



## Office of the Attorney General

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October 24, 2008

### LEGAL MEMORANDUM

Ref: DOA 08-0667

TO: Director, Department of Administration

FROM: Attorney General 

SUBJECT: Paternity Leave for Firefighters

We are in receipt of your request regarding the amount of paternity leave earned by firefighters employed by the Guam Fire Department. Firefighters' usually work twenty-four (24) hours straight, from 8:00 a.m. to 8:00 a.m. the next day, and do so five times in a two week pay period. They are therefore compensated and accrue sick and annual leave differently from other government employees. One twenty-four hour shift for a firefighter is considered the equivalent of two work days for other government employees. Thus, in a two week period, a typical government employee works ten eight hour days (80 hours) and a firefighter works five twenty-four hour shifts (120 hours).

The statutes granting maternity and paternity leave to government employees in general, 4 G.C.A. 4107 and 4107.1, mirror each other, but do not mention firefighters:

**§ 4107. Maternity Leave.** Maternity leave shall be granted to a female employee occupying a permanent position who is absent from work as a result of childbirth or adoption of a child(ren) five (5) years old or younger. Such maternity leave shall not exceed twenty (20) days, encompassing the date of childbirth or adoption. Any additional leave taken for such childbirth or adoption purpose may be charged against accumulated sick leave, or may be unpaid leave, at the option of the employee. Total leave, whether maternity, sick or unpaid leave, shall not exceed six (6) months without approval of the employee's supervisor.

**§ 4107.1. Paternity Leave.** Paternity leave shall be granted to a male employee occupying a permanent position upon the birth or adoption of his child(ren). Such paternity leave shall not exceed twenty (20) days, encompassing the date of childbirth or adoption of a child(ren) five (5) years old or younger. Any additional leave taken for such purpose may be charged against accumulated sick leave, or may be unpaid leave, at the option of the employee. Total leave,

whether paternity, sick or unpaid leave shall not exceed six (6) months without approval of the employee's supervisor.

To answer the question raised by the Director of DOA, we must understand the underlying intent of the statute. The key to statutory interpretation is legislative intent. People v. Flores, 2004 Guam 18.

These statutes, which seem to contemplate typical government employees, not firefighters, provide twenty (20) days paid leave to a parent when a new child enters the family. We must first determine what the meaning of "twenty days" is in these two statutes.

Curiously, 4107 and 4107.1 do not specifically state that the leave will be leave with pay, but that is presumably what the Legislature intended. Furthermore, most government statutes on leave equate "days" of leave with a certain number of hours, but Section 4107 and 4107.1 do not. For example, 4 G.C.A. 4108 and 4109 provide:

**§ 4108. Sick Leave.**

(a) Defined. Employees occupying permanent positions shall accrue sick leave at the rate of one-half day (4 hours) for each biweekly pay period in which they are in pay status for the entire ten (10) days;...

**§ 4109. Annual Leave.**

(a) Annual leave shall be granted to employees occupying permanent positions,...in accordance with the following schedule:

- (1) One-half day (4 hours) for each full bi-weekly pay period in the case of employees with less than five (5) years of service;
- (2) Three-fourths day (6 hours) for each bi-weekly pay period in the case of employees with five (5) years of service but less than fifteen (15) years of service.
- (3) One (1) day (8 hours) for each full biweekly pay period in the case of employees with fifteen (15) years or more service.

We believe that twenty days, in Sections 4107 and 4107.1, means twenty work days, not twenty consecutive days. Twenty work days equates roughly to four weeks since a typical week contains five work days. Thus, the Legislature intended that new parents could be absent from work for four weeks to welcome a new child into their families.

Firefighters should receive approximately the same time away from work in order to fulfill the intent of 4107 and 4107.1. In other words, a firefighter should receive four weeks' absence from the workplace because that is what other employees receive. Thus, if a firefighter is absent for the full four weeks authorized by Section 4107.1, he should be deemed to receive ten (10) days of paternity leave, although he will miss 240 hours of work. As we stated in the beginning, a firefighter is deemed to have worked eighty hours when he has actually worked one hundred and twenty. This ratio ( $80:120 = 2:3$ ;  $20 \times 8 = 160$ ;  $10 \times 24 = 240$ ;  $160:240 = 2:3$ ) is maintained by giving the firefighter ten (10) days absence for paternity leave.

This is consistent with policies previously established by statute regarding sick and annual leave for firefighters. See 4 G.C.A. 6219. The Legislature has recognized that firefighters put in more hours than other government employees, but has given them approximately the same leave benefits.

Your memorandum states that the GFD timekeeper has been granting firefighters ten (10) days of paternity leave for every four weeks they are away from work. This is the correct practice.

  
**DAVID J. HIGHSMITH**  
Assistant Attorney General