

19.107 FAMILY MEDICAL LEAVE ACT (FMLA)

References:

Procedure 16.110, Personnel Accounting and Distribution
 Procedure 19.105, Sick/Injured With Pay and Special Leaves
 Family Medical Leave Act (FMLA)
 FOP/City Labor Agreement
 AFSCME/City Labor Agreement
 Cincinnati Organized and Dedicated Employees (CODE)/City Labor Agreement
 City of Cincinnati Human Resources Policies and Procedures, Section 4.3
www.dol.gov/whd/fmla/
 City of Cincinnati Parental Leave Policy

Definitions:

Family Medical Leave Act (FMLA) Eligible Employee:

- An employee who has been employed by the City for 12 months or 52 weeks. This time does not need to be consecutive. The employee must also have worked 1,250 hours during the 12-month period prior to the date of the requested leave. Only time actually worked counts toward the 1,250 hours; paid leave such as vacation or holiday does not count toward the 1,250 hours.

Serious Health Condition:

- Inpatient care (admitted) in a hospital, hospice or medical care facility, to include any period of incapacity following inpatient care; or
- Incapacity Plus Treatment
 - Incapacity lasting for more than three consecutive days that also requires;
 - Treatment 2 or more times by a health care provider, within 30 days of the first day of incapacity; or
 - Treatment on at least one occasion, within 7 days of the first day of incapacity which results in a continuing regimen of care; or
- Any period of incapacity due to pregnancy or prenatal care.
- Any period of incapacity due to a chronic serious health condition defined as one which requires periodic visits (two or more per year), to a qualifying health care provider for treatment or continues over an extended period of time for treatment (e.g., asthma, diabetes, epilepsy).
- A period of incapacity that is permanent or long-term due to a condition for which treatment may not be effective (Alzheimer's, severe stroke, terminal stages of a disease).
- Any absence to receive multiple treatments for a condition that would likely result in incapacity of more than 3 consecutive days if left untreated (chemotherapy, radiation or dialysis treatment, etc.).

- Absence for **treatment** of substance abuse is eligible for FMLA leave.
 - Absence due to an employee's **use** of alcohol or drugs is not covered under FMLA

A medical or health related condition, including but not limited to; cosmetic surgery, common cold, flu, earache or upset stomach is not generally considered to be a serious health condition, unless the condition develops into the circumstances outlined above.

Form WH-380E and Form WH-380F, Certification of Health Care Provider:

- These forms contain statements of medical facts to support certification for FMLA leave. It is to be completed by the treating health care provider. A Form WH-380E is for employees and the WH-380F is for qualified family members. A completed WH-380E or WH-380F or equivalent (e.g., hospital discharge papers) is required for FMLA approved leave.
- If a certification is incomplete or contains insufficient information (e.g., one or more entries have not been completed or the information is vague, ambiguous or nonresponsive), the employee must be provided with seven days (unless not practicable) to correct any such deficiency, and must be informed of the consequences for failure to provide the certification.
- If the employee fails to provide the certification, Employee Health Service (EHS) or Police Personnel Section may contact the employee's Health Care Provider for purposes of authentication or clarification of the Form WH-380E.

Military Service:

- Allows Up to 26 weeks of FMLA leave for members of the Armed Forces injured in the line of duty resulting in a serious health condition.
- Qualifying Exigency allows up to 12 weeks of FMLA leave for employees or family members who must react to a service members call to active duty, they include; short notice deployment, military related events or activities, child care and school activities, financial and legal arrangements, counseling, rest and recuperation, post-deployment activities, or any activity mutually agreed upon between the employee and employer.

Covered Service Member:

- A member of the Armed Forces of the United States, including a member of the National Guard or Reserve, who is undergoing medical treatment recuperation or therapy, is otherwise in outpatient status or is otherwise on the temporary disability retired list for a serious illness or injury.

Serious Injury or Illness:

- In the case of a member of the Armed Forces, including a member of the National Guard or Reserve means an injury or illness incurred by the member in the line of duty on active duty in the Armed Forces that may render the member medically unfit to perform the duties of the member's office, grade, rank, or rating.

Purpose:

Ensure adherence to Federal Law and necessary documentation of FMLA leave requests.

Establish a uniform Department procedure for requesting, recording and reporting personnel using the provisions of FMLA.

Policy:

It is City policy to provide up to 12 weeks of family and medical leave during a 12-month period to eligible employees in accordance with the provisions of FMLA. Under qualifying circumstances, eligible employees who are the spouse, child, parent, or next-of-kin of a covered service member may be entitled to 26 weeks of military family leave during a 12-month period, under FMLA law.

The use of FMLA leave can result in the loss of any employment benefit, e.g., sick time sell back, sick usage incentive, paid sick leave, etc. Unpaid sick leave may also result in out-of-pocket health care premium expenses to the employee.

The employee's private physician will evaluate the medical condition of an employee and authorize the clearance for return to duty following FMLA leave. The EHS physician will not be contacted for non-duty related illness/injury medical evaluations prior to the return to duty for FMLA approved leave. Police Personnel Section may contact the EHS physician for clarification of medical terminology contained in the WH-380E or WH-380F.

An employee may be required to furnish re-certification (Form WH-380E or F) of an illness relating to a previous FMLA leave. A recertification request may be made under certain circumstances such as request for an extension, a significant change in circumstances described by the certification, or receipt of information which casts doubt upon the stated reason for absence. All recertification requests will be made in adherence to FMLA guidelines.

FMLA certifications for an employee or employee's family member that lasts beyond a single year will require annual certifications to maintain FMLA coverage. Annual certifications are due within 15 calendar days of expiration of the previous certification.

An employee's entitlement to FMLA leave for a birth expires at the end of the 12-month period beginning on the date of the birth. Paid FMLA leave taken for birth and/or bonding is subject to City of Cincinnati Policy and Procedure and collective bargaining agreements. Leave for birth or bonding should be taken in a continuous block of time. If an employee wishes to take intermittent leave for birth or bonding, a Form 17 describing any extenuating circumstances will be submitted through the chain of command for approval. FMLA for birth/bonding will run concurrent with the City of Cincinnati Parental Leave Policy.

The Family and Medical Leave Act (FMLA) grants the Police Department the right to designate qualifying leave as FMLA even if the employee does not wish to obtain certification. Absences such as extended leave or chronic intermittent leave will be reviewed on a case by case basis for eligibility and the employee will be notified if their leave is being designated as FMLA.

Information:

Police Personnel Section should be contacted for assistance in the determination or interpretation of FMLA requests. Additional information is available in Human Resources Policies and Procedures, Section 4.3.

FMLA provides eligible employees the right to take paid/unpaid leave for the conditions listed below:

1. Birth of an employee's child and to care for that child and/or any period of incapacity due to pregnancy or prenatal care.
2. Placement of a child with the employee for adoption or foster care.
3. Care for an employee's spouse, child, or parent with a serious health condition.
4. A serious health condition that prevents the employee from performing the functions of his/her position.
5. Any qualifying exigency arising out of the fact that the spouse, child, or parent of the employee is on active military duty status, or has been notified of an impending call to active military duty status, in support of a contingency operation of the United States Armed Forces.
6. Care for a covered military service member who is the spouse, child, parent or next-of-kin, recovering from a serious illness or injury sustained in the line of duty on active military duty status in the United States Armed Forces.

FMLA enables an employee to take up to 12 weeks of leave (or 26 weeks of military family leave in qualifying situations) within a 12 month rolling calendar period.

If both husband and wife work for the City and each spouse qualifies to take family leave (e.g., for the birth, adoption or foster care placement of a child or to care for a parent with a serious health condition), they may take a combined (aggregate) total of 12 weeks leave (not 12 weeks each). FMLA leave taken for the birth, adoption or placement of a child must be taken during the first 12 months after the arrival of the child.

- Example: Following the birth of their child, in which both spouses work for the City, each spouse uses six weeks FMLA. They have reached their aggregate limit of 12 weeks total. Each spouse will still have six weeks of FMLA leave available to them for qualifying reasons **other** than childbirth.

There are more specific time frames listed under this section.

If both husband and wife work for the City and each spouse qualifies to take family leave for condition #6 above, they may take a combined (aggregate) total of up to 26 weeks leave (not 26 weeks each).

Intermittent leave or reduced scheduled leave is authorized if medically necessary for a serious health condition of the employee, their spouse, child or parent. The leave may be taken in 12 consecutive weeks (26 weeks when applicable) or used intermittently (take a day when needed over the year). It may, in some cases, be used to reduce the workload or workday, resulting in a reduced hour schedule. In all cases leave can not exceed 12 weeks (26 weeks when applicable) over a 12-month time period.

Employees may only use qualifiable leave described in their current labor contract and in City Policy. Otherwise, the leave is unpaid FMLA leave. FMLA for birth/bonding will run concurrent with the City of Cincinnati Parental Leave Policy.

Intermittent or reduced work week leave taken for a serious health condition should be scheduled with a supervisor prior to taking the leave. The employee must provide a completed Form WH-380E or F or equivalent indicating intermittent or reduced leave is necessary.

Procedure:

A. Family Medical Leave Act (FMLA)

1. The Department will follow the current City guidelines as outlined in Human Resources Policies and Procedures Section 4.3, Police Department procedures, and/or current labor agreements.
2. Final FMLA approval occurs when the employee submits a Form WH-380E or F or equivalent completed by their health care provider and it is reviewed by Police Personnel Section. A Form WH-380E or F or equivalent must be submitted by the employee whenever the FMLA leave request is the **first instance** of this type of illness or injury. Supervisors requiring assistance regarding Form WH-380E or F should contact Police Personnel Section. The employee's personal information will not be released.
3. Leave not taken as FMLA but assumed to qualify for FMLA during the employee's time off can still be counted as FMLA if the employee advises their immediate supervisor while on leave or within two days after returning to work.
 - a. An employee must submit a completed Form WH-380E or F or equivalent to Police Personnel Section within 15 calendar days of the employee being notified of eligibility, or of the employee requesting FMLA. If circumstances arise which prevent timely submission, the employee must contact Police Personnel Section.
4. Unpaid FMLA leave
 - a. Employees may be required to use vacation or compensatory time in lieu of unpaid FMLA leave. Use of unpaid leave or time other than sick time to cover FMLA leave will be subject to compliance with labor contracts, Department and City policy.
 - b. Employees are responsible to maintain knowledge of their time balances and notify the timekeeper if they wish to utilize a different time balance in lieu of unpaid leave.
 - c. It is the responsibility of the supervisor to notify the timekeeper when an employee under FMLA should be carried in a no-pay status due to contract or policy compliance.

B. Employee Responsibilities: FMLA Requests

1. If the need for leave is not foreseeable, notify a supervisor within 2 business days or as soon as practicable. If the need for leave is foreseeable, notify a supervisor at least 30 days in advance or as soon as practicable.
2. Submit a Form 25S detailing the reason for the FMLA leave request. For phone requests, the supervisor will complete the Form 25S in detail. Include the following information:
 - a. The specific nature of the illness, injury, or in cases of military family leave, the qualifying exigency.
 - 1) The employee should advise the supervisor if the illness, injury, or qualifying exigency is believed to be or is FMLA leave eligible.
 - b. How long you expect to be off duty.

3. Advise the supervisor of court appearances, off-duty details, meetings, public appearances and training dates that may need to be rescheduled.
4. The employee is responsible for providing complete and accurate documentation within given time frames, and ensuring the WH-380 or equivalent form includes all necessary information.
 - a. Once the employee receives the **completed** WH-380 from their health care provider, the employee must forward it **directly** to Police Personnel Section for processing. Do NOT forward the completed WH-380 to a supervisor or timekeeper.
 - b. New certifications, re-certifications and annual certifications will be submitted by the employee to Police Personnel Section within 15 calendar days of being notified of the request.
5. Employees will be notified if documentation is incomplete or insufficient and will have 7 calendar days to correct deficiencies.
 - a. If the employee fails to submit the requested documentation or request an extension within deadlines, FMLA may be denied.
 - 1) Failure to submit the completed certification paperwork, after being provided with an eligibility packet, will result in FMLA being considered declined at the employee's request unless extenuating circumstances exist.
6. When calling off track, employees will notify their supervisor if a current WH-380 is on file or if FMLA certification is pending.
 - a. If more than one FMLA certification exists, the employee must provide the supervisor with enough information to determine which FMLA condition applies to the absence.
 - b. The employee is required by federal law to provide the supervisor with enough information to determine if the request is a legitimate use of FMLA.
7. Department employees will be governed by their current labor contract and the Human Resources Policies and Procedures.
 - a. The employee is responsible for knowing how contracts and policies apply to their personal requests for FMLA leave and should contact Police Personnel Section if clarification is needed.
 - b. An employee may be carried in an unpaid status if they fail to provide physician's verification of illness when requested and/or required by contract or policy.
8. The employee will notify their supervisor or timekeeper **before** payroll is submitted if they are eligible for and wish to use compensatory or vacation time in lieu of unpaid leave.
 - a. For AFSCME, CODE, and FOP employees whose contracts do not mandate use of vacation, compensatory or other accumulated time once sick time is depleted, the employee will be carried without pay unless the timekeeper is authorized by the employee to use alternate time banks.

C. Supervisor Responsibilities

1. Upon receiving notice an employee is requesting FMLA or knowledge they may be eligible for FMLA due to the nature of their absence:
 - a. Review the Form 25S provided by the employee to ensure all necessary information is included.
 - 1) For telephone requests, the supervisor will complete the Form 25S in detail.
 - b. Complete the FMLA portion of the Form 25S by indicating whether the requested leave is FMLA eligible or if FMLA was declined by the employee.
 - 1) Employees who are calling off for new instances of FMLA **must be provided** an FMLA notification packet in accordance with federal law.
 - 2) Employees who are FMLA eligible but do not wish to obtain FMLA certification **must still be provided** with an FMLA notification packet in accordance with federal law.
 - a) The notification packet includes a Notice of Eligibility (WH-381), Employee Rights and Responsibilities Under FMLA information, and a letter of explanation informing the employee of the FMLA process and where to locate appropriate certification forms. The packet is available on the H: drive in CPDFORMS /Personnel-Related Docs.
 - 3) If unable to provide the notification packet in person, the supervisor **must** provide the employee with the necessary paperwork within 5 working days, through USPS or electronically.
 - c. All FMLA paperwork, including the Form 25S and Verification of Notice of FMLA Eligibility (Form 17), must be processed and routed to the timekeeper by the end of the shift.
 - 1) Indicate the recommendation of approval or disapproval of the use of FMLA leave on the Form 25S.
 - a) If unable to determine if the leave is FMLA eligible but it is believed to be or is requested, designate the leave as FMLA pending appropriate documentation for timekeeping purposes.
 - b) The supervisor must list specific details indicating why the leave is FMLA eligible, such as chronic illness or hospitalization.
 - d. The supervisor will instruct the employee to forward the completed WH-380 **directly** to Police Personnel Section.
 - e. The administrative supervisor will update the affected shift supervisor if they become aware of any changes in an employee's FMLA status and eligibility.

D. Administrative Supervisor Responsibilities

1. The administrative supervisor will function as a liaison between the timekeeper, shift supervisors and Police Personnel Section.
 - a. The administrative supervisor and Police Personnel Section will work in conjunction to keep each other aware of changes to an employee's FMLA status and/or eligibility.
 - b. The administrative supervisor will ensure the timekeeper and affected shift supervisor are updated when an employee's FMLA status and/or eligibility changes.
 - 1) Within five business days of becoming aware of a change in an employee's status or eligibility, the administrative supervisor will ensure the affected employee is provided with a notification packet.

E. District/Section/Unit Commander Responsibilities

1. Upon receipt of a Form 25S for FMLA leave:
 - a. Review and sign indicating recommendation of approval or disapproval of the use of FMLA leave, pending submission of necessary documentation and Police Personnel Section review.
 - 1) The district/section/unit commander will ensure the required notification of eligibility is made by a supervisor within the time specifications established by FMLA.
 - 2) Maintain a copy in the employee's Medical Jacket.
2. Note the date of return on the unit copy when an employee returns to duty. Send a copy to Police Personnel Section.
3. Ensure the district/section/unit timekeeper tracks all FMLA leave so no employee is carried on FMLA leave more than 12 weeks in a 12-month period.
 - a. For cases in which the employee is entitled to military family leave as a caregiver for a covered service member, ensure FMLA leave does not exceed 26 weeks in a 12-month period.
4. Ensure the appropriate Time Book symbols are used to reflect FMLA time taken.

F. Police Personnel Section Responsibilities

1. Receive copies of all FMLA paperwork.
2. Review requests for FMLA to ensure Department compliance. FMLA time off cannot receive final approval without the required Form WH-380E or F or equivalent.
 - a. Police Personnel Section reviews all FMLA requests as the Police Chief's designee.
 - 1) If the request does not meet FMLA and Department guidelines, Police Personnel Section will complete and forward a Form WH-382 to the employee within five business days of receipt of the documentation.

- 2) If the request does meet FMLA and Department guidelines and contains adequate documentation, Police Personnel Section will complete and forward a WH-382 to the employee within five business days of receipt of the documentation and will notify the affected timekeeper and district/section/unit commander of pertinent leave information.
3. Provide employees with notices regarding failure to certify, request for recertification or annual certification and designation of FMLA forms as needed.
4. File the Form WH-380E or F or equivalent with the corresponding Form 25S.
5. Record FMLA use in the Cincinnati Human Resource Information System (CHRIS).
6. Maintain an updated list of employees who have taken leave under the provisions of FMLA and furnish timekeepers with updated lists as needed.
7. Provide the Police Chief with a list of Department employees on FMLA leave through the weekly leave report.
8. Serve as the Department liaison with EHS.

G. Timekeeper Responsibilities

1. Receive and process FMLA paperwork.
2. Forward all Notification of Eligibility Form 17's and a copy of the Form 25S for **new** FMLA to Police Personnel Section by the end of the shift.
 - a. For **existing** certifications where a new FMLA condition is not being noted, Police Personnel Section does not need to receive the daily Form 25S.
 - b. The original Form 25S will remain with the timekeeper. When the FMLA instance is closed, forward the original Form 25S to Police Personnel Section. All other original documents will be sent to Police Personnel Section when received.
3. Record FMLA use in the Timekeeper FMLA Tracker and forward to Police Personnel Section during the first week of each month.
4. Notify the administrative supervisor if the timekeeper becomes aware of an absence which may become FMLA eligible and/or when an employee may no longer be qualified for paid FMLA leave.
 - a. When contract and/or policy require a physician's verification of illness to qualify for paid leave, the timekeeper will notify the administrative supervisor when an employee's number of sick instances reaches the maximum amount allowed.
 - 1) For AFSCME/CODE employees, the timekeeper will notify the administrative supervisor when the employee reaches their fifth sick instance in a rating period.
 - b. The administrative supervisor will advise the timekeeper if the employee should be carried in a no-pay status under FMLA for all subsequent sick instances during the rating period.