

**ORIGINAL**

## Family and Medical Leave

### 1038.1 PURPOSE AND SCOPE

The purpose of this policy is to provide general guidance for managing leave for eligible employees for qualified medical and family reasons, including (29 USC § 2612; RCW 50A.05.010):

- The birth, adoption, or foster care placement of a child.
- To care for a family member with a serious health condition.
- When an employee is unable to work because of his/her own serious health condition.
- To care for a spouse, son, daughter, parent, or next of kin who is a service member of the United States Armed Forces and who has a serious injury or illness incurred in the line of duty.

This policy does not address all possible situations and circumstances that may arise when an employee requests leave for family or medical reasons. As these leave situations arise, supervisors should consult with the Administration or legal counsel to obtain specific guidance regarding leave rights and obligations.

Nothing in this policy supersedes any provision of any collective bargaining agreement, civil service or other local rule, or any law that provides greater family or medical leave rights.

#### 1038.1.1 DEFINITIONS

Definitions related to this policy include:

**Child** - A child under 18 years of age, or 18 years of age or older who is incapable of self-care because of a mental or physical disability (29 USC § 2611; 29 CFR 825.102; 29 CFR 825.122). An employee's child is one for whom the employee has actual day-to-day responsibility for care and includes a biological, adopted, or foster child; stepchild; or a child for whom the employee is standing in loco parentis (in place of a parent). For the Paid Family and Medical Leave (PFML) program, age or dependency status of a child is not a factor and includes a child's spouse (RCW 50A.05.010).

**Family member** (under PFML) -

- A child, grandchild, grandparent, parent, sibling, or spouse, including a state-registered domestic partner of an employee;
- Any individual who regularly resides in the employee's home or whose relationship with the employee creates an expectation that the employee care for the person, and that individual depends on the employee for care;
- Any individual who regularly resides in the employee's home, except for an individual who simply resides in the same home with no expectation that the employee care for the individual (RCW 50A.05.010).

**PFML** - The Washington Paid Family and Medical Leave program (RCW 50A.05.010 et seq.).

**FMLA** - The federal Family and Medical Leave Act (29 USC § 2601 et seq.).

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- Any period of incapacity due to pregnancy complications or prenatal care (29 CFR 825.115(b)).
- A chronic condition which requires treatment (29 CFR 825.115(c)).
- A permanent condition for which treatment may not be effective (such as Alzheimer's or the terminal stages of a disease) (29 CFR 825.115(d)).
- Any period of absence to receive multiple treatments, including any recovery period, either for restorative surgery after an accident or other injury, or for a condition that would likely result in a period of incapacity of more than three consecutive calendar days without medical intervention or treatment (such as cancer chemotherapy or physical therapy for arthritis) (29 CFR 825.115(e)).

#### 1038.4.2 BIRTH OR PLACEMENT OF A CHILD

Eligible employees may take up to 12 weeks of leave for the birth, adoption, or foster care placement of a child of the employee (29 USC § 2612; 29 CFR 825.200). The leave must be concluded within one year of the birth or placement of the child (29 CFR 825.120; 29 CFR 825.121; RCW 50A.05.010).

If both parents are employed by North Whatcom Fire & Rescue, the combined number of work weeks of FMLA leave is limited to 12 work weeks during any 12-month period (29 USC § 2612(f); 29 CFR 825.120; 29 CFR 825.121).

#### 1038.4.3 FMLA-MILITARY EXIGENCY LEAVE

Eligible employees may take service member leave of up to 12 weeks for qualifying exigencies occurring because a spouse, child, or parent is on covered active duty or has been notified of an impending order to active duty (29 USC § 2612(a)(1)(E); 29 CFR 825.200). This type of leave is available to a family member of a person in the National Guard, Reserves, or members of the regular Armed Forces deployed to a foreign country. Qualifying exigencies include (29 CFR 825.126):

- Addressing issues that arise from a short notice (seven or less days) deployment.
- Attending military events related to the active duty or call to duty.
- Attending family support or assistance programs.
- Making child care or educational arrangements or attending school activities arising from active duty or a call to active duty.
- Making financial and legal arrangements.
- Spending time with a military member who is on short-term rest-and-recuperation leave during a period of deployment.
- Attending post-deployment activities.
- Addressing issues that arise from the death of a military member, such as making funeral arrangements.

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### **1038.7 USE OF FMLA/PFML LEAVE**

If an employee takes a leave of absence for any reason that is FMLA/PFML qualifying, the District may designate that non-FMLA/PFML leave as running concurrently with the employee's 12-week FMLA/PFML leave entitlement (RCW 50A.15.110).

### **1038.8 PROCEDURES**

The following procedures will apply for all employees requesting leave under FMLA/PFML:

- (a) When a leave is requested for a medical or other FMLA/PFML-related treatment appointment, the employee must make a reasonable effort to schedule the appointment at a time that minimizes disruption to the district's operations (29 USC § 2612; 29 CFR 825.302; RCW 50A.15.030).
- (b) An employee who wishes to take FMLA/PFML must provide their supervisor with 30 days' advance notice when the leave is foreseeable or as soon as practicable if the need for leave is not foreseeable (29 USC § 2612; 29 CFR 825.302; 29 CFR 825.303; RCW 50A.15.030; WAC 192-600-005 et seq.).
  - 1. When leave is unforeseeable for PFML and the employee is unable to provide notice, written notice may be provided by a responsible party (e.g., spouse, neighbor, coworker) (WAC 192-600-010).
- (c) At the time of the request, the employee must complete a FMLA/PFML request form.

Requests for medical leave shall be accompanied by a qualified health care professional statement, including the date on which the serious health condition began and the estimated date of return to work (29 USC § 2613; 29 CFR 825.302; RCW 50A.15.040; WAC 192-610-010).

Once the leave is requested or designated by the District, the Deputy Fire Chief should forward the request and any medical certifications to Human Resources and ensure the employee is provided the necessary forms and FMLA/PFML information within five days (29 CFR 825.300; RCW 50A.20.010).

Employees are required to provide medical certification of a qualified health care professional or military documentation if requested (29 CFR 825.305; 29 CFR 825.308; 29 CFR 825.309; 29 CFR 825.310; RCW 50A.15.040).

Employees shall be required to periodically report on their status and intent to return to work (29 USC § 2614; 29 CFR 825.311; RCW 50A.35.010). This may assist in avoiding a delay in reinstatement when the employee is ready to return to work.

Employees returning from a medical leave from the employee's own serious health condition will be required to present medical verification from a qualified health care professional of the employee's ability to return to work and a list of any restrictions that need to be accommodated (29 USC § 2614; 29 CFR 825.100; 29 CFR 825.312; RCW 50A.35.010). Employees may be required to complete a return to work physical with the District's occupational physician prior to returning to work.

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#### **1038.9 REINSTATEMENT FOLLOWING LEAVE**

Generally, employees returning from FMLA/PFML within the qualified period will be restored to their original job or to an equivalent job with equivalent pay and benefits, unless the employee would not otherwise have been employed at the time reinstatement is requested (e.g., in the case of a layoff) (29 USC § 2614; 29 CFR 825.214; 29 CFR 825.216; RCW 50A.35.010).

If the same position is no longer available, such as in a layoff, the employee will be entitled to a position that is comparable in pay, job content, and promotional opportunities and geographic location, if such a comparable position exists.

If upon return from leave an employee is unable to perform the essential functions of the job because of a physical or mental disability, the supervisor should work with the Administration or legal counsel to engage in an interactive process with the employee to identify a potential reasonable accommodation.

After exhausting paid FMLA leave, non-paid leave will continue until the conclusion of the protected 12- or 26-week time limit. Following the protected leave, the Fire Chief, in consultation with the legal counsel or the Administration, will determine whether non-FMLA/PFML leave should apply.

##### **1038.9.1 RETURN TO WORK**

Refer to District Policy 1032 Temporary Modified Duty Assignments and District Policy 1034 Return to Work for detailed information on return to work medical physical and re-entry to shift requirements.

#### **1038.10 RESPONSIBILITY**

Supervisors should work with the Administration or legal counsel regarding questions relating to leave or reinstatement from leave under this policy. The Administration should advise the supervisor and inform members of their rights and responsibilities.

#### **1038.11 RECORDS**

The District will maintain leave-related records as required by 29 CFR 825.500 for at least three years and in compliance with the district's established records retention schedule.

Records and documents related to doctor certifications and other medical information created for purposes of complying with FMLA/PFML and this policy shall be maintained as confidential medical records in separate files from employee personnel files.

#### **1038.12 NOTICE TO EMPLOYEES UNDER FMLA**

Human Resources should ensure that a notice explaining the FMLA's provisions and procedures is prominently posted in conspicuous places in the District where it can be readily seen by all employees and applicants for employment. Electronic posting is sufficient as long as the other posting requirements have been met as provided by 29 CFR 825.300 (29 CFR 825.300).