

## METROPOLITAN POLICE DEPARTMENT

## NOTICE OF EMERGENCY AND PROPOSED RULEMAKING

The Chief of Police, pursuant to the Fire and Police Medical Leave and Limited Duty Amendment Act of 2004, effective September 30, 2004 (D.C. Law 15-194, D.C. Official Code § 5-635 (March 2005 Supp.)) and sections 12 (o) and (p) of the Policemen and Firemen's Retirement and Disability Act, approved September 1, 1916 (39 Stat. 718, D.C. Official Code §§ 5-724 (a) and (b) (2001)), and Mayor's Order 05-100, dated June 14, 2005, hereby gives notice of the adoption of the following rules implementing medical leave and limited duty policies for sworn members of the Metropolitan Police Department. Without these emergency rules, a large number of police officers would remain indefinitely unavailable for full-duty service. Therefore, to ensure the preservation of the public safety and welfare, the Chief of Police took action on June 23, 2005 to adopt the following rules on an emergency basis effective that date. The emergency rules will remain in effect until October 21, 2005, or upon publication of a Notice of Final Rulemaking in the *D.C. Register*, whichever occurs first. The Chief of Police also gives notice of intent to take final rulemaking action to adopt these rules in not less than thirty (30) days.

These emergency amendments, implementing deadlines for medical claims processing, and mandatory retirement thresholds for disabled sworn members of the Metropolitan Police Department, will create a new Chapter 24 in Title 7, Employee Benefits, of the District of Columbia Municipal Register (DCMR).

Title 7 DCMR, "Employee Benefits" is amended by adding a new chapter 24 to read as follows:

**CHAPTER 24 METROPOLITAN POLICE DEPARTMENT  
SWORN MEMBER DISABILITY**

**2400 Processing Claims**

- 2400.1 The Director shall determine whether a member's injury or illness was sustained in the performance of duty within 30 calendar days of a claim being reported to the department.
- 2400.2 Prior to making a determination, the Director shall review the unit commander's report on the cause of the injury or illness and consult with physicians from the Police and Fire Clinic on the nature of the injury or illness.
- 2400.3 If the Director fails to make a determination within 30 days, there shall be a rebuttable presumption that the member's injury or illness was sustained in the performance of duty.
- 2400.4 Until the presumption is rebutted by a finding by the Director that the injury or illness was not sustained in the performance of duty, the department shall be responsible for all treatment costs and shall furnish the member with non-chargeable medical leave.

**2401 Limited Duty**

- 2401.1 If the Director, in consultation with Police and Fire Clinic physicians, determines that a member, because of injury or other temporary medical disability is unable to perform the full range of duties, but is capable of effectively performing certain types of work within the department, and the prognosis is that the member will be able to perform a full range of duties after achieving maximum medical improvement, the Director may recommend to the Chief that the member perform work in a limited-duty status.
- 2401.2 The Director's recommendation shall not vest with the member a right to a limited duty position, and the Chief is not obligated to provide any member with a limited duty assignment.
- 2401.3 Members in a limited-duty status shall:
- (a) Undertake in-service training as required by the Chief;
  - (b) Not be permitted to work voluntary overtime; and
  - (c) Not accept or continue any off-duty employment without the specific approval of the Chief.
- 2401.4 No less than every 30 days, the Director shall evaluate members in a limited-duty status to evaluate their health status and to ensure that they are complying with their medical treatment plans.
- 2401.5 If at any time the Director, in consultation with Police and Fire Clinic physicians, determines that a member in a limited-duty status will be unable to perform the full range of duties after achieving maximum medical improvement, the Director shall recommend the member for disability retirement.

**2402 Performance of duty injuries and illnesses**

- 2402.1 Except as provided in subsection 2402.5, if the Director, in consultation with Police and Fire Clinic physicians, determines that a member can neither perform the full range of duties nor work in a limited-duty status due to a performance-of-duty injury or illness, the member shall be entitled to non-chargeable medical leave and shall receive administrative pay for a period of not more than 2 years.
- 2402.2 If a member has exhausted his or her non-chargeable medical leave, but has not yet been retired pursuant to the Fire and Police Medical Leave and Limited Duty Amendment Act of 2004, effective September 30, 2004 (D.C. Law 15-194, D.C. Official Code § 5-635 (March 2005 Supp.)), the member shall be entitled to chargeable medical leave to the extent the member has leave in his or her sick leave and annual leave accounts, and in accordance with rules established by the Mayor under the District of Columbia Government Comprehensive Merit Personnel Act of 1978, effective March 3, 1979 (D.C. Law 2-139; D.C. Official Code § 1-601 *et seq.*),

and the District of Columbia Family and Medical Leave Act of 1990, effective October 3, 1990 (D.C. Law 8-181; D.C. Official Code § 32-501 *et seq.*).

- 2402.3 If at any time the Director, in consultation with Police and Fire Clinic physicians, determines that a member who has sustained a performance-of-duty injury or illness will not be able to perform the full range of duties after achieving maximum medical improvement, the Director shall recommend the member for disability retirement.
- 2402.4 Except as provided in subsection 2402.5, and regardless of whether the prognosis is that the member will be able to perform the full range of duties after achieving maximum medical improvement, the Director shall process for disability retirement those members of the Metropolitan Police Department who spend all or part of 172 cumulative work days in a less-than-full-duty status over any 2-year period as a result of any one performance-of-duty injury or illness, including any complications relating to the injury or illness, as determined by the Director in consultation with Police and Fire Clinic physicians.
- 2402.5 If a member has sustained a serious or life-threatening injury or illness in the performance of duty that may require more than 2 years of medical treatment for the member to achieve maximum medical improvement, and the prognosis is that the member eventually will be able to perform the full range of duties, the Director, in consultation with Police and Fire Clinic physicians, may recommend to the Chief that the member be provided with additional non-chargeable medical leave and disability compensation pay until the member achieves maximum medical improvement.
- 2402.6 The Director's recommendation does not vest with the member a right to any additional non-chargeable medical leave or disability compensation pay, and the Chief is not obligated to provide any member with additional non-chargeable medical leave or disability compensation pay.

**2403 Non-performance-of-duty illnesses and injuries**

- 2403.1 If the Director, in consultation with Police and Fire Clinic physicians, determines that a member can neither perform the full range of duties nor work in a limited duty status due to a non-performance-of-duty injury or illness, the member shall be entitled to chargeable medical leave to the extent the member has leave in his or her sick leave and annual leave accounts, and in accordance with rules established by the Mayor under the District of Columbia Government Comprehensive Merit Personnel Act of 1978, effective March 3, 1979 (D.C. Law 2-139; D.C. Official Code § 1-601 *et seq.*), and the District of Columbia Family and Medical Leave Act of 1990, effective October 3, 1990 (D.C. Law 8-181; D.C. Official Code § 32-501 *et seq.*).
- 2403.2 If at any time the Director, in consultation with Police and Fire Clinic physicians, determines that a member who has sustained a non-performance-of-duty injury or illness will not be able to perform the full range of duties after achieving maximum

medical improvement, the Director shall recommend the member for disability retirement.

2403.3 Except as provided in subsection 2403.4, and regardless of whether the prognosis is that the member who has sustained a non-performance-of-duty injury or illness will be able to perform a full range of duties after achieving maximum medical improvement, the Director shall process for disability retirement those Metropolitan Police Department members who spend all or part of 172 cumulative work days in a less-than-full-duty status over any 2-year period as a result of any one non-performance-of-duty injury or illness, including any complications relating to the injury or illness as determined by the Director in consultation with Police and Fire Clinic physicians.

2403.4 The provisions of subsections 2403.2 and 2403.3 of this section shall not apply to members who are unable to perform a full range of duties as a result of pregnancy.

#### **2404 Appeals**

2404.1 Non-performance-of-duty determinations made by the director under § 2400 may be appealed to the Chief of Police or his designee, in writing, within 15 calendar days of the date the decision was served on the member.

2404.2 The member's appeal of a non-performance-of-duty determination shall contain all information relevant to the appeal, including but not limited to:

(a) A copy of the non-performance-of-duty injury/illness determination being appealed;

(b) A statement specifically describing the basis for the appeal;

(c) All documentation supporting the appeal, including, but not limited to, written statements of witnesses, affidavits, documents or any other form or depiction of information; and

(d) Any other information that the Department may require as provided in its directives.

2404.3 In reviewing information and documents submitted, the Chief of Police or designee may consider anything he or she deems material and reasonably reliable under the circumstances.

2404.4 The Chief of Police or designee shall evaluate the appeal based on the documentation submitted pursuant to § 2404.2.

2404.5 The member shall have no right to an oral hearing on his or her appeal.

- 2404.6 The Chief of Police or designee has the sole discretion to permit any party to appear in person after all documents and information have been timely filed, but only where such appearance is likely to result in the presentation of information that is material, probative, and non-cumulative, and could not reasonably have been presented in writing previously.
- 2404.7 The member requesting review of the non-performance-of-duty determination has the burden of proving, by clear and convincing evidence, that he or she is entitled to a determination that the injury or illness occurred in the performance of duty.
- 2404.8 The Chief of Police or designee shall issue a written decision and order on the member's appeal, and shall include findings of fact and conclusions of law.
- 2404.9 The decision issued pursuant to § 2404.8 shall constitute final agency action on the member's appeal.
- 2404.10 Members wishing to appeal the decision issued pursuant to § 2404.8 may file a Petition for Review with the District of Columbia Superior Court within 30 calendar days from the date of the decision.

**2499 Definitions**

- 2499.1 For purposes of this chapter, the following definitions shall apply and have the meaning ascribed:

“Chief” -- The Chief of the Metropolitan Police Department.

“Critical Incident” – An incident where a member suffers a psychiatric injury and:

- (a)(1) the member took direct, authorized police action and the member was seriously wounded, or
- (2) the member was the victim of an assault or other crime that could have resulted in the member being seriously wounded and the assault or other crime was related to that member's status as a police officer; or
- (b) the member took direct, authorized police action and that action directly caused the serious or fatal wounding of another individual.

“Department” -- The Metropolitan Police Department.

“Director” -- The director of medical services for the Metropolitan Police Department.

“Limited duty” -- A temporary status for members who, because of injury or other temporary medical disability, are not able to perform the full range of duties, but are

certified by a Police and Fire Clinic physician as being capable of effectively performing certain types of work within the department.

“Maximum Medical Improvement” -- Reasonable medical probability that no further material recovery from or lasting improvement to an injury can reasonably be expected.

“Member” -- A sworn employee of the Metropolitan Police Department.

“Performance of Duty” -- An injury or illness that arises out of and in the course of a member performing one or more of the essential tasks of his or her duties as a member of the Metropolitan Police Department. Psychiatric injuries shall only be deemed “performance of duty” if they are the result of a “critical incident.”

Comments on these proposed amendments should be submitted, in writing, to Terrence D. Ryan, General Counsel, Metropolitan Police Department, Room 4125, 300 Indiana Avenue NW, Washington, D.C. 20001, within thirty (30) days of the date of the publication of this notice in the D.C. Register. Additional copies of these proposed amendments are available from the above address.