

DC ST § 32-501

Formerly cited as DC ST 1981 § 36-1301

DISTRICT OF COLUMBIA OFFICIAL CODE 2001 EDITION

DIVISION V. LOCAL BUSINESS AFFAIRS

TITLE 32. LABOR.

CHAPTER 5. FAMILY AND MEDICAL LEAVE.

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§ 32-501. Definitions.

For purposes of this chapter, the term:

(1) "Employee" means any individual who has been employed by the same employer for 1 year without a break in service except for regular holiday, sick, or personal leave granted by the employer and has worked at least 1000 hours during the 12 month period immediately preceding the request for family or medical leave.

(2) "Employer" means any individual, firm, association, or corporation, any receiver or trustee of any individual firm, association, or corporation, or the legal representative of a deceased employer, including the District of Columbia ("District") government, who uses the services of another individual for pay in the District.

(3) "Employment benefit" means any benefit, other than salary or wages, provided or made available to an employee by an employer, including, but not limited to, group life, health, and disability insurance, sick and annual leave, and educational and pension benefits, regardless of whether the benefit is provided by a policy or practice of an employer or by an employee welfare benefit plan as defined in title 1, subtitle A, section 3(3) of the Employee Retirement Income Security Act of 1974, effective September 2, 1974 (88 Stat. 833; 29 U.S.C. 1002(1)).

(4) "Family member" means:

(A) A person to whom the employee is related by blood, legal custody, or marriage;

(B) A child who lives with an employee and for whom the employee permanently assumes and discharges parental responsibility; or

(C) A person with whom the employee shares or has shared, within the last year, a mutual residence and with whom the employee maintains a committed relationship.

(5) "Health care provider" means any person licensed under federal, state, or District law to provide health care services.

(6) "Public safety agency" means the Metropolitan Police Department of the District of Columbia, the Fire Department of the District of Columbia, or the Department of Corrections.

(7) "Mayor" means Mayor of the District of Columbia.

(8) "Reduced leave schedule" means leave scheduled for a fewer number of hours than an employee usually works during each workweek or workday.

(9) "Serious health condition" means a physical or mental illness, injury, or impairment that involves:

(A) Inpatient care in a hospital, hospice, or residential health care facility; or

(B) Continuing treatment or supervision at home by a health care provider or other competent individual.

(10) "Local educational agency" shall have the same meaning as the term has

in section 1471(12) of the Elementary and Secondary Education Act of 1965, approved April 28, 1988 (102 Stat. 201; [20 U.S.C. 2891\(12\)](#)).

§ 32-502. Family leave requirement.

(a) An employee shall be entitled to a total of 16 workweeks of family leave during any 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.

(b) The entitlement to family leave under subsection (a)(1) through (3) of this section shall expire 12 months after the birth of the child or placement of the child with the employee.

(c) Subject to the requirements of subsection (h) of this section, in the case of a family member who has a serious health condition, the family leave may be taken intermittently when medically necessary.

(d) Upon agreement between the employer and the employee, family leave may be taken on a reduced leave schedule, during which the 16 workweeks of family leave may be taken over a period not to exceed 24 consecutive workweeks.

(e)(1) Except as provided in paragraphs (2) and (3) of this subsection, family leave may consist of unpaid leave.

(2) Any paid family, vacation, personal, or compensatory leave provided by an employer that the employee elects to use for family leave shall count against the 16 workweeks of allowable family leave provided in this chapter.

(3) If an employer has a program that allows an employee to use the paid leave of another employee under certain conditions, and the conditions have been met, the employee may use the paid leave as family leave and the leave shall count against the 16 workweeks of family leave provided in this chapter.

(4) Nothing in this section shall require an employer to provide paid family leave.

(f) If the necessity for leave under this section is foreseeable based on an expected birth or placement of a child with an employee, the employee shall provide the employer with reasonable prior notice of the expected birth or placement of a child with the employee.

(g) If the necessity for family leave under this section is foreseeable based on planned medical treatment or supervision, an employee shall:

- (1) Provide the employer with reasonable prior notice of the medical treatment or supervision; and
- (2) Make a reasonable effort to schedule the 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 disrupt unduly the operations of the employer.

(h)(1) If 2 family members are employees of the same employer:

(A) The employer may limit to 16 workweeks during a 24-month period the aggregate number of family leave workweeks to which the family members are entitled; and

(B) The employer may limit to 4 workweeks during a 24-month period the aggregate number of family leave workweeks to which the family members are entitled to take simultaneously.

(2) For the purposes of this subsection, the term "same employer" includes an office, division, subdivision, or other organizational section of an employer in which both employees have the same or interrelated duties and the absence of both employees would disrupt unduly the conduct of the employer's business.

(i)(1) Information that an employee gives to an employer regarding a family

relationship, pursuant to which the employee seeks to take family leave under this section, shall be used only to make a decision in regard to the provisions of this chapter. An employer shall keep any information regarding the family relationship confidential.

(2) Any employer who willfully violates this subsection shall be assessed a civil penalty of \$1,000 for each offense.

§ 32-503. Medical leave requirement.

(a) Subject to the provisions of § 32-504, any employee who becomes unable to perform the functions of the employee's position because of a serious health condition shall be entitled to medical leave for as long as the employee is unable to perform the functions, except that the medical leave shall not exceed 16 workweeks during any 24-month period. The medical leave may be taken intermittently when medically necessary.

(b) (1) Except as provided in paragraphs (2) through (4) of this subsection, medical leave may consist of unpaid leave.

(2) Any paid medical or sick leave provided by an employer that the employee elects to use for medical leave shall count against the 16 workweeks of allowable medical leave under this chapter.

(3) If an employer and employee agree that an employee may use paid vacation, personal, or compensatory leave as medical leave, the paid vacation, personal, or compensatory leave shall count against the 16 workweeks of medical leave provided in this chapter.

(4) If an employer has a program that allows an employee to use the paid leave of another employee under certain conditions, and the conditions have been met, the employee may use the paid leave as medical leave and the leave shall count against the 16 workweeks of medical leave provided in this chapter.

(c) If the need for medical leave is foreseeable based on planned medical treatment or supervision, the employee shall:

(1) Provide the employer with prior reasonable notice of the medical treatment or supervision; and

(2) Make a reasonable effort to schedule the medical treatment or supervision, subject to the approval of the health care provider of the employee, in a manner that does not disrupt unduly the operations of the employer.

§ 32-504. Certification.

(a) An employer may require that a request for family leave under § 32-502(a)(4) of medical leave under § 32-503 be supported by a certification issued by the health care provider of the employee or family member. The employee shall provide a copy of the certification to the employer.

(b) The certification provided by the employee to the employer shall 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 entitle the employee to take leave under this chapter; and

(4) (A) For purposes of medical leave under § 32-503, a statement that the employee is unable to perform the functions of the employee's position; or

(B) For purposes of family leave under § 32-502(a)(4), an estimate of the amount of time that the employee is needed to care for the family member.

(c) For the purposes of § 32-505(c), the employer may request that certification issued in any case involving medical leave under § 32-503 include an explanation of the extent to which the employee is unable to perform the functions of the employee's position.

(d) (1) If the employer has reason to doubt the validity of the certification

provided under subsection (a) of this section, the employer may require that the employee obtain, at the expense of the employer, the opinion of a 2nd health care provider approved by the employer, in regard to any information required to be certified under subsection (b) of this section.

(2)(A) If the 2nd opinion provided under this subsection differs from the original certification provided under subsection (a) of this section, the employee may obtain the opinion of a 3rd health care provider mutually agreed upon by the employer and the employee, in regard to any information required to be certified under subsection (b) of this section. The employer shall pay the cost of the opinion of the 3rd health care provider.

(B) The opinion of the 3rd health care provider in regard to the information certified under subsection (b) of this section shall be final and binding on the employer and employee.

(e) Any health care provider approved or mutually agreed upon under subsection (d)(1) or (2) of this section may not be retained on a regular basis by the employer or employee or otherwise bear a close relationship to the employer or employee that would give the appearance that the certification is biased.

(f) The employer may require that the employee obtain subsequent recertifications on a reasonable basis.

(g)(1) Certification information requested under this section shall be used only to make a decision in regard to the provisions of this chapter. An employer shall keep any medical information obtained from a certification request confidential.

(2) Any employer who willfully violates this subsection shall be assessed a civil penalty of \$1,000 for each offense.

§ 32-505. Employment and benefits protection.

(a) Any employee who takes family or medical leave under this chapter shall not lose any employment benefit or seniority accrued before the date on which the family or medical leave commenced.

(b)(1) During any period in which an employee takes family or medical leave under § 32-502 or § 32-503, the employer shall maintain coverage under any group health plan, as defined in [section 5000\(b\) of the Internal Revenue Code of 1986](#), approved October 21, 1986 (100 Stat. 2012; [26 U.S.C. 5000\(b\)](#)), except that for the purposes of this chapter, the term "group health plan" shall include a group health plan provided by the District of Columbia government. The employer shall maintain coverage for the duration of the family or medical leave at the same level and under the same conditions that coverage would have been provided if the employee had continued in employment from the date the employee commenced the family or medical leave until the date the employee was restored to employment pursuant to subsection (d) of this section.

(2) An employer may require the employee to continue to make any contribution to a group health plan that the employee would have made if the employee had not taken family or medical leave. If an employee is unable or refuses to make the contribution to the group health plan, the employee shall forfeit the health plan benefit until the employee is restored to employment pursuant to subsection (d) of this section and resumes payment to the plan.

(c)(1) Nothing in this chapter shall prohibit an employer and an employee with a serious health condition from agreeing mutually to alternative employment for the employee throughout the duration of the serious health condition of the employee.

Any period of alternative employment shall not cause a reduction in the amount of family or medical leave to which the employee is entitled under § 32-502 or § 32-503.

(2) When the employee who agreed to alternative employment is able to perform the functions of the employee's original position, the employee shall

be restored to the original position pursuant to subsection (d) of this section.

(d) Except as provided in subsection (f) of this section, upon return from family or medical leave taken pursuant to § 32-502 or § 32-503, the employee shall be:

(1) Restored by the employer to the position of employment held by the employee when the family or medical leave commenced; or

(2) Restored to a position of employment equivalent to the position held by the employee when the family or medical leave commenced that includes equivalent employment benefits, pay, seniority, and other terms and conditions of employment.

(e) Except as provided in subsection (b) of this section, nothing in this section shall entitle an employee restored by an employer to a position of employment to:

(1) The accrual of any seniority or employment benefit during any period of family or medical leave; or

(2) Any right, employment benefit, or position of employment other than any right, employment benefit, or position of employment to which the employee would have been entitled had the employee not taken the family or medical leave.

(f)(1) Except as provided in paragraph (2) of this subsection, an employer in the District may deny restoration of employment to a salaried employee if the employee is among the 5 highest paid employees of an employer of fewer than 50 persons or among the highest paid 10% of employees of an employer of 50 or more persons and the following conditions are met:

(A) The employer demonstrates that denial of restoration of employment is necessary to prevent substantial economic injury to the employer's operations and the injury is not directly related to the leave that the employee took pursuant to this chapter; and

(B) The employer notifies the employee of the intent to deny restoration of employment and the basis for the decision at the time the employer determines denial of restoration of employment is necessary.

(2) The condition in paragraph (1)(A) of this subsection shall not apply if the following conditions have been met:

(A) The employer is under a contract to provide work or services and the absence of the employee prohibits the employer from completing the contract in accordance with the terms of the contract;

(B) Failure to complete the contract will cause substantial economic injury to the employer; and

(C) After the employer made reasonable attempts, the employer failed to find a temporary replacement for the employee.