in their applicability. The department shall have the responsibility to determine when each type of leave is applicable based on the circumstances of each individual application and whether leave periods should run consecutively under military provisions or concurrently under the respective State or Federal guidelines.

6.2. State Family Leave Provisions (FL)

6.2.1. Requests for family leave shall be granted for any of the following reasons:

- a. The birth of an employee's child;
- b. The adoption of a child by an employee;
- c. To provide care to an employee's child, spouse, or parent with a serious health condition.

6.2.2. Employees are entitled to family leave for a total of four weeks in a calendar year and as outlined in the following guidelines:

- a. Full-time employees shall be entitled to 160 hours of family leave per calendar year.
- b. Eligible part-time employees shall be allowed family leave of a prorated amount based on their full-time equivalency (FTE). In administering the family leave provision, the work week of a part-time employee is to be considered "one-week" regardless of the number of hours or days worked in a week.
- c. For employees serving a temporary appointment, the family leave period shall not extend beyond the employee's temporary appointment date. This provision is not applicable to regular employees serving in a temporary appointment.

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6.2.3. Family leave may be taken intermittently upon approval by the Police Chief or designee.

6.2.4. Unused family leave shall not be cumulative.

6.2.5. Employees who have utilized the allotted four weeks or 160 hours of family leave may, upon request, be granted additional leave in accordance with applicable collective bargaining agreements, administrative rules or executive orders of the department.

6.3. Federal Family and Medical Leave Provisions (FML)

6.3.1. The FMLA entitles qualified employees up to 12 weeks of unpaid or paid leave per calendar year for the birth of a child and to care for such child, for the placement of a child for adoption or foster care with an employee, to care for a spouse or an immediate family member with a serious health condition, for medical treatment of an employee's own serious health condition, for leave to care for covered service member who is injured, and for military exigency leave. FMLA also entitles employees reinstatement of pre-existing health coverage upon conclusion of the leave and reinstatement to the same or an equivalent position.

6.3.2. The department will determine whether to limit Family and Medical Leave (FML) taken by spouses working in the department to a combined total of 12 workweeks during a calendar year if leave is taken for the birth of the employee's child or placement with the employee of a child for adoption or foster care.

6.3.3. Employee must provide certification from health care providers when FML is taken for an employee's own serious health condition or to provide care for an employee's spouse, child or parent.

a. The certification shall be submitted to the department within 15 calendar days from the date of leave notification, unless extenuating circumstances prevent the employee from providing the certification within the required time period.

b. If the department doubts the validity of a medical certification, the department may require a second medical

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opinion. If the opinion of the employee's and the employer's designated health care providers differ, the department may require the employee to obtain certification from a third health care provider.

6.3.4. Employees may utilize an intermittent or reduced leave schedule for a serious health condition.

- a. An employee requiring an intermittent or reduced leave schedule for a serious health condition shall attempt to schedule the leave so that it does not disrupt the department's operations and shall provide the department with a schedule of the leave.
- b. If the department assigns an employee to an alternate position to accommodate the employee's intermittent/reduced leave schedule for planned medical treatment, including a period of recovery from a serious health condition, the department shall provide the employee with written notice of the assignment.
- c. An employee seeking intermittent/reduced leave schedule for the birth of the employee's child or placement of a child with the employee for adoption or foster care shall make a written request to the Police Chief via memorandum. In the request, the employee shall provide details of the leave schedule. The department shall consider the employee's request and provide the employee with a written response.

6.3.5. Health insurance coverage will be maintained during periods of FML under the same conditions that applied before the leave commenced.

- a. To continue health insurance coverage during periods of leave without pay, employee must continue to pay their share of health insurance premiums.
- b. If an employee's health insurance coverage lapses while on FML, the employee will, upon return to work, be automatically reinstated to that coverage on the same terms as they were immediately before the leave without any

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qualifying period, etc., unless the employee elects to cancel the coverage in accordance with the Hawai'i Public Employees Health Fund rules.

- c. The department may recover premium payments from employee if it has made payments to maintain the health insurance coverage of employee who fails to return to work from FML.
- 6.3.6. Upon the expiration of FML, the department will reinstate a regular employee to the employee's former position or to a position equivalent in pay, benefits, and other terms and conditions of employment.
- a. Upon the expiration of FML, the department will reinstate a non-regular employee to the employee's former position, provided that the status and function of the employee's appointment and/or position remained the same during the employee's absence. In the event the non-regular employee cannot be reinstated, the employee shall be terminated.
 - b. Any employee who fraudulently obtains FML is not protected by FMLA's job restoration or maintenance of health benefits provisions.
- 6.3.7. FML will be monitored and administered on a calendar year (January-December) basis, and the department will document and maintain FML records.