

Legislative Updates to the DCFMLA

OHR Enforcement Guidance No. 23-01



Date: October 18, 2022

SUBJECT

Recent legislative updates to the D.C. Family & Medical Leave Act of 1990 (DCFMLA)

BACKGROUND & PURPOSE

In late 2021, the D.C. Council amended the DCFMLA to modify the definition of “employee” under the Act. Additionally, the Council included an administrative tolling provision for civil actions filed under the Act. The purpose of this guidance is to summarize these two changes.

LEGISLATIVE UPDATES TO THE DCFMLA, EFFECTIVE FOR LEAVE STARTING NOVEMBER 13, 2021

1. Definition of employee: An employee is eligible under the Act if they have been employed by the employer for at least 12 consecutive or non-consecutive months in the seven years immediately preceding the start of the family or medical leave, and worked at least 1,000 hours during these 12 months.

Leave Prior to November 13, 2021	Leave on or After November 13, 2021
<p><u>Time Requirement</u>: 12 consecutive months with D.C. employer</p> <p><u>Hour Requirement</u>: 1,000 hours in the 12 months immediately preceding the requested leave</p>	<p><u>Time Requirement</u>: 12 consecutive OR non-consecutive months with D.C. employer in the past 7 years</p> <p><u>Hour Requirement</u>: 1,000 hours during these 12 months</p>

2. Administrative tolling: A civil action for a violation of the Act must be commenced no more than 1 year after the occurrence or discovery of the alleged violation. However, this limitation period is tolled while a claim is pending administrative review.

FREQUENTLY ASKED QUESTIONS

1. When does the new definition of “employee” become effective?
 - a. An employee taking family or medical leave on or after November 13, 2021, is subject to the new definition of employee. Specifically, to be eligible under the Act, the employee must have been employed by the employer for at least 12 consecutive or non-consecutive months in the seven years immediately preceding the start of the family or medical leave, and worked at least 1,000 hours during these 12 months.
 - b. For family or medical leave that began prior to November 13, 2021, an employee is eligible under the Act if she or he was employed by the employer for at least one year without a break in service, and worked at least 1,000 hours during the 12 month period immediately preceding the requested leave. The one year of service requirement did not need to have immediately preceded the request for leave.

2. Does an employer have to provide notice to employees of their rights under the DCFMLA?
 - a. Yes. All employers with any covered employee should post a notice of rights, which can be obtained on OHR’s website. The Poster for DCFMLA that includes the new definition of “employee” effective November 13, 2021 can be found here: ohr.dc.gov/page/WorkplacePosters.

Additional OHR guidance issuances under the DCFMLA can be found at: ohr.dc.gov/page/OHRGuidance.