

Final Report

Sick Leave Usage
Montgomery County
Fire and Rescue Service

Report # OIG-15-002

October 27, 2014

Montgomery County Maryland
Office of the Inspector General



Sick Leave Usage

Montgomery County Fire and Rescue Service

Introduction

In January 2014, the Office of the Inspector General (OIG) received a complaint from a Montgomery County employee alleging that allowing employees to use up or “burn” sick leave at the end of their careers has become common practice in the Montgomery County Fire and Rescue Service (MCFRS). The complainant further stated that a MCFRS Battalion Chief collected months of compensation for unused sick leave without any medical certification and had recently posted the following message on his Facebook page:

Today was my “unofficial” last day of work with MCFRS. From this point, I’ll be burning leave to the very end. It is soon to be the greatest 26 year ride ever! Thanks for the memories. Johns Hopkins Public Safety Leadership Program, here I come!

Objectives, Scope, and Methodology

The objectives of our inquiry were to:

- Identify the Battalion Chief quoted in the complaint and assess the validity of the complainant’s allegations against the Battalion Chief;
- Determine whether sick leave usage increases as MCFRS personnel near retirement.

In our search for the Battalion Chief described in the complaint, we reviewed the FY2014 pay records and sick leave usage for 14 MCFRS employees who retired near the end of FY2014. Our findings are detailed in the body of this report.

Our inquiry was conducted in July 2014 in accordance with the standards contained in *Quality Standards for Inspection and Evaluation* issued by the Council of the Inspectors General on Integrity and Efficiency (January 2012).

Background

MCFRS policies and procedures state that employees do not “have the right to use sick leave for any personal reasons not related to a bona fide medical condition.”¹ Additionally, the current MCFRS Union Agreement defines sick leave as earned, paid leave granted to eligible employees for absences because of personal illness, injury, medical quarantine, medical, dental or optical treatments, or for temporary disability related to pregnancy, miscarriage, or child birth for the employee or an employee’s immediate family member.² Employees are also permitted to use sick leave for parental leave related to the birth or adoption of a child.³ MCFRS employees are required to provide medical documentation for frequent⁴ or extended⁵ sick leave usage. MCFRS management is free to issue and enforce rules, policies, and regulations necessary to carry out managerial functions, including administration of the sick leave program, as long as they do not conflict with law or the current MCFRS Union Agreement.⁶

¹ Policies and Procedures, Department of Fire & Rescue Services, Montgomery County, MD, No. 508.2, Dec. 10, 1991, *Procedures - Sick Leave*, Section 4.1.

² Agreement Between Montgomery County Career Firefighters Association International Association of Firefighters Local 1664, AFL-CIO and Montgomery County Government Montgomery County, Maryland for the years July 1, 2013 – June 30, 2016 (Current MCFRS Union Agreement), Section 7.1(A-D).

³ *Ibid.*, Section 7.1(C).

⁴ Policies and Procedures, Department of Fire & Rescue Services, Montgomery County, MD, No. 508.2, Dec. 10, 1991, *Procedure - Sick Leave Abuse (Misuse)*, Section 7.8 and 7.9 states that once an employee on a 24/48 work schedule has 3 incidents of family or personal sick leave without medical documentation, the Senior Career Officer must counsel the employee that additional sick leave will not be approved without documentation. When the employee uses sick leave for the fourth time without submitting documentation, management must charge the employee with Leave Without Pay (LWOP) for the time they were absent and prepare a statement of charges for a Written Reprimand. Similar restrictions may be imposed after 4 incidents for an employee on a 42 hour work week and 5 incidents for those on a 40 hour work week. The Current MCFRS Union Agreement, Section 7.7(A)-2 allows an employee on the 24/48 hour work schedule 4 incidents of undocumented sick leave prior to counseling and states that employees on all work schedules may be restricted after 5 incidents of undocumented sick leave.

⁵ *Ibid.*, *Procedure - Sick Leave Use and Authorization*, Section 6.7, “2496 hour employees who are unable to report to work for more than 48 consecutive work hours, 2184 hour employees who are unable to report to work for 42 consecutive work hours, or 2080 hour employees who are unable to report to work for 40 consecutive work hours must obtain a medical certificate from their physician confirming a medical condition which prohibited the employee from working. This will also apply to absences for immediate family sick leave.” The Current MCFRS Union Agreement, Section 7.7(A) allows up to 72 hours consecutive sick leave, depending on the employee’s work schedule, before they must obtain medical documentation confirming an illness.

⁶ Current MCFRS Union Agreement, Article 5 (S) – *Management Rights*.

Regulations and the current MCFRS Union Agreement require that sick leave be forfeited upon separation from County service, except that an employee in the Employees' Retirement System (ERS) may use accumulated sick leave, up to a maximum of 4,136 hours (or 24 months), as credited service for retirement purposes under the ERS.⁷

Findings

Finding 1: After MCFRS Battalion Chief A reported on Facebook that he would be burning leave prior to retirement, he had no hours in working status for 8 pay periods, roughly 5 months, immediately preceding his retirement.

We accessed payroll records for MCFRS Battalion Chiefs with 24-28 years of service or known to be retiring near the end of FY2014⁸ and identified one employee (Battalion Chief A) who consistently recorded 80 hours of leave per pay period, nearly all of which was sick leave. A review of pay records for Battalion Chief A indicates that he reported no hours in working status after the pay period ending December 28, 2013. After that pay period, Battalion Chief A was on a combination of Annual Leave, Administrative Leave, and Sick Leave until he received his last paycheck on May 16, 2014. (See Figure 1.) During that 5 month period, Battalion Chief A was paid predominately from sick leave (660 out of 710 hours), despite the fact that information on his public Facebook page suggests he was not actually sick or disabled in any way.

During the same period, Battalion Chief A posted information on his public Facebook page stating that he planned to "burn" leave from December 19, 2013 until retirement. He later used Facebook to report his retirement date as May 1, 2014. Additionally, his Facebook page included the quote submitted by the complainant. (See Appendix A for a listing of Battalion Chief A's relevant Facebook page postings.)

Based on posts on the Facebook page, Battalion Chief A was out of the country in St. Maarten from April 11, 2014 – April 16, 2014. MCFRS policies and procedures state that, "Any employee

⁷ MCPR, 2001, Section 17-12, *Disposition of accumulated sick leave at separation from County service* and the Current MCFRS Union Agreement, Section 7.9, *Disposition of Accumulated Sick Leave at Separation from County Service*.

⁸ The complaint indicated that the MCFRS Battalion Chief had 26 years of service, so 24-28 years was used. A newspaper article identified an individual with 29 years of service who intended to retire who was also included in the data mining efforts.

requesting to remain away from home for any period of time... while on sick leave or on medical leave of absence must submit a request through channels to the Director of DFRS for approval.”⁹ Battalion Chief A violated policy in that he failed to inform MCFRS that he intended to leave the Country while on sick leave. MCFRS reported that had he requested permission to leave the Country for a vacation in the Caribbean, he would have been denied. MCFRS has previously permitted overseas travel while on sick leave for the purposes of undergoing a medical procedure.¹⁰

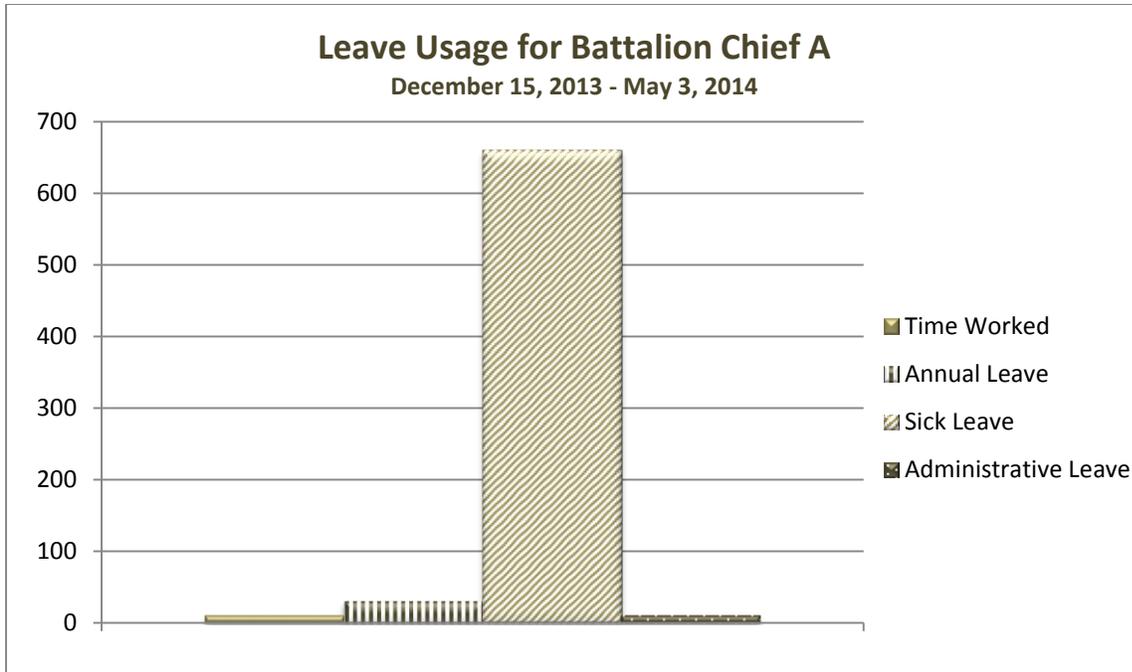


Figure 1

MCFRS reported that Battalion Chief A did not submit any medical documentation confirming a medical condition which prohibited the employee from working. MCFRS senior staff stated that it is their practice and policy¹¹ that medical documentation must be submitted upon return to work. If an employee retires following a period of sick leave without returning to work, no medical documentation is requested from the employee. Similarly, the current MCFRS Union Agreement states that medical documentation for extended absence “must be submitted upon the employee’s return to work.”¹² However, the current MCFRS Union Agreement also allows MCFRS to require an employee to provide medical certification if they have reasonable

⁹ Policies and Procedures, Department of Fire & Rescue Services, Montgomery County, MD, No. 508.2, Dec. 10, 1991, *Procedure - Sick Leave Abuse (Misuse)*, Section 7.10(c).

¹⁰ MCFRS previously permitted an employee to utilize sick leave to travel to Peru for a liver transplant.

¹¹ Policies and Procedures, Department of Fire & Rescue Services, Montgomery County, MD, No. 508.2, Dec. 10, 1991, Sections 6.7 and 7.8(c).

¹² Agreement Between Montgomery County Career Firefighters Association International Association of Firefighters Local 1664, AFL-CIO and Montgomery County Government Montgomery County, Maryland for the years July 1, 2013 – June 30, 2016, Section 7.7(A).

cause to believe that an employee is misusing/abusing sick leave. This passage does not specifically stipulate that the documentation will be provided upon return to work, although other portions of the same passage do contain this language.¹³

Finding 2: In 13 of 14 cases we examined, MCFRS employees used sick leave at an above average rate in the fiscal year of retirement, suggesting they may be “burning” sick leave at significant cost to the County.

We analyzed payroll records for Battalion Chief A and all MCFRS employees who were eligible for retirement and received a lump sum payment on June 27, 2014.¹⁴ Of the 14 sampled MCFRS employees, 13 had sick leave usage in FY2014 that exceeded the average MCFRS employee. (See Figure 2.) The average MCFRS employee utilized 129 hours of sick leave per year in FY2014. Six of the sampled employees used more than 530 hours of sick leave, which is at least 4 times the rate of the average MCFRS employee.

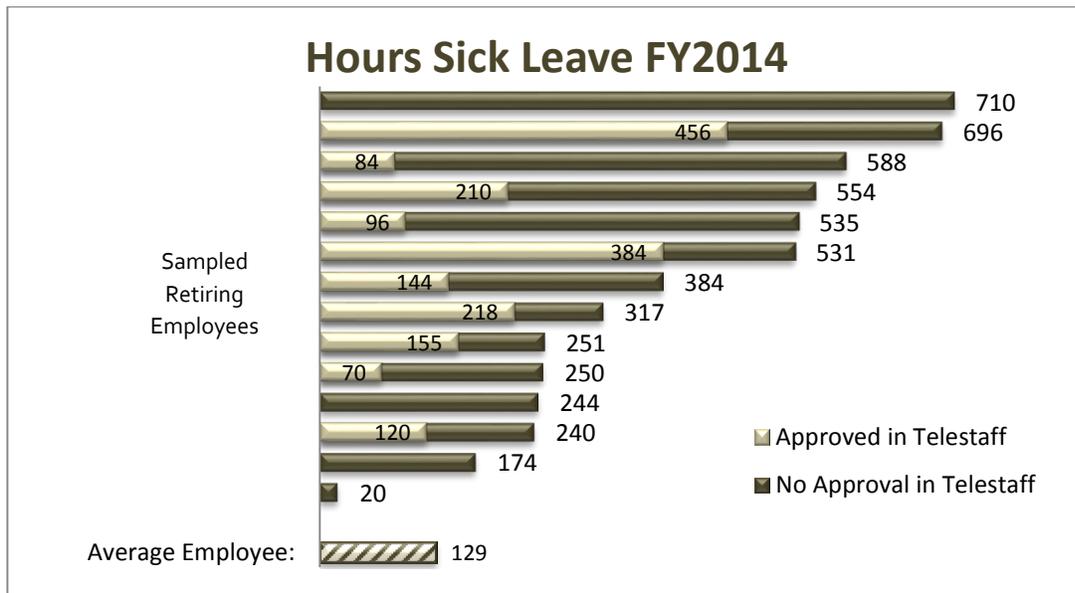


Figure 2

¹³ Ibid. Section 7.7(A)-5, “Reasonable cause means that the Employer has obtained information or has observed that the employee is abusing/misusing sick leave.”

¹⁴ 13 employees had more than 20 years of service and received a lump sum payment for unused leave on June 27, 2014. The 14th employee was Battalion Chief A who received his lump sum payment on May 3, 2014.

Management is expected to use Telestaff, the MCFRS scheduling program used to track employee leave, to recode leave from "sick leave" to "approved-sick leave" when medical documentation is submitted by the employee. Management is expected to maintain a copy of the documentation in the employee's supervisory file to support the coding change. For the purposes of this analysis, we assumed that instances cited in Telestaff as "approved" sick leave evidenced that the sick leave usage was documented.¹⁵

Based on information obtained from Telestaff, only 2 of the 14 employees' sick leave usage was adequately supported by medical documentation or fell below the levels which require documentation.

a. Seven of the 14 sampled employees had a lengthy incident of sick leave usage¹⁶ immediately preceding retirement.

The employees in this group averaged close to 7 weeks¹⁷ of sick leave usage at the end of their careers. After that period, none returned to work or submitted any medical documentation supporting an illness. This information suggests that retiring employees may be taking advantage of the current MCFRS Union Agreement which allows a maximum of 72 hours of sick leave usage during a single incident before medical documentation is required but also states that the documentation "must be submitted upon the employee's return to work."¹⁸ While it is possible that the previously mentioned "reasonable cause" criterion would allow a manager to request documentation during the absence, this is not the current practice within MCFRS.

b. For the 7 employees who did not take a large chunk of sick leave immediately preceding retirement, 5 incurred 5 or more undocumented incidents of sick leave usage, should have been placed on notice, and could have been placed on subsequent leave restriction.

MCFRS employees are allowed a maximum of 4 incidents of undocumented sick leave before they are counseled "that additional sick leave without the appropriate documentation...may result in sick leave restriction." Employees with a fifth incident of undocumented sick leave may be placed on leave restriction and given LWOP for additional undocumented sick leave. MCFRS reported that only one of the employees was counseled and none were placed on leave restriction. According to a MCFRS senior staff member, managers are reluctant to counsel employees or place them on leave restriction in the months immediately preceding retirement.

¹⁵ We requested copies of medical documentation for a sample of sick leave instances and were told that, the supervisory files for the requested employees were destroyed after they left the Department and that any documentation would have been in those files.

¹⁶ The employees used between 120 and 660 hours of sick leave during one incident immediately preceding retirement. The average amount used was 298 hours. MCFRS reported that 2 of these employees were injured in the line of duty and permitted to use undocumented sick leave until retirement in lieu of working a light duty position.

¹⁷ Only sick leave hours were used for analysis purposes. Some employees comingled sick leave, with other types of leave such as annual and compensatory leave, resulting in a longer absence immediately preceding retirement.

¹⁸ Agreement Between Montgomery County Career Firefighters Association International Association of Firefighters Local 1664, AFL-CIO and Montgomery County Government Montgomery County, Maryland for the years July 1, 2013 – June 30, 2016, Section 7.7.

The staff member told us there is a perception that this is a pointless effort as the employee will have left by the time any discipline can be imposed.

Sick Leave Cost

On average, MCFRS spent \$3,819 per employee on sick leave pay in FY2014. In total, our 14 sampled MCFRS employees received \$241,065 in sick pay in FY2014, averaging \$15,290 per person. Based on our analysis, the average sampled retiring MCFRS employee’s sick pay cost was 4 times the average MCFRS employee’s. (See Figure 3.)



Figure 3

During FY2014, 108 MCFRS employees, representing 8.6% of the departmental workforce¹⁹ separated from service. We did not determine how many of those employees separated due to retirement. However, approximately 25 percent of the employees had more than 20 years of service and were eligible to retire. Further analysis would be required to determine how many separating employees retired and whether their use of sick leave increased as they approached retirement. Based on our analysis and current policy constraints, it appears likely that the practice of “burning” sick leave extends beyond what is reflected in our small sample.

Additionally, “burning” sick leave by employees as they approach retirement is costly for reasons other than what is reflected in the employee’s payroll records. By policy, MCFRS has

¹⁹ 108 separated/ 1251 total = 8.6 percent

minimum staffing levels, requiring certain positions to be filled around the clock. The majority of MCFRS employees occupy emergency first response field operation positions, which require the position to be filled by another employee, likely on overtime, anytime the employee is out.²⁰ Therefore, MCFRS may not only be incurring sick leave pay costs for retiring employees “burning” sick leave but in many cases may be paying other employees time and a half in order to keep their positions adequately staffed.

Finding 3: Current MCFRS policy and practice unfairly favors retiring employees who misuse sick leave.

As previously stated, only one of the 14 sampled employees’ FY2014 sick leave usage fell below average. That same employee forfeited over 1700 hours of sick leave upon retirement. At the same time, 7 of the other 13 employees used every hour of sick leave prior to retirement.

While MCFRS policy clearly outlines the circumstances under which an employee can use sick leave, it does not give adequate consideration to enforcement of the policy as an employee nears retirement. Because management reports they feel unable to ask for documentation from an employee who never returns to work and timely discipline may not be possible near the end of an employee’s career, it appears that a retiring employee who utilizes sick leave as outlined in policy may forfeit a great deal of leave, while other retiring employees are able to violate policy and enjoy substantial additional time off without repercussion. This may negatively affect some employees’ morale and encourage employees to engage in an inappropriate pattern of sick leave usage.

Conclusion

Under current policy, sick leave is not an entitlement²¹ and should be utilized only when an employee or a member of the employee’s immediate family has a legitimate medical need.

²⁰ Montgomery County Office of Legislative Oversight Report Number 2014-2, *Injuries, Injury-Related Leave, and Overtime in the Montgomery County Fire and Rescue Service*, November 26, 2013, page 1.

²¹ MCFRS Management reported that prior to January 15, 1988 excess compensatory time was converted to sick leave at the end of the year. Employees who began employment prior to 1988 may have been required to work extra hours which was subsequently converted to sick leave and thus feel greater entitlement to a portion of their sick leave balance.

Current MCFRS policy appears designed to prevent inappropriate use of unscheduled leave during an employee's career but does not adequately address the prevention of leave "burning" as an employee nears retirement. Employees who have a lengthy incident of undocumented sick leave usage and do not return to duty status prior to retirement have not been required to provide appropriate medical documentation. The current MCFRS Union Agreement allows managers to request medical documentation any time they have reasonable cause to believe that the employee is misusing/abusing sick leave²² and leaves room for managers to require documentation for increased patterns of sick leave usage as an employee approaches retirement.

The current MCFRS Union Agreement provides that in some cases, employees can utilize a significant number of hours²³ of sick leave prior to being required to submit medical documentation. Further research is warranted to determine whether an incentive program could significantly reduce sick leave usage and its associated overtime costs.

Recommendations

MCFRS should take those steps necessary to ensure that:

1. Employees who use sick leave in a way that is contrary to policy are counseled, placed on leave restriction, and disciplined as outlined in policy and the current MCFRS Union Agreement.
2. Managers who inappropriately approve sick leave without confirming a legitimate medical need are held accountable.
3. Current policy is expanded to specifically address sick leave abuse as an employee approaches retirement. New policy should clearly outline an effective methodology to hold employees and managers accountable for lengthy and repetitive undocumented incidents of sick leave usage immediately preceding retirement.
4. To the extent possible, losses attributable to abuse of sick leave are recovered.

²² Agreement Between Montgomery County Career Firefighters Association International Association of Firefighters Local 1664, AFL-CIO and Montgomery County Government Montgomery County, Maryland for the years July 1, 2013 – June 30, 2016, Section 7.7(A)-5.

²³ Ibid. Section 7.7

Summary of the
Chief Administrative Officer's Response

The response from the Montgomery County Chief Administrative Officer (CAO) to the final draft report is included in its entirety in Appendix B. The CAO concurred with our recommendations.

The CAO's response did not cause us to alter our findings or recommendations.

Appendix A: Relevant Facebook Quotes

The following quotes were obtained from Battalion Chief A's public Facebook page:

Today was my "unofficial" last day of work with MCFRS. From this point, I'll be burning leave to the very end. It is soon to be the greatest 26 year ride ever! Thanks for the memories. Johns Hopkins Public Safety Leadership Program, here I come! I must be outta my ... mind! - December 19, 2013

My wife said this is when she loves me the most. I say, "I'm retired dammit!" – February 25, 2014 (This particular quote was accompanied by photos of Battalion Chief A sleeping in various locations.)

Sun and sand for a few – at Baie Nettle, St Martin – Netherlands Antilles – April 11, 2014

...was at Oyster Bay Beach Resort St Maarten – April 13, 2014

Last night in St. Marteen. Having grilled lobster at Bistro due la Mer – at Port De Marigot, St. Martin – April 16, 2014

Well it's official. I received my first pension statement for May 1st. I'm retired from MCFRS. Thanks for the memories. New ones forthcoming. – April 30, 2014

Left Job at Montgomery County Fire and Rescue Services. May 1 – Retired Battalion Chief... – May 1, 2014

Appendix B: Chief Administrative Officer's Response



OFFICES OF THE COUNTY EXECUTIVE

Isiah Leggett
County Executive

Timothy L. Firestine
Chief Administrative Officer

MEMORANDUM

October 22, 2014

TO: Edward Blansitt, Inspector General

FROM: Timothy L. Firestine, Chief Administrative Officer *Timothy L. Firestine*

SUBJECT: Final Draft Report, Montgomery County Fire and Rescue Service Sick Leave Usage

I am in receipt of your final draft report sent on September 24, 2014 detailing the audit conducted by your office concerning sick leave usage in Montgomery County Fire and Rescue Service. We thank you for your efforts in reviewing this issue and agree with the report's conclusion that according to our current laws and policies, sick leave should be utilized only when an employee or a member of the employee's immediate family has a legitimate medical need.

We agree with the report's recommendations 1-3, and will take all the steps necessary to ensure that those three recommendations are fully analyzed and implemented. With respect to recommendation 4, the Office of the County Attorney is working with Montgomery County Fire and Rescue Service to explore legal options.

If you have any questions, please feel free to contact Assistant Chief Administrative Officer Fariba Kassiri, who can be reached at (240) 777-2512 or Fariba.Kassiri@montgomerycountymd.gov.

TLF:ja

cc: Joseph Adler, Director, Office of Human Resources
Marc Hansen, County Attorney
Fariba Kassiri, Assistant Chief Administrative Officer
Bonnie Kirkland, Assistant Chief Administrative Officer
Steven Lohr, Fire Chief

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