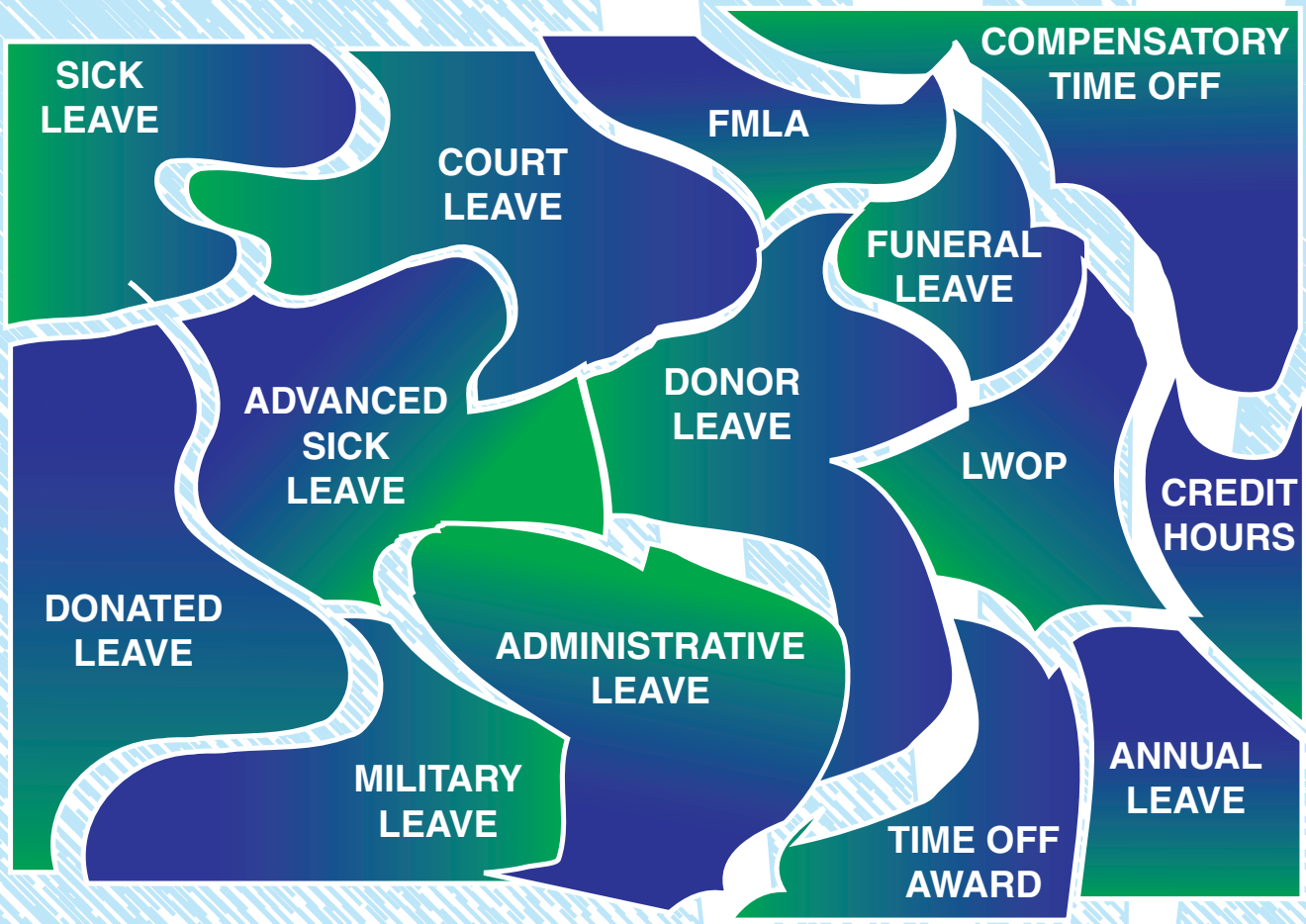
Handbook on Leave and Absence

A Tool for Human Resource Staffs, Payroll Staffs, and Time and Attendance Clerks



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Introduction

Introduction

Philosophy: The philosophy of Federal leave policy and administration stems from the President's recognition of the many dimensions of people's lives that make them whole, and that only by maintaining its status as a "model employer" can the Federal Government attract, retain, and motivate the diverse and productive workforce necessary to create a Federal Government that works better and costs less.

The Department of Energy (DOE) is supportive of this philosophy and has established a variety of leave policies and programs aimed at improving employee wellness and helping employees achieve their work and family goals. All employees are encouraged to become familiar with the leave flexibilities available in the DOE workplace. Responsible and appropriate use of Federal leave programs, consistent with the mission of the Department to serve the public, and the Department's commitment to a family friendly workplace, will ensure an environment in which teamwork, trust, openness, pride, and respect represent our highest standards.

Purpose: This guide supplements the requirements and responsibilities described in DOE O 322.1A, PAY AND LEAVE ADMINISTRATION AND HOURS OF DUTY, and is designed as a technical reference for personnel staffs and time and attendance clerks, as well as source material which can be customized locally for employees and supervisors. Employees and supervisors who utilize this guide should contact their servicing personnel office for in-depth guidance about a particular situation.

Structure: This guide is organized by common types of absences and captures the various types of leave that are available based on laws, regulations, executive orders, former Comptroller General decisions, and Departmental policy for the particular type of situation. It does not set policy or cover all possible reasons for an absence. Each section describes what situation(s) is(are) covered, the types of leave that may be used, and any limitation on the amount of leave that may be taken.

Background Information

Background Information

General: **Compensatory time off, time-off awards, and/or credit hours earned while participating in a flexible work schedule may be used for all situations in lieu of leave or leave without pay (LWOP).**

Pay Status: As long as there is a leave or other paid time off balance, an employee may elect to be paid his/her normal salary/wage; otherwise, the employee is placed in a nonpay status and may request LWOP, which must be approved, or is placed on absence without leave (AWOL), if not approved.

Leave Accrual Rates:

	Sick	**Annual**		
		Years of Service		
Full-Time Employees		Less than 3	3-15	15 or more
Per pay period	4 hours	4 hours	6 hours	8 hours
Maximum per year	104 hours	13 days	20 days	26 days
Maximum at year end	No limit	240 hours	240 hours	240 hours
Maximum amount advanced	240 hours	13 days	20 days	26 days
Part-Time Employees				
Per pay period[1]	1:20 hours	1:20 hours	1:13 hours	1:10 hours
Maximum per year	Varies, depending on the amount of hours worked			
Maximum at year end	No limit	240 hours	240 hours	240 hours
Maximum amount advanced	Varies, depending on the amount of hours worked			

All Employees	**Military**	**Funeral**	**Court**	**Donor**[2]
Maximum per year	15 days[3]	[4]	No limit	37 days
Maximum at start of following year[5]	30 days	NA	NA	37 days

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1 Expressed as a ratio (pro-rata) of one hour accrued/earned per the number of hours in a pay status during a pay period.

2 7 days for bone-marrow donation and 30 days for organ donation.

3 See *Military Duty* regarding a military reserve technician's entitlement to 44 days.

4 Per event; see *Funeral and Related Arrangements* regarding the amount of leave for veterans' funerals.

5 See *Military Duty* regarding carrying over leave.

Employee Entitlement & Privileges vs Supervisory Discretion: Entitlement refers to a privilege that has been established by law, such as an amount of annual or sick leave that is earned each pay period and the right to use sick leave to care for family members. Additional privileges have been established over the years through Executive Orders, regulations, Comptroller General decisions issued, Departmental and local policies, and negotiated provisions in local bargaining agreements. Supervisory discretion refers to a supervisor's authority to determine when a subordinate employee may exercise his/her entitlements and privileges. Thus, an employee requests a particular entitlement or privilege and an appropriate supervisor approves or disapproves the timing and type of entitlement or privilege requested.

Authorizing Official: This may vary by organization (check local delegations). Normally, the first full supervisory level approves most types of leave and other paid absences based on an existing balance (note: team leaders may be recommending officials or they may have limited authority to act on leave requests). A leave request over 12 weeks, an advance of sick leave, LWOP for extended periods, a leave request from an employee who is regarded as a "leave abuser" (see the section in the *Introduction* titled "Leave Abuse"), or forced leave (see the section of the *Introduction* titled "Forced Leave") may require a higher level supervisory approval. Servicing personnel offices should concur when LWOP is being approved beyond 6 months or forced leave is being considered. Medical Officers and time and attendance clerks do not approve requests for leave, except as a supervisor for their subordinates.

Documentation: A supervisor may require an employee to provide evidence of a medical condition pertaining to the employee or his/her family member in the form of a medical certificate (see 5 CFR, §339.104 and §630.201) at any time, but at least by the 5th consecutive calendar (not work) day of confinement evidence should be provided, unless the employee is so incapacitated that s/he is unable to obtain and/or provide such documentation. A medical certificate is required to advance sick leave (see DOE O 322.1, paragraph 4b (8)). A copy of military orders should be provided when requesting military leave. A copy of a summons should be provided when requesting court leave. In order to qualify for restoration of annual leave, documentation must exist which gives evidence that leave was requested and approved at least by the third biweekly pay period before the end of the leave year (see Appendix H).

Employee Responsibilities: To the extent feasible, an employee is expected to adjust his/her personal schedule in order to meet significant work requirements and deadlines. When an event, particularly an unplanned event, results in an employee not being able to maintain normal duty hours, then the employee is expected to make up that time or request an appropriate type of leave. An employee should:

- Maintain a cooperative spirit in balancing work and personal needs.

- Request leave as far in advance as possible, specifying the type of leave that is requested, particularly when an employee intends to invoke his/her entitlement of 12 weeks of LWOP under the Family and Medical Leave Act (FMLA). **When invoking the entitlement under the FMLA, requests should be submitted at least 30 days before the leave is to begin**, unless the condition will not permit such notice, in which case a request should be submitted as far in advance as possible.

- If requesting unscheduled/unplanned leave, notify his/her immediate supervisor directly, leave his/her telephone number, or when that is not possible, indirectly notify the supervisor through another employee in the office, as soon as possible on the initial day that s/he is not able to report for work so that s/he will not be reported as absent without leave (AWOL).

- Provide evidence of a medical condition or treatment promptly when the immediate supervisor requests or orders it; and

- Review his/her leave usage and balances on the biweekly statement of earnings periodically to verify the accuracy of leave charges and balances.

Supervisor Responsi-bilities:

Supervisors:

Are expected to keep informed about employee leave balances, local leave policies and procedures, and time and attendance reporting policies and procedures. Decisions regarding leave requests should be made on a case-by-case basis. Supervisors should seek a reasonable balance between work demands and employee needs, particularly to avoid "stacking" options which will result in an employee being gone an excessive amount of time and adversely impacting the productivity of the organization. For example, an employee who requests to exhaust his/her sick and annual leave before requesting or utilizing an additional 12 weeks of LWOP under the FMLA can be denied part or all of the leave request. Thus, the absence could be limited to 12 weeks, if needed.

Should inform all subordinates as to:

- The process to request leave;

- Any documentation that is needed;

- The frequency that subordinates should report their status; and

- When and what type(s) of leave has(have) been approved.

Should inform the servicing personnel office when:

- An employee will be absent over 30 days;
- An employee is being considered for LWOP beyond 6 months;
- An employee is suspected of abusing leave privileges;
- An employee is to be reported as AWOL;
- Considering placing an employee on extended excused absence (administrative leave);
- Considering forcing an employee to take leave (see the section that follows on forced leave); and
- An assessment from a medical officer is needed, as the servicing personnel office is responsible for determining the employability of an employee.

Determine the impact that an employee's medical condition is having on the performance of his/her duties. Supervisors have a need to know enough about the employee's medical condition to make personnel and management decisions, including approval/disapproval of leave, the type of leave to be charged, acceptable reasonable accommodation, undue hardship on the mission of the organization, and an adverse action. Supervisors should seek a medical assessment and recommendation from the servicing medical officer when an employee's health status is an issue, particularly to insure that any documentation provided by an employee is, in the medical officer's opinion, adequate in order to understand the ramifications of the medical condition.

Medical Officer Responsi-bilties:

The role of the medical officer is to:

Advise supervisors and the personnel staff on the medical condition of employees in layperson's terms so those management officials can determine the employee's ability to work;

Perform fitness-for-duty examinations to determine whether an employee meets the medical requirements of a position when the position is included in a medical evaluation program and to determine whether there is a medical reason for a performance problem;

Determine the medical sufficiency/adequacy of any documentation provided by the employee or the employee's physician in order to understand the nature and extent of the medical condition; and

Advise on the medical usefulness of possible accommodation or propose reasonable accommodation from an ergonomic standpoint.

Excused Absence: Excused absence (commonly referred to as administrative or admin leave) is used for brief periods, normally up to 1 hour, and is discretionary as to its use. There are some situations identified in the *Common Types of Absences* section and Appendix J in which excused absence may be authorized for longer periods. Up to 4 hours of excused absence is authorized for health screenings (see Appendix M).

Leave Abuse: Abuse may involve one or more of the following characteristics:

- Unscheduled/Unplanned - Leave is normally not requested in advance, even when the employee knows or makes plans prior to the date(s) of the absence. Abusers normally call in the day of the absence and tell someone other than the supervisor.

- Amount - Usage may be more frequent that most employees normally take, so the amount of leave used is proportionately higher.

- Pattern - A pattern of usage may become apparent over time, such as being off before or after weekends or holidays or repeatedly taking sick leave for one day less than the number of days when a medical certificate is required.

- Impact on productivity and/or other employees - Leave abusers tend to focus on self-interests rather than balancing the needs of the organization or other employees' schedules.

- Reason for taking leave - Abusers may offer a reason(s) which, cumulatively, become(s) questionable as to the reliability of the justification(s).

- Type of leave is inappropriate - Abusers may have a limited annual leave balance, so sick leave is used when annual leave would be appropriate.

When a supervisor suspects an abusive situation, then s/he should discuss it with the employee. The discussion should focus on why the supervisor has become concerned and the impact on the organization and other employee. Corrective action may include any of the following:

- Establishing internal control procedures, such as when calling in sick, the employee must talk to a supervisor.

- Requiring a leave request form be completed and/or a medical certificate.

- Adjusting the employee's hours of work or work schedule, e.g., put the employee on core hours (but not a flexiplace arrangement).

- Referring the employee to an Employee Assistance program counselor if the leave problem stems from a personal problem.

- Planning the employee's annual leave usage over a few months.

- An oral admonishment.

- Issuing a letter cautioning the employee that, if the attendance problem continues, it may result in disciplinary action.

In the event that the employee fails to comply with the supervisor's instructions, then the supervisor is authorized to disapprove the leave request and place the employee on absent without leave (AWOL), which may lead to disciplinary action.

Forced Leave: Forced leave (also referred to as enforced leave) is management directed leave or other paid absence, as opposed to an employee requesting a particular type of leave. A supervisor may use this authority when needed, such as to close a plant operation over the Christmas holiday week or as a last resort when the employee's presence at the worksite is unproductive or would have a negative impact on the organization's operations, including the well being, health, and/or safety of the employee and/or other employees. The servicing personnel office should be consulted when a supervisor is considering using this authority since, in most cases, enforced leave is tantamount to a suspension.

Definitions: Family Member - An employee's spouse; children, including adopted and foster children; parents and "in-laws;" siblings and their spouses; and any individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship, e.g., a grandparent, an "adopted" parent, a legal guardian, or an active "in-law" from a previous marriage.

Serious Health Condition - An illness, injury, impairment, or physical or mental condition that involves:

- Inpatient care (i.e., an overnight stay) in a hospital, hospice, or residential medical care facility, including any period of incapacity or any subsequent treatment in connection with such inpatient care; or

- Continuing treatment by a health care provider that includes (but is not limited to) examinations to determine if there is a serious health condition and evaluations of such conditions if the examinations or evaluations determine that a serious health condition exists.

(For a complete description of what is included or excluded in the definition of a serious health condition see 5 CFR §630.1202.)

"Use or Lose" Leave - A term that applies to annual and donor leave. It means that, if the amount of leave that is earned annually is not fully used, then it is normally forfeited at the end of the 12-month period in which it was available to be used.

Common Types of Absences

Common Types of Absences

Administrative Dismissals

Coverage: Events beyond the control of management or employees, such as hazardous weather or civil disturbances; situations requiring an office to close, such as inadequate heat or air conditioning or loss of essential services, e.g., an electrical outage or plumbing problem; a local event, such as a Presidential Inauguration or a local holiday; and any other comparable situation.

Leave Usage: Excused absence (administrative leave) with no time limit is authorized for covered situations when management initiates the dismissal. However, when an employee anticipates these situations and chooses to depart before an administrative dismissal is announced, the employee should request annual leave or LWOP. If the administrative dismissal is approved within an hour of an employee's departure, the leave request may be changed to excused absence. When an office or facility is closed before the start of the work day, employees on scheduled leave will have their leave changed to excused absence.

Care For A Family Member[6]

Coverage: The care that an employee needs to provide a family member as a result of a serious health condition[7], as well as other conditions, such as physical or mental illness, injury, pregnancy, childbirth and a medical, dental, or optical examination or treatment.

Leave Usage: A full-time employee may request at least 40 hours (5 workdays)[8] of sick leave each leave year to care for a family member. An additional 64 hours (8 days) are available if the employee maintains a balance of at least 80 hours, for a total of 104 hours (13 days). Hours for a part-time employee are pro-rated based on the employee's scheduled tour of duty each week.

If an employee does not have a sick or annual leave balance, the employee may request donated annual leave under the leave transfer program[9].

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6 See the definition of a family member in the *Introduction.*

7 See the definition of a serious health condition in the *Introduction.*

8 The total hours available are reduced for any hours used for maternity or paternity purposes (see *Maternity and Paternity*) and/or to arrange or attend the funeral or memorial service of a family member (see *Funerals and Related Arrangements).*

9 See Appendix K.

An employee may request up to 12 weeks of sick leave[10] and/or LWOP during any 12-month period[11] to care for a family member who has a serious health condition.

An employee may request up to 24 hours of LWOP during any 12-month period[12] to accompany his/her child(ren) or an elderly relative to routine medical or dental appointments or to assist an elderly relative in making arrangements for housing, meals, telephone and banking services, and similar activities.

Children's Activities

Coverage: Employees wanting to participate in children's school or early educational activities.

Leave Usage: Employees may request annual leave or up to 24 hours of LWOP during any 12-month period[13] to attend parent-teacher conferences, meetings with child care providers, interviews with new school or child care facilities, or to participate in volunteer activities supporting their children's educational advancement.

Community Service (Volunteer) Activities[14]

Coverage: Community service (volunteer) activities which are work- and non-work related.

Leave Usage: Annual leave and LWOP may be requested.

Excused absence (administrative leave) may be authorized when the activity is directly related to DOE's mission, is officially sponsored or sanctioned by the Secretary or Head of a Departmental Element, or will clearly enhance an

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10 The total time available is reduced for any time (up to 13 days) used to care for a family member for a non-serious health condition (see the Qs&As at http://www.opm.gov/oca/leave/html/slQ&A.htm).

11 The total time available is reduced for any time used for an employee's serious health condition (see *Employee's Medical or Health Condition)* and for maternity or paternity purposes (see *Maternity and Paternity).* **30-day advance notice, or as much as possible, is required when invoking this entitlement under FMLA.**

12 The 24 hours available are reduced for hours used for eligible children's activities (see *Children's Activities*) (see Appendix B).

13 The 24 hours available are reduced for any hours used to care for a family member (see *Care For A Family Member).*

14 See Appendix L.

employee's professional development or skills in his/her current position. Reasonable limits should be established based on the activity.

Examples: Excused absence may be authorized for:

- Science, matematics, and engineering education[15].
- Computer installation and training (see Appendix C).
- Rescue or protective work during an emergency, such as a fire, flood, riot, or search operation (normally up to 3-5days). Excused absence is not appropriate for a member of a volunteer fire company responding to routine alarms or other activities that would require frequent absence from duty.
- Pre-emergency civil defense training and test exercises (up to 40 hours in any *calendar* year; see Appendix D).

Court Appearances

Coverage: Jury duty, serving as a witness, child support payment and paternity matters, and all other court appearances.

Leave Usage:

Jury Duty: When an employee has been summonsed to serve as a juror or prospective juror, court leave is authorized.

Witness: When an employee is asked to testify or produce records on behalf of any party, in an official capacity, based on the employee's current or former position in the Federal or District of Columbia Government, then the employee is performing in a regular duty status[16].

When an employee has been summonsed as a witness in a non-official capacity for any party in a judicial (not administrative) proceeding involving a Federal, State or local government entity, court leave is authorized.

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15 See 42 U.S.C. § 7381b.

16 When the Federal Government is not a party, then an employee must have approval of the release of information from the General Counsel in accordance with 10 CFR Part 202.

When an employee has been summonsed as a witness in a non-official capacity for any party in a judicial or administrative proceeding, excused absence (administrative leave) may be authorized if it is in the best interest of the Government or it is for a brief period.

For any other witness situation, annual leave or LWOP may be requested.

All Other: For all other court appearances, annual leave or LWOP may be requested.

Downsizing Activities

Coverage: Career transition services, including counseling, employment interviews, tests, and training, as a result of an organization's need to downsize.

Leave Usage: Excused absence (administrative leave) may be authorized once it has been announced that an organization is being downsized and that placement efforts are authorized. An employee may be excused for the period of time needed for counseling, interviews, tests, and training, and for travel to and from a local area counseling center, training center, or employer for those purposes.

Once a Certificate of Expected Separation has been issued, an employee is regarded as surplus. The employee is then authorized a minimum of 40 hours of excused absence for career transition services[17]

When placement efforts have not been authorized, an employee may request annual leave or LWOP.

Employee's Medical or Health Condition

Coverage[18]: Medical, dental, or optical examination or treatment; illness; injury[19]; and surgery.

Leave Usage: Earned sick leave and/or annual leave may be requested.

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[17] See the DOE Career Transition Assistance Plan.

[18] For pregnancy and child birth, see *Maternity and Paternity*; for care for a family member, see *Care For A Family Member*; for blood, bone-marrow, or organ donation, see *Medical Donations;* for non-DOE health screenings, see *Physical Fitness and Wellness Activities.*

[19] Other than an injury on the job; for an injury sustained while on the job, see the *DOE Workers' Compensation Guide.*

If an employee has no sick leave balance, sick leave may be advanced up to 30 days, providing the employee is expected to return to duty so the indebtedness will be satisfied.

When an employee has no sick and annual leave balance, the employee may be eligible for the transfer of annual leave from another Federal employee under the leave transfer program, in which case the employee should contact the servicing personnel office for assistance in enrolling in the program.

When an employee is unable to perform the duties of his/her position because of a serious health condition[20], the employee may request up to 12 weeks of LWOP during any 12-month period[21].

An employee is in a duty status for the time at, and travel to and from, a DOE medical facility or provider's office for a medical examination (including an on-the-job injury) or treatment (including immunizations), and/or recuperation.

Funerals and Related Arrangements

Coverage: Funerals and memorial services for family members and non-family.

Leave Usage:

Family Member: Full-time employees may use at least 40 hours (5 workdays)[22] of sick leave each leave year to make arrangements for, and/or attend, family funerals and memorial services. An additional 64 hours (8 days) is available if the employee maintains a balance of at least 80 hours, for a total of 104 hours (13 days). Hours for part-time employees are pro-rated based on the employee's scheduled tour of duty each week.

Annual leave or LWOP may be requested.

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20 See the definition for a serious health condition in the *Introduction.*

21 The 12 weeks available are reduced by any time used for the birth of a child and care of the newborn, the adoption or foster care of a child (for both situations see *Maternity and Paternity)*, and/or the care for a family member with a serious health condition (see *Care For A Family Member*). **30-day advance notice, or as much as possible, is required when invoking this entitlement under FMLA.**

22 The total hours available are reduced for any hours used for the care of a family member (see *Care For A Family Member* and *Maternity and Paternity*).

When the family member died as a result of wounds, disease, or injury incurred while serving as a member of the armed forces in a combat zone, funeral leave may be requested up to 3 days (they need not be consecutive) and used in conjunction with annual leave, sick leave and/or LWOP.

If funeral leave is not appropriate, excused absence (administrative leave) up to 4 hours in a day may be authorized for an employee who was a veteran or a member of a veteran's organization, for the purpose of participating in the return from overseas of the remains of a veteran[23].

Non-Family: An employee may request annual leave or LWOP to arrange or attend the funeral or memorial service for a non-veteran.

Excused absence (administrative leave) up to 4 hours in a day may be authorized for an employee who was a veteran or a member of a veteran's organization, for the purpose of participating in the return from overseas of the remains of a veteran.

Maternity and Paternity

Coverage[24]: Pregnancy, childbirth, recuperation from childbirth, adoption, care for a newborn or newly adopted child, and foster parenting.

Leave Usage: Expectant mothers may use a combination of sick leave, annual leave, or LWOP.

An employee may request sick and/or annual leave, and/or up to 12 weeks LWOP during any 12-month period[25] for:

- The birth of a child;
- The placement of a child with the employee for adoption, including

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23 See 5 U.S.C. §6321.

24 For other medical or health conditions, see *Employee's Medical or Health Condition*; for court appearances regarding determinations of paternity, i.e., paternity suits, see *Court Appearances*.

25 The total time available is reduced for any time used for an employee's or other family member's serious health condition (see *Employee's Medical or Health Condition* and *Care For A Family Member)*. **30-day advance notice, or as much as possible, is required when invoking this entitlement under FMLA.**

appointments with adoption agencies, social workers, and/or attorneys, court proceedings, required travel, and any other activities necessary to allow the adoption to proceed;

- Foster care; and
- To care for a child who has a serious health condition[26].

A full-time employee may request at least 40 hours (5 workdays)[27] of sick leave each leave year to care for a child who is physically or mentally ill or needs a medical, dental, or optical examination or treatment. An additional 64 hours (8 days) are available if the employee maintains a balance of at least 80 hours, for a total of 104 hours (13 days). Hours for a part-time employee are pro-rated based on the employee's scheduled tour of duty each week.

Medical Donations

Coverage: Blood, bone-marrow, and organ donations.

Leave Usage: Up to 4 hours of excused absence (administrative leave) may be authorized, as necessary, to travel to and from a blood donor site, donate blood, and recover.

Up to 7 days of paid (donor) leave each *calendar* year may be authorized for bone-marrow donation and 30 days for organ donation.

Sick and annual leave and LWOP may be requested for these purposes.

Military Duty

Coverage: An employee who is a member of a reserve component of the Army, Navy, Air Force, Marines, or Coast Guard, or a member of the National Guard, and is ordered to report for training or active military duty.

Leave Usage: Military leave, annual leave, and/or LWOP[28] may be requested for annual active duty training, inactive duty training, or engaging in field or coast defense

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26 See the definition of a serious health condition in the *Introduction.*

27 The total hours available are reduced for any care for another family member (see *Care For A Family Member)* and/or to make or attend a funeral or memorial service of a family member (see *Funerals and Related Arrangements).*

28 LWOP for over 6 months should be justified based on the criteria in DOE O 322.1, PAY AND LEAVE ADMINISTRATION AND HOURS OF DUTY.

training, and, in lieu of being separated, for the initial (6 months') period of active duty training and for active duty. Military leave accrues at 15 calendar days each *fiscal* (not calendar or leave) year, and is prorated for a part-time employee. Any unused leave is carried forward to the next fiscal year for a total of up to 30 days at the beginning of the subsequent fiscal year.

A military reserve technician on active duty without pay in support of combat operations is entitled to a total of up to 44 workdays of military leave in a *calendar* year without loss of or reduction in, accrual of leave or credit for time or service[29].

Physical Fitness and Wellness Activities

Coverage: Physical fitness programs during normal duty hours.

Leave Usage: No leave is charged when participation in a physical fitness program occurs during, or in lieu of, a meal (lunch) period. If the amount of time needed to exercise and eat exceeds the meal period, then, whenever possible, an employee should be allowed to adjust/expand his/her work schedule to accommodate the program, as it is in the Department's best interest for employees to maintain good physical and mental fitness; otherwise, annual leave or LWOP may be requested. Recognizing that all employees cannot participate at the same time during their meal (lunch) periods, staggered fitness schedules throughout the day are beneficial. When management promotes a particular program, normally for a short period of time, such as an hour once a week for a few weeks for a smoking cessation class, an introductory fitness program, or a charity run, then excused absence (administrative leave) may be authorized.

Up to 4 hours of excused absence (administrative leave) each *leave* year may be authorized an employee in order to participate in preventive health screenings[30]

Professional Meetings, Conferences, and Conventions

Coverage: Individual development or educational events.

Leave Usage: Attendance at an event paid with training and/or travel funds, including time and travel to and from the event, is considered official duty. If attendance at an event primarily benefits the employee rather than the Department, the employee must request annual leave or LWOP. Other events may be approved for excused absence (administrative leave) when the authorizing official believes that

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29 See 5 U.S.C. 6323(d)(1).

30 See Appendix Appendix M.

attendance may benefit the Department indirectly or to a limited degree or when the event would clearly benefit the Department, but, due to the nonavailability of funds, the employee agrees to pay his/her expenses.

Tardiness and Brief Absences

Coverage: Brief absences, including heavy or hazardous traffic conditions and personal or family issues that result in a delay in starting work at a scheduled time or a need to depart during normal duty hours, as well as luncheons and office functions.

Leave Usage: Excused absence (administrative leave) may be requested for a brief period, normally up to 1 hour.

Excused absence (administrative leave) may be authorized for up to the number of hours an employee is scheduled to work in a day when there is a prohibition or restriction of traffic or public transportation by public authority which would require a one-way travel time of over 4 hours. This does not apply if advance notice of a probable disruption of service, such as a strike, permits sufficient time to arrange other means of getting to work.

Excused absence (administrative leave) may be authorized for luncheons, which are not "working luncheons," office parties, and similar functions that are sponsored or supported by managers. A reasonable time frame should be determined by an appropriate supervisor based on the function.

If not prohibited by a local policy or collective bargaining agreement, an employee may be authorized to make up the time by working during a normal lunch period or adjusting his/her normal duty hours.

For other tardiness or brief absences, an employee may request annual leave or LWOP.

Vacations

Coverage: Absences for personal recreation, rest, and recuperation involving several consecutive days or a day or two at a time.

Leave Usage: Annual leave may be requested for vacations. If sufficient annual leave is not available, LWOP may be requested. If leave or LWOP must be denied due to workload demands, then the supervisor should discuss an alternative schedule with the employee.

Voting and Voter Registration

Coverage: Registration for, and the act of voting in, Federal, State, county, or municipal elections or in referendums on any civic matter.

Leave Usage: Excused absence (administrative leave) may be authorized for an employee to report to work up to 3 hours after the polls open or to leave work up to 3 hours before the polls close, whichever requires the lesser amount of time off. In exceptional circumstances, up to a full day may be allowed. If registration in person is required and it cannot be accomplished other than during duty hours, absence may be excused on substantially the same basis as voting.

Appendix

INDEX OF LAWS,

REGULATIONS,

AND OTHER REFERENCES

RELATED TO

LEAVE ADMINISTRATION

INDEX OF LAWS, REGULATIONS, AND OTHER REFERENCES RELATING TO LEAVE ADMINISTRATION

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NOTE 1: An asterisk (*) indicates that the subject area is not within the purview of the Office of Compensation Administration. Questions in these areas should be directed to the responsible organization.

NOTE 2: A separate index on pay and hours of duty is available on OPM's electronic bulletin boards. In MAINSTREET (202-606-4800), see file named "payindex" in the Compensation and Leave file area of the Compensation and Leave Policy forum. In PAYPERNET (202-606-2675), see the file named "payindex" in the Compensation and Leave file directory of the Pay Administration conference.

THE WHITE HOUSE

WASHINGTON

April 11, 1997

MEMORANDUM FOR THE HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

SUBJECT: Expanded Family and Medical Leave Policies

I have strongly supported meeting Federal employees' family and medical leave needs through enactment of the Family and Medical Leave Act of 1993 (FMLA) and the Federal Employees Family Friendly Leave Act of 1994 (FEFFLA). However, Federal employees often have important family and medical needs that do not qualify for unpaid leave under the FMLA or sick leave under the FEFFLA. I ask you to take immediate action to assist Federal workers further in balancing the demands of work and family.

Last year I proposed to expand the Family and Medical Leave Act of 1993. My legislation would allow Federal and eligible private sector workers 24 hours of unpaid leave during any 12-month period to fulfill certain family obligations. Under the legislation, employees could use unpaid leave to participate in school activities directly related to the educational advancement of a child, including early childhood education activities; accompany children to routine medical and dental examinations; and tend to the needs of older relatives.

In furtherance of my proposed policy, I ask that you take immediate action within existing statutory authorities to ensure that Federal employees may schedule and be granted up to 24 hours of leave without pay each year for the following activities:

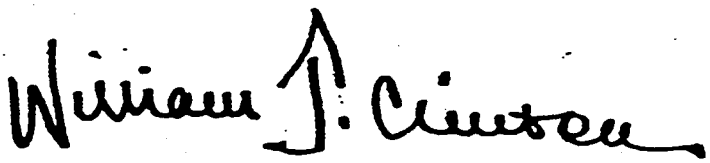
(1) SCHOOL AND EARLY CHILDHOOD EDUCATIONAL ACTIVITIES -- to allow employees to participate in school activities directly related to the educational advancement of a child. This would include parent-teacher conferences or meetings with child-care providers, interviewing for a new school or child-care facility, or participating in volunteer activities supporting the child's educational advancement. In this memorandum, "school" refers to an elementary school, secondary school, Head Start program, or a child-care facility.

(2) ROUTINE FAMILY MEDICAL PURPOSES -- to allow parents to accompany children to routine medical or dental appointments, such as annual checkups or vaccinations. Although these activities are not currently covered by the FMLA, the FEFFLA does permit employees to use up to 13 days of sick leave each year for such purposes. Agencies should assure that employees are able to use up to 24 hours of leave without pay each year for these purposes in cases when no additional sick leave is available to employees.

(3) ELDERLY RELATIVES' HEALTH OR CARE NEEDS -- to allow employees to accompany an elderly relative to routine medical or dental appointments or other professional services related to the care of the elderly relative, such as making arrangements for housing, meals, phones, banking services, and other similar activities. Although Federal employees can use unpaid leave or sick leave for certain of these activities under the FMLA or FEFFLA, such as caring for a parent with a serious health condition, agencies should ensure employees can use up to 24 hours of unpaid time off each year for this broader range of activities related to elderly relatives' health or care needs.

This new policy will assure that Federal employees can schedule and receive up to 24 hours away from the job each year for these family and medical circumstances. I also urge you to accommodate these employee needs as mission requirements permit, even when it is not possible for employees to anticipate or schedule leave in advance for these purposes. In addition, I ask that you support employees' requests to schedule paid time off -- such as annual leave, compensatory time off, and credit hours under flexible work schedules -- for these family activities when such leave is available to these employees. The Office of Personnel Management shall provide guidance to you on the implementation of this memorandum.

I encourage you to use a partnership approach with your employees and their representatives in developing an effective program that balances the employees' needs to succeed both at work and at home. I ask agencies, unions, and management associations to continue to work together to assess and improve the use of family-friendly programs and to make certain that employees are aware of the expanded family and medical leave policy.



Department of Energy
Washington, DC 20585

September 13, 1996

MEMORANDUM FOR SERVICING PERSONNEL OFFICERS

FROM: STEPHEN G. PERIN
DIRECTOR, OFFICE OF PERSONNEL POLICY,
PROGRAMS AND ASSISTANCE

SUBJECT: GUIDANCE ON IMPLEMENTING EXECUTIVE ORDER 12999

Executive Order 12999, Educational Technology: Ensuring Opportunity for all Children in the Next Century, streamlines the transfer of excess and surplus Federal computer equipment to schools and nonprofit organizations and encourages Federal employees to volunteer their time and expertise to assist teachers and to connect classrooms. Attached is guidance from the Office of Personnel Management regarding volunteer activities. Of particular note is the criteria for determining when to use excused absence, i.e., administrative leave, on page 3. This guidance should be helpful in dealing with other volunteer activities that organizations may be involved in from time to time. This guidance will be an attachment to the guidance forthcoming to all Departmental Elements, which will probably be routed to property managers. If you have any questions, please contact Bruce Murray on (202) 586-3372.

Attachment

Printed with soy ink on recycled paper

INTERAGENCY ADVISORY GROUP

UNITED STATES
OFFICE OF PERSONNEL MANAGEMENT
WASHINGTON, D.C. 20415

JUL 15 1996

MEMORANDUM FOR DIRECTORS OF PERSONNEL

FROM: ALLAN D. HEUERMAN
ASSOCIATE DIRECTOR FOR
HUMAN RESOURCE SYSTEMS

Subject: Guidance on Implementing Executive Order 12999

1. Introduction

a. On April 17, 1996, President Clinton signed Executive Order 12999, Educational Technology: Ensuring Opportunity for All Children in the Next Century. The Executive order streamlines the transfer of excess and surplus Federal computer equipment to schools and nonprofit organizations and encourages Federal employees to volunteer their time and expertise to assist teachers and to connect classrooms.

b. Section 3(a) of the Executive order asks agencies who have employees with computer expertise to encourage those employees to:

(1) help connect American classrooms to the National Information Infrastructure;
(2) assist teachers in learning to use computers to teach; and
(3) provide ongoing maintenance and technical support for the educationally useful Federal equipment transferred pursuant to this order.

c. This memorandum provides departments and agencies with policy guidance on addressing requests for leave, changes in work schedules, and other personnel matters related to employees who volunteer to help transfer educationally useful Federal equipment to schools and nonprofit organizations.

d. Agency implementation plans are to be submitted to the Office of Science and Technology Policy by October 17, 1996. A copy of the Executive order is attached.

2. Guidance

The following guidance is being provided to assist departments, agencies, and employees in dealing with several issues that may arise in relation to volunteer activities related to E.O.

12999. Agencies should also review any applicable internal regulations or policies and collective bargaining agreements before making determinations on related matters.

(a) Leave and Work Scheduling

(1) General

The Federal personnel system provides agencies with considerable flexibility in scheduling leave and hours of work. Departments and agencies are encouraged to make appropriate use of this flexibility in responding to requests for leave or changes in work schedules to allow employees to engage in volunteer activities. However, before approving such requests, departments and agencies should give due consideration to the effect of the employee's absence or change in duty schedule on work operations and productivity.

(2) Alternative Work Arrangements

As discussed below, departments and agencies have the flexibility to approve a variety of alternative work arrangements for employees seeking to engage in volunteer activities during normal work hours.

Alternative Work Schedules (AWS) -- In many cases flexible or compressed work schedules may be established for employees who wish to engage in volunteer activities during normal working hours. To determine whether an employee is eligible for AWS, agencies should review their internal AWS policies, applicable collective bargaining agreement provisions, and the regulations in 5 CFR part 610, subpart D, Flexible and Compressed Work Schedules.

Part-time Employment and Job Sharing -- Part-time employment or job-sharing might also be appropriate for employees who request such arrangements in connection with performing volunteer service. 5 CFR part 340, provides additional guidance on part-time employment and job-sharing.

(3) Leave Scheduling

Employees seeking to participate in volunteer activities during work hours may be granted annual leave, leave without pay, or, in very limited circumstances, excused absence, as discussed below.

Annual Leave -- When employees request annual leave to perform volunteer service, agencies should be as accommodating as possible in reviewing and approving such requests consistent with the regulations contained in 5 CFR part 630, subpart C, Annual Leave.

Leave Without Pay -- At the discretion of the agency, leave without pay (LWOP) may be granted to employees who wish to engage in volunteer activities during normal working hours. As with annual leave, OPM encourages departments and agencies, whenever possible, to act favorably upon requests by employees for LWOP to perform volunteer services. However, LWOP is appropriate for extended periods only if the employee is expected to return to his or her job at the end of the LWOP. Agencies should review their internal policies on LWOP and applicable collective bargaining agreements.

Excused Absence -- Since there are no general OPM regulations covering excused absence (sometimes called "administrative leave"), each agency or department has the authority for determining the situation in which excusing employees from work without charge to leave is appropriate. This is because under law, an agency is authorized to pay the salaries only of employees who perform work related to the department's or agency's mission. Further, pay levels for employees are determined by the official duties they perform for the employing agency. As a general rule, therefore, it is inappropriate to pay an employee engaged in volunteer service. Also, OPM notes that if an employee is paid his or her regular salary while performing services on a voluntary basis, the employee, in essence, would no longer be a "volunteer."

Notwithstanding these considerations OPM recognizes that it may be appropriate, under limited conditions, to excuse employees from duty for brief periods of time without loss of pay or charge to leave, to participate in volunteer activities. OPM advises that the granting of such excused absence should be limited to those situations in which the employee's volunteer service, in the agency's determination, satisfies one or more of the following criteria: is directly related to the department's or agency's mission; is officially sponsored or sanctioned by the head of the department or agency; or will clearly enhance the professional development or skills of the employee in his or her current position. Before granting excused absence under these criteria, departments and agencies should ensure that an employee's absence will not have an adverse impact on work operations or productivity. Agencies should review their internal guidance on excused absence and applicable collective bargaining agreements.

(b) Coercion

While managers, supervisors, and other agency officials may encourage employees to become involved in volunteer activities, coercion is strictly prohibited. (See also 5 U.S.C. 2302, Prohibited Personnel Practices.)

(c) Conflict of Interest/Hatch Act Restrictions

Departments, agencies, and employees are reminded that conflict of interest laws and related regulations governing outside employment for compensation apply to Federal employees who engage in volunteer activities. Hatch Act restrictions apply to employees who are on duty, as well as to those on paid or unpaid leave. 5 CFR part 733, contains additional information pertaining to conflict of interest guidelines and Hatch Act restrictions.

(d) Liability for Work-Related Injuries

Departments and agencies need to be aware of liability issues related to employee participation in volunteer activities. The Department of Labor advises that, in most instances, employees who perform mission-related agency sponsored/sanctioned, or skills-enhancing volunteer activities while they are on excused absence are covered by 5 U.S.C. chapter 81, Compensation for Work Injuries.

(e) Consultation with Unions and Other Employee Organizations

Agencies should attempt to involve the partnership of unions and other appropriate employee organizations in the design and implementation of employee recognition for community service related initiatives. Unions and other employee organizations have assisted in establishing several such programs already underway in Federal agencies and the communities they serve. When establishing or changing official policies regarding employee community service, departments and agencies should ensure that any bargaining and consultation obligations under 5 U.S.C. chapter 71 and Exective Order 12871 are met.

Attachment

Federal Register
Vol. 61, No. 77
Friday, April 19, 1996

Presidential Documents

Title 3—

The President

Executive Order 12999 of April 17, 1996

Educational Technology: Ensuring Opportunity for All Children in the Next Century

In order to ensure that American children have the skills they need to succeed in the information-intensive 21st century, the Federal Government is committed to working with the private sector to promote four major developments in American education: making modern computer technology an integral part of every classroom; providing teachers with the professional development they need to use new technologies effectively; connecting classrooms to the National Information Infrastructure; and encouraging the creation of excellent educational software. This Executive order streamlines the transfer of excess and surplus Federal computer equipment to our Nation's classrooms and encourages Federal employees to volunteer their time and expertise to assist teachers and to connect classrooms.

Accordingly, by the authority vested in me as President by the Constitution and the laws of the United States of America, including the provisions of the Stevenson-Wydler Technology Innovation Act of 1980, as amended (15 U.S.C. 3701 *et seq.*), the Federal Property and Administrative Services Act of 1949, ch. 288, 63 Stat. 377, and the National Defense Authorization Act for Fiscal Year 1996, Public Law 104–106, it is hereby ordered as follows:

Section 1. *Protection of Educationally Useful Federal Equipment.* (a) Educationally useful Federal equipment is a vital national resource. To the extent such equipment can be used as is, separated into parts for other computers, or upgraded—either by professional technicians, students, or other recycling efforts—educationally useful Federal equipment is a valuable tool for computer education. Therefore, to the extent possible, all executive departments and agencies (hereinafter referred to as "agencies") shall protect and safeguard such equipment, particularly when declared excess or surplus, so that it may be recycled and transferred, if appropriate, pursuant to this order.

Sec. 2. *Efficient Transfer of Educationally Useful Federal Equipment to Schools and Nonprofit Organizations.* (a) To the extent permitted by law, all agencies shall give highest preference to schools and nonprofit organizations, including community-based educational organizations, ("schools and nonprofit organizations") in the transfer, through gift or donation, of educationally useful Federal equipment.

(b) Agencies shall attempt to give particular preference to schools and nonprofit organizations located in the Federal enterprise communities and empowerment zones established in the Omnibus Reconciliation Act of 1993, Public Law 103–66.

(c) Each agency shall, to the extent permitted by law and where appropriate, identify educationally useful Federal equipment that it no longer needs and transfer it to a school or nonprofit organization by:

(1) conveying research equipment directly to the school or organization pursuant to 15 U.S.C. 3710(i); or

(2) reporting excess equipment to the General Services Administration (GSA) for donation when declared surplus in accordance with section 203(j) of the Federal Property and Administrative Services Act of 1949, as amended, 40 U.S.C. 484(j). Agencies shall report such equipment as far as possible

in advance of the date the equipment becomes excess, so that GSA may attempt to arrange direct transfers from the donating agency to recipients eligible under this order.

(d) In transfers made pursuant to paragraph (c)(1) of this section, title shall transfer directly from the agency to the schools or nonprofit organizations as required by 15 U.S.C. 3710(i). All such transfers shall be reported to the GSA. At the direction of the recipient institution or organization, and if appropriate, transferred equipment may be conveyed initially to a nonprofit reuse or recycling program that will upgrade it before transfer to the school or nonprofit organization holding title.

(e) All transfers to schools or nonprofit organizations, whether made directly or through GSA, shall be made at the lowest cost to the school or nonprofit organization permitted by law.

(f) The availability of educationally useful Federal equipment shall be made known to eligible recipients under this order by all practicable means, including newspaper, community announcements, and the Internet.

(g) The regional Federal Executive Boards shall help facilitate the transfer of educationally useful Federal equipment from the agencies they represent to recipients eligible under this order.

Sec. 3. *Assisting Teachers' Professional Development: Connecting Classrooms.* (a) Each agency that has employees who have computer expertise shall, to the extent permitted by law and in accordance with the guidelines of the Office of Personnel Management, encourage those employees to:

(1) help connect America's classrooms to the National Information Infrastructure;

(2) assist teachers in learning to use computers to teach; and

(3) provide ongoing maintenance of and technical support for the educationally useful Federal equipment transferred pursuant to this order.

(b) Each agency described in subsection (a) shall submit to the Office of Science and Technology Policy, within 6 months of the date of this order, an implementation plan to advance the developments described in this order, particularly those required in this section. The plan shall be consistent with approved agency budget totals and shall be coordinated through the Office of Science and Technology Policy.

(c) Nothing in this order shall be interpreted to bar a recipient of educationally useful Federal equipment from lending that equipment, whether on a permanent or temporary basis, to a teacher, administrator, student, employee, or other designated person in furtherance of educational goals.

Sec. 4. *Definitions.* For the purposes of this order: (a) "Schools" means individual public or private education institutions encompassing prekindergarten through twelfth grade, as well as public school districts.

(b) "Community-based educational organizations" means nonprofit entities that are engaged in collaborative projects with schools or that have education as their primary focus. Such organizations shall qualify as nonprofit educational institutions or organizations for purposes of section 203(j) of the Federal Property and Administrative Services Act of 1949, as amended.

(c) "Educationally useful Federal equipment" means computers and related peripheral tools (e.g., printers, modems, routers, and servers), including telecommunications and research equipment, that are appropriate for use in prekindergarten, elementary, middle, or secondary school education. It shall also include computer software, where the transfer of licenses is permitted.

(d) "Nonprofit reuse or recycling program" means a 501(c) organization able to upgrade computer equipment at no or low cost to the school or nonprofit organization taking title to it.

(e) "Federal Executive Boards," as defined in 5 C.F.R. Part 960, are regional organizations of each Federal agency's highest local officials.

Sec. 5. This order shall supersede Executive Order No. 12821 of November 16, 1992.

Sec. 6. *Judicial Review.* This order is not intended, and should not be construed, to create any right or benefit, substantive or procedural, enforceable at law by, a party against the United States, its agencies, its officers, or its employees.

William J. Clinton

THE WHITE HOUSE,
April 17, 1996.

[FR Doc. 96-9866
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S11–3. CIVIL DEFENSE ACTIVITIES

Executive Order 10529 of April 22, 1954, provides that employees who participate in Federally recognized civil defense programs may be excused for a reasonable amount of time without charge to leave up to a maximum of 40 hours in any calendar year. The pertinent portions of this order are:

"SEC. 2. *After consideration of the recommendations of the Federal Civil Defense Administrator, the head of a Federal department or agency, or such officer as the head thereof may designate, may from year to year authorize such of said personnel of such department or agency as he may designate to participate in pre-emergency training programs and test exercises in cooperation with any State or political subdivision thereof, and such duties shall be performed on assignment by the particular Federal department or agency, subject to the following conditions:*

"(*a*) *Personnel so assigned shall at all times remain subject to the administrative jurisdiction and control of their Federal department or agency;*

"(*b*) *The period of official time that may be authorized for any such assignment pursuant to this order shall not exceed a total of 40 working hours during a calendar year; and*

"(*c*) *There shall be satisfactory evidence from State or local civil defense authorities that such personnel served or participated in such programs or exercises pursuant to specific request of a public governmental body or organization established pursuant to and in accordance with a State civil defense law.*

"SEC. *3. During any period or periods in which such personnel shall be engaged in said civil-defense training duties under authority of this order, they shall continue to be compensated in usual course by their Federal department or agency, and shall continue in their status as Federal employees for all purposes. Where travel is involved in connection with the performance of such training duties, travel allowances and expenses may be authorized in accordance with the Standardized Government Travel Regulations.*"

"SEC. *5. As used in this order:*

"(*a*) *The term 'personnel' shall mean persons who are in a full time pay status as civilian officers or employees of the United States Government.*

"(*b*) *The term 'State' shall mean any of the several States of the United States, the District of Columbia, each of the territories and possessions of the United States, and the Commonwealth of Puerto Rico.*"

FAMILY-FRIENDLY LEAVE POLICIES

FAMILY AND MEDICAL LEAVE ACT OF 1993 (FMLA)

(Public Law 103-3, February 5, 1993)
Effective on August 5, 1993

Covered Federal employees are entitled to a total of 12 administrative workweeks of unpaid leave during any 12-month period for (a) the birth of a son or daughter and care of the newborn; (b) the placement of a son or daughter with the employee for adoption or foster care; (c) the care of a spouse, son, daughter, or parent with a serious health condition; and (d) a serious health condition of the employee that makes the employee unable to perform the duties of his or her position. Upon return from such leave, an employee must be returned to the same position or to an equivalent position with equivalent benefits, pay, status, and other terms and conditions of employment.

SICK LEAVE TO CARE FOR A FAMILY MEMBER

Regulations Effective on December 2, 1994
(5 CFR 630.401 (a)(3) and (4), (b), and (c)

Most covered Federal employees may use up to 104 hours (13 days) of sick leave each leave year to care for a family member or to arrange for or attend the funeral of a family member. Full-time employees may use 40 hours (5 days) of sick leave for these purposes without regard to their current sick leave balance. An additional 64 hours (8 days) may be used if the employee maintains a balance of at least 80 hours of sick leave in his or her sick leave account.

SICK LEAVE FOR ADOPTION

(Section 629(b) of Public Law 103-329, September 30, 1994)

Federal employees are entitled to use sick leave for purposes related to the adoption of a child. In addition, employees may substitute sick leave retroactively for all or any portion of annual leave used for adoption-related purposes between September 30, 1991, and September 30, 1994.

LEAVE FOR BONE-MARROW OR ORGAN DONATION

(Section 629(a) of Public Law 103-329, September 30, 1994)

Federal employees are entitled to use 7 days of paid leave each calendar year (in addition to annual or sick leave) to serve as a bone-marrow or organ donor.

FEDERAL LEAVE SHARING

(Public Law 103-103, October 8, 1993)
Permanent program effective since January 31, 1994

Leave transfer programs allow Federal employees to donate annual leave to other Federal employees who have medical emergencies and who have exhausted their own leave. Leave banks allow employees to contribute a specified amount of annual leave yearly to their agency leave bank. Leave bank members with medical emergencies can withdraw leave from the bank if they exhaust their own leave.

Office of Compensation Policy
U.S. Office of Personnel Management **January 1998**

FEDERAL EMPLOYEE ENTITLEMENTS
under the
FAMILY AND MEDICAL LEAVE ACT OF 1993

(effective August 5, 1993)

ENTITLEMENT

Sections 6381 through 6387 of title 5, United States Code, as added by Title II of the Family and Medical Leave Act 1993 (FMLA) (Public Law 103-3, February 5, 1993), provides covered Federal employees with entitlement to 12 workweeks of unpaid leave during any 12-month period for the following purposes: (Note: coverage

- the birth of a son or daughter of the employee and the care of such son or daughter;
- the placement of a son or daughter with the employee for adoption or foster care;
- the care of spouse, son, daughter, or parent of the employee who has a serious health condition; or
- serious health condition of the employee that makes the employee unable to perform the essential functions of his or her positions.

Under certain conditions, FMLA leave may be taken intermittently, or the employee may work under a work schedule that is reduced by the number of hours of leave taken as family and medical leave. An employee may elect to substitute annual leave and/or sick leave, consistent with current laws and regulations, for any unpaid leave under the FMLA. FMLA leave is in addition to other paid time off available to an employee.

JOB BENEFITS AND PROTECTION

- Upon return from FMLA leave, an employee must be returned to the same position or to an "equivalent position with equivalent benefits, pay, status, and other terms and conditions of employment."
- An employee who takes FMLA leave is entitled to maintain health benefits coverage. An employee may pay the employee share of the premiums on a current basis or pay upon return to work.

ADVANCE NOTICE AND MEDICAL CERTIFICATION

- The employee must provide notice of his or her intent to take family and medical leave not less than 30 days before leave is to begin or as soon as is practicable.

- An agency may request medical certification for FMLA leave taken to care for an employee's spouse, son, daughter, or parent who has a serious health condition or for the serious health condition of the employee.

This is a brief summary of your entitlements and responsibilities under the FMLA. Contact your agency personnel office for additional information.

Office of Compensation Policy
U.S. Office of Personnel Management **June 1966**

SICK LEAVE TO CARE FOR A FAMILY MEMBER

(and Leave to Serve as a Bone Marrow or Organ Donor)

SICK LEAVE TO CARE FOR A FAMILY MEMBER

Beginning December 2, 1994, most Federal employees may use a total of up to 104 hours (13 workdays) of sick leave each leave year to:

- provide care for a family member who is incapacitated as a result of physical or mental illness, injury, pregnancy, or childbirth;
- provide care for a family member as a result of medical, dental, or optical examination or treatment; or
- make arrangements necessitated by the death of a family member or attend the funeral of a family member.

A covered full-time employee may use 40 hours (5 workdays) of sick leave each leave year for these purposes. An additional 64 hours (8 workdays) of sick leave may be used each year if the employee maintains a balance of at least 80 hours of sick leave in his or her account. Part-time employees and employees with uncommon tours of duty are also covered, and the amount of sick leave permitted for family care and bereavement is pro-rated in proportion to the average number of hours of work in the employee's scheduled tour of duty each week.

"Family member" is defined as:
- spouse, and parents thereof;
- children, including adopted children, and spouses thereof;
- parents;
- brothers and sisters, and spouses thereof; and
- any individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship.

SICK LEAVE FOR ADOPTION

Beginning September 30, 1994, employees are permitted to use sick leave for purposes related to the adoption of a child. Employees may use sick leave for appointments with adoption agencies, social workers, and attorneys; court proceedings; required travel; and any other activities necessary to allow the adoption to proceed.

LEAVE TO SERVE AS A BONE-MARROW OR ORGAN DONOR

Beginning September 30, 1994, employees are entitled to 7 days of paid leave each calendar year (in addition to annual and sick leave) to serve as a bone-marrow or organ donor. This is a new category of leave.

This is a brief summary on the use of sick leave for family care, bereavement, and adoption. Employees should contact their agency personnel offices for additional information to assist them in balancing their work and family responsibilities.

LIMITATIONS ON THE AMOUNT OF LEAVE THAT CAN BE TAKEN

FOR FAMILY AND MEDICAL NEEDS

ANNUAL LEAVE	Limited to the amount of annual leave accumulated by the employee and to the extent the absence is approved by the supervisor or manager.
SICK LEAVE	Limited to the extent that the employee is incapacitated due to physical or mental illness, injury, pregnancy or childbirth; routine examination or treatment; or exposure to a communicable disease.
SICK LEAVE TO CARE FOR A FAMILY MEMBER AND FOR FUNERAL OF FAMILY MEMBER	For a full-time employee, limited to 104 hours (13 workdays) of sick leave each leave year to provide care for a family member who is incapacitated as a result of a physical or mental illness, injury, pregnancy, or childbirth; routine examination or treatment; or to make arrangements for or attend the funeral of a family member. (If sick leave balance is less than 80 hours, sick leave for these purposes is limited to 40 hours (5 workdays).) For a part-time employee or an employee with an uncommon tour or duty, leave is prorated based on number of hours in employee's tour of duty.
SICK LEAVE FOR ADOPTION	Limited to the extent leave is needed for appointments with adoption agencies, social workers, and attorneys; court proceedings; required travel; any other activities necessary to allow the adoption to proceed.
ADVANCED ANNUAL AND SICK LEAVE	Annual leave -- limited to the amount of annual leave employee would accrue in a leave year. Sick leave -- limited to 30 days for serious disability or ailment or adoption.
VOLUNTARY LEAVE SHARING PROGRAM	Under leave transfer program, limited to the amount of leave donated to an approved leave recipient for a medical emergency. Under the leave bank program, limited to the amount of leave approved by the leave bank board for the medical emergency of the leave recipient.
FAMILY AND MEDICAL LEAVE ACT	Limited to a total of 12 workweeks of unpaid leave during any 12-month period for certain family and medical needs.
BONE-MARROW/ ORGAN TRANSPLANT	Employees are entitled to 7 days of paid leave each calendar year to serve as a bone-marrow or organ donor. Additional leave may be granted, as appropriate.
LEAVE WITHOUT PAY (LWOP)	Limited by agency internal policy.

DEFINITION OF FAMILY MEMBER:

Family & Medical Leave Act (FMLA)	Sick Leave for Family Care and Bereavement	Leave Sharing (Voluntary Leave Transfer Program and Voluntary Leave Bank Program)
Family member is defined as a **spouse, son, daughter, or parent.*** **Spouse**-- a husband or wife, as defined or recognized under State law for purposes of marriage, including common law marriage in States where it is recognized. **Son or Daughter**-- a biological, adopted or foster child; a step child; a legal ward; or a child of a person standing *in loco parentis*, who is; A. Under 18 years of age; or B. 18 years or older and incapable of self-care because of a mental or physical disability. **Parent**-- the biological parent or an individual who stands or stood *in loco parentis* to an employee when the employee was a child.	Family member is defined as: 1. **Spouse, and parents thereof;** 2. **Children, including adopted children, and spouses thereof;** 3. **Parents;** 4. **Brothers and sisters, and spouses thereof; and** 5. **Any individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship.**	Family member definition is the same as the definition in "Sick Leave for Family Care and Bereavement."

* DOE O 322.1 expanded the definition, so the definition is the same as the second column.

EMPLOYEE ELIGIBILITY FOR LEAVE TO MEET FAMILY NEEDS

Sick Leave for Family Care and Bereavement	Family and Medical Leave Act of 1993 (FMLA)	Leave Sharing (Voluntary Leave Transfer Program--Voluntary Leave Bank Program)
Any employee who is covered by the Federal leave system. (See 5 U.S.C. 6301(2).) Excludes employees of the government of the District of Columbia.	**Any employee who is covered by the Federal leave system (See 5 U.S.C. 6301(2).)** Plus-- 1. Any employee covered under 38 U.S.C. 7401(1) in the Veterans Health Administration of the Department of Veterans Affairs; 2. Any teacher or individual holding a teaching position as defined by section 901 of title 20; and 3. Any employee paid from a nonappropriated fund **who has completed 12 months of service with the Federal Government.** Excluded are: 1. Employees of the government of the District of Columbia, and 2. Temporary and intermittent employees. (Excluded employees are covered under Title I of the FMLA. See Department of Labor regulations at 29 CFR part 825).	**Any employee who is covered by the Federal leave system. (See 5 U.S.C. 6301(2).)** Excludes employees of the government of the District of Columbia.

LEAVE TO MEET FAMILY NEEDS -- WHAT CONDITIONS ARE COVERED?

Family & Medical Leave Act (FMLA):	Sick Leave:	Voluntary Leave Transfer & Leave Bank Programs:
Situation Covered: (1) Birth of a son or daughter and care of the newborn (2) Placement of a son or daughter with the employee for adoption or foster care (3) Care of a spouse, son, daughter, or parent who has a **serious health condition**; (4) The **serious health condition** of an employee that makes the employee unable to perform the essential functions of his or her position. **Key Term:** ☞ "**Serious Health Condition**" means an illness, injury, impairment, or physical condition that involves: --Inpatient care in a hospital, hospice, or other residential medical care facility; or --Any period of incapacity requiring an absence of more than 3 calendar days and involving continuing treatment by a health care provider; or --Any chronic or long-term health condition requiring continuing treatment or supervision by a health care provider.	**Situation Covered:** Agencies must grant a limited amount of sick leave -- 104 hours if the employee has a sick leave balance of 80 hours; otherwise 40 hours--when an employee: -- Provides care for a family member who is incapacitated as a result of physical or mental illness; injury; pregnancy; childbirth; or medical, dental, or optical examination or treatment; or -- Makes arrangements necessitated by the death of a family member or attends the funeral of a family member An employee is entitled to use sick leave for purposes related to the adoption of a child. The employee may not use sick leave for "bonding" purposes unless his or her absence from duty is ordered by the court or the adoption agency. **Key Term:** ☞ "**Provides Care for Family Member**" means giving care or otherwise attending to a family member who is incapacitated as a result of an illness, injury, or other condition which, if the employee had the condition, would justify the use of sick leave by the employee.	**Situation Covered:** An employee who is bona fide leave recipient under an agency's leave transfer or leave bank program may use annual leave that has been transferred to him or her from a leave donor or leave bank for a **medical emergency**. **Key Term:** ☞ "**Medical Emergency**" means a medical condition of the employee or a family member of the employee that is likely to require the employee's absence from duty for a prolonged period of time and result in a substantial loss of income (24 hours) to the employee because of the unavailability of paid leave.

Serious health conditions under FMLA: Examples include heart attacks, heart conditions involving bypass or valve operations, most cancers, back conditions requiring extensive therapy or surgery, strokes, severe respiratory conditions, spinal injuries, appendicitis, pneumonia, emphysema, severe arthritis, severe nervous disorders, injuries caused by serious accidents on or off the job, ongoing pregnancy, miscarriages, complications or illnesses related to pregnancy (e.g., severe morning sickness), the need for prenatal care, childbirth, and recovery from childbirth.

NOTIFICATION AND CERTIFICATION REQUIREMENTS TO TAKE LEAVE FOR FAMILY AND MEDICAL NEEDS

Type of Leave	Notification	Certification
Annual Leave	Request approval from supervisor	
Sick Leave -- Personal Needs -- Family Care -- Adoption	An employee must file a written application for sick leave within such time limits as the agency may require.	An agency may grant sick leave only when supported by evidence that is administratively acceptable (including the employee's certification). For an absence of 3 workdays, or a lesser time, the agency may require a medical certificate or other administratively acceptable evidence.
Voluntary Leave Sharing Program	An employee or his or her representative may make written application to become a leave recipient, subject to approval by agency.	Each application must include: name, reasons leave needed, expected duration of medical condition and certification from one or more physicians or appropriate experts with respect to the medical emergency.
Family and Medical Leave Act	Employee must provide 30 day advance notice, if practicable.	An agency may request medical certification for FMLA leave. Information that can be requested is prescribed in law and regulation.
Sick Leave for Adoption	Effective 9/30/94 An employee must file a written application for sick leave within such time limits as the agency may require.	Agency internal procedures may require evidence that is administratively acceptable
Bone-Marrow or Organ Donation	Effective 9/30/94 An employee must file a written application for leave within such time limits as the agency may require.	Agency internal procedures may require evidence that is administratively acceptable
Leave Without Pay (LWOP)	An employee must request approval from supervisor.	Agency internal procedures may require evidence that is administratively acceptable

Who can Donate Leave Under the Voluntary Leave Sharing Programs?

Permissible Annual Leave Donations	Voluntary Leave Transfer Program	Voluntary Leave Bank Program
Between employees within the same agency:	❍ Any employee to another employee[1] who is a designated leave recipient. ❍ Any employee to another family member who is a designated leave recipient.	❍ Any employee (bank member or not) may donate to his or her agency's leave bank. ❍ Any employee to another employee[2] who is a designated leave recipient in the same agency's leave bank.
Between employees in different agencies:	❍ Any employee to another family member who is a designated leave recipient. ❍ When the leave recipient's employing agency determines that leave donations within the agency are insufficient. ❍ When the leave recipient's employing agency determines that accepting the donation of leave would "further the purpose" of the leave transfer program. (5 CFR 630.096(f)(2) and (3))	☹ **Annual leave may not be borrowed, contributed, or otherwise transferred between leave banks.** **(5 CFR 630.1003(e))**

[1] Exception: The recipient may not be the leave donor's immediate supervisor. (5 CFR 630.906(b))

[2] Exception: The specified recipient bank member may not be the donor's immediate supervisor. (5 CFR 630.1004(b))

FEDERAL VOLUNTARY LEAVE SHARING PROGRAM

LIMITATIONS ON DONATIONS OF ANNUAL LEAVE

	Voluntary Leave Transfer Program & Voluntary Leave Bank Program
1	No more than half of the annual leave an employee is entitled to accrue in one leave year may be donated in that leave year. (5 CFR 630.908(a))
2	For employees who are projected to have use or lose leave that will be subject to forfeiture at the end of the leave year, the lesser of: (a) No. 1 above; or, (b) the number of hours remaining in the leave year (as of the date of the transfer) for which the employee is scheduled to work and receive pay. (5 CFR 630.908(b))

QUESTIONS AND ANSWERS ON FAMILY AND MEDICAL LEAVE ACT

1. Is leave used under the Act always leave without pay (LWOP)?

- No. If the employee is otherwise eligible under the Act, having met one or more of the four conditions on the handout, the employee may substitute paid leave--annual leave, sick leave if appropriate, or compensatory time. The type of leave requested must be identified in advance; the employee can't ask for LWOP and then later substitute paid leave. For example, under condition (1), childbirth, sick leave would certainly be appropriate for confinement and recovery of the female employee. The male employee, taking leave for his spouse's childbirth, may take annual leave, compensatory time, or LWOP~~; he may not take~~ sick leave. ~~Further, sick leave is no longer available for use in the adopting process; the law authorizing this use of leave has expired~~.

2. Can an employee qualify for leave under the Act and still participate in leave transfer?

- Yes, under every condition except for the adoption of a child; adoption of a child would not be considered a medical emergency. Because LWOP under the Act must be used prospectively, employees would first qualify under the Act, use donated paid leave, then take the remainder of the 12 weeks as LWOP.

3. Can a supervisor deny requests for leave under the Act?

- Ordinarily, no. A supervisor can delay leave under the Act if the employee asks for leave with less than 30 days notice and the condition supporting the leave request was predictable. The supervisor can then delay the 12 weeks entitlement until the 30-day notice period is fulfilled.

- Another issue worth noting is provisional leave under the Act. There are times, such as a medical emergency, when the employee may not be able to produce medical documentation in time for the 30-day notice period. The supervisor can then grant provisional leave pending production of the documentation. If the documentation is not forthcoming, the employee can be requested to submit a request for annual leave or, if appropriate, a sick leave request. If the employee has promised something that he/she could not produce, then the employee is subject to discipline.

4. What can supervisors do to backfill or otherwise substitute for employees who are off on leave under the Act?

- A number of options are available to an agency: it can detail another employee to the job that has been temporarily vacated; it can spread the duties around among several employees; it can defer projects until later. The procedures for effecting these actions may be subject to the collective bargaining agreement. The temporarily vacated position cannot be permanently filled unless there is an equivalent position available to the returning employee.

5. What happens when several employees in the same organization request leave under the Act?

- This can present a problem because, for the first time, this is an entitlement to leave and it may not be refused based on workload or lack of accrued leave. Further, the employee decides which leave to request, once entitlement is established. The supervisor and employee should attempt to work together to develop a schedule, perhaps, or even a work-at-home arrangement if the employee's position lends itself to this. Employees may not be discriminated against for applying for or using leave under the Act; neither may they be coerced into using other leave instead of LWOP.

6. The Act says that the employee is entitled to return to his/her position or to an "equivalent position." What is that?

- An "equivalent position" must have the same pay, benefits and working conditions as the position formerly held by the returning employee. It must have the same or substantially similar duties and responsibilities and must entail substantially equivalent skill, effort, responsibility and authority.

7. Is there special documentation to be used for conditions (1) and (2); that is, childbirth and adoption respectively?

- There is no set certification format related to either of these conditions. An employee requesting leave under the Act must put his/her request in writing, though. The request should identify the condition, how long this condition (or process) is expected to continue, and when the employee expects to return.

8. What is the "serious health condition" that is referred to in (3) and (4)?

- That is a health condition that is incapacitating. For the employee, it would mean that the employee was unable to attend work for at least three days or the employee needed to be absent for recurring medical treatment; the employee or family member must be under the care of a licensed medical provider or Christian Science practitioner. For a family member, a "serious health condition" would mean that the person was unable to engage in ordinary activity, such as attending school. Further, for a family member, the "serious health condition" could mean that the person needed assistance (from the employee, for example) to care for him or herself--ensuring proper hygiene or safety.

9. What happens if the conditions that entitled the employee to LWOP under the Act continue more than 12 weeks?

- The agency can grant leave for a longer period of time. In fact, if the employee him/herself is incapacitated due to illness or injury, and provides acceptable medical documentation, the agency must grant appropriate leave. However, the employee's right to the same or equivalent position no longer exists after the expiration of the 12 weeks; further, if the agency needs the position filled, it has the option of initiating adverse action procedures to remove the employee for inability to perform the job. As in all such cases, however, this would be a case-by-case decision.

10. Can the employee be forced to take a physical examination upon return from leave under the Act?

- Physical (and psychiatric) examinations are allowed if the employee is otherwise subject to them. For example, current regulation allows physical examinations only for those employees whose jobs require a specific level of physical fitness or whose jobs are being monitored for hazards. Finally, employees who are returning from work-related injury or illness for which they received compensation under the Federal Employee Compensation Act may be required to undergo physical examinations if it is deemed necessary. The agency would pay for such examinations.

11. Can the employee be required to "check in" with his/her supervisors?

- The regulations require that the agency may request medical updates no more frequently than once each 30 days for conditions (3) and (4). The regulations do not address any other issues such as informing the supervisor when the employee plans to be back after childbirth. It's a good idea for the supervisor and employee to agree to a plan whereby management would keep the employee informed of current activities, and

the employee, in turn, would keep the supervisor up to date on developments in the employee's life.

12. Can the employee's performance appraisal be affected by long absences under the Act?

- It is improper to evaluate an employee negatively on activities that the employee was unable to engage in because of absence. The rating official should look, instead, at the work that was performed and measure it in accordance with statutory requirements for quality, quantity, timeliness and manner of performance, as necessary. Elements that cannot be rated because of the absence should be marked "Unable to rate."

13. Can the employee's pay be affected by long absences under the Act?

- If the employee is on LWOP, he/she would not receive any pay for this period. Also, if the employee is on LWOP for more than thirty days, current regulations require that he/she pay for his/her share of health benefits payments, although reimbursement to the agency, which makes payments to the medical providers, could usually be made after the employee returns if the absence isn't too prolonged, i.e., it's less than one year.

14. What about within-grade increases?

- Current regulatory provisions regarding within-grade increases have not been affected by the passage of the Act: Employees in the waiting period for steps 2, 3 and 4 of their grade may have two workweeks LWOP without extending the waiting period for a within grade increase; employees in the waiting period for steps 5, 6 and 7 may have four workweeks in LWOP without extending the waiting period; employees in the waiting period for steps 8, 9 and 10 may have six workweeks.

Taking Action In Medical Inability Cases

U.S. Office of Personnel Management
Employee Relations Branch
SOELR '98

Questions and Answers

This document was prepared by Office of Personnel Management staff and is intended as a resource for those employee and labor relations specialists who are responsible for providing technical advice and assistance to supervisors. The case descriptions are necessarily concise and are only intended to provide enough detail to allow the user to identify relevant caselaw and proceed with further research. The information provided is accurate as of the date of issuance but regulations, laws and third party decisions can be amended and this document should not be relied upon without verifying that the information is still accurate.

1. *Can an agency require employees to submit written leave requests?*

Yes. Each agency must establish procedures for its time and attendance recordkeeping system. The procedures should describe the requirement for a written request for leave, with provisions for how leave should be requested in emergency situations where it is not possible to schedule leave in advance. Agencies should inform employees that failure to follow the procedures for requesting leave may result in a denial of the leave request, and ultimately to an adverse action based on the resulting absence without leave (AWOL) and failure to follow established leave procedures.

2. *What should an agency do in a situation where it charges AWOL but later determines that requested leave (sick, annual or leave without pay (LWOP)) should have been granted (e.g., the employee submits medical documentation for sick leave several weeks after the leave request was denied)?*

As long as the employee has sufficient leave to cover the absence, the agency may substitute approved leave for AWOL. The appropriate authority in the agency should make the determination that the absence was improperly charged as AWOL.

3. *When is an agency required to grant sick leave?*

An agency must grant sick leave under conditions provided in 5 CFR 630.401, including:

- *when the employee receives emergency medical, dental, or optical examination or treatment;*
- *when the employee is incapacitated for the performance of duties by physical or mental illness, injury, pregnancy, or childbirth;*
- *when the employee would, as determined by the health authorities having jurisdiction or by a health care provider, jeopardize the health of others by his or her presence on the job because of exposure to a communicable disease.*

In addition, an agency must grant up to 5 days of sick leave a year:

- when the employee provides care for a family member as a result of physical or mental illness, injury, pregnancy, childbirth or emergency medical, dental, or optical examination or treatment; or
- when the employee makes arrangements necessitated by the death of a family member or attends the funeral of a family member.

The agency must grant up to an additional 8 days of sick leave a year for these family care and bereavement purposes as long as the employee maintains a balance of at least 80 hours in his or her sick leave account.

4. Must an agency advance leave?

The decision to grant advanced annual and sick leave is left to the discretion of the agency. There are limits on the amounts of leave that can be advanced. For the purposes of using sick leave for family care or bereavement, agencies may advance up to 40 hours of sick leave. Agencies may not advance sick leave so that an employee may meet the requirement to maintain a balance of 80 hours of sick leave in his or her account or to use additional sick leave for these purposes. The agency should not advance leave when there is little or no likelihood that the employee will return to work. In addition, any indebtedness resulting from advanced leave is forgiven when an employee retires on disability.

5. Under what circumstances can an agency deny leave requests?

An agency can deny sick leave for nonemergency medical, dental, or optical purposes, even with acceptable medical documentation when it needs the employee's services. The agency can also deny emergency or nonemergency sick leave when the employee does not supply sufficient medical documentation, if required. The same is true for annual leave. In addition, an agency can generally deny a request for LWOP at its own discretion (with limited exceptions), even if the employee has good reason for requesting it. Limited exceptions, where the agency would grant an employee's request for LWOP are: cases where the employee invokes his or her entitlement to absence under the Family and Medical Leave Act and who otherwise qualifies for participation; cases where a claim is pending with the Office of Workers' Compensation (OWCP), and during any period when the employee is in receipt of OWCP benefits; cases where the employee is a disabled veteran receiving medical treatment; and cases where the employee is a reservist and must be absent from work to attend military training.

6. Can an agency take action based on approved leave?

The general rule is that an adverse action cannot be based on leave that the agency has approved, mainly because the agency has the normal discretion to approve or disapprove leave. An agency may base an adverse action on excessive unscheduled LWOP only if all three of the following criteria are met:

- The employee's excessive absences are uncontrollable and not the fault of the employee. Approval or disapproval of the leave would be immaterial since the absences will continue.
- The absences have continued beyond a reasonable period of time, and the agency needs the employee's services on a regular, full-time or part-time basis.
- The agency warns the employee that an adverse action might be initiated unless the employee becomes available for work on a regular, full-time or part-time basis.

7. If an agency cannot disapprove leave based on appropriate medical documentation or an approved OWCP status, can it take any action in response to an employee's failure to follow procedures?

Yes. In **Wilkinson v. Air Force**, 68 M.S.P.R. 4 (1995), the appellant was removed for failure to request leave according to established procedures. The Board held that agencies (both Postal and non-Postal agencies) may discipline employees for failure to follow

established procedures, so long as the employee is on notice of the agency's requirements. This holding applies even when the agency eventually approves the leave in question or in cases where the Board determines on review that the agency's denial of a leave request was unreasonable. Looking to **Fleming** v. U.S.P.S., 30 M.S.P.R. 302 (1986), the Board noted that an employer is "doubly burdened" by an unscheduled absence--once for the loss of productivity and again for the lost opportunity to plan for the absence. The Board sustained the removal.

8. What kind of medical documentation is appropriate when an employee requests sick leave?

Agencies usually consider the employee's personal certification, i.e., a signature on a leave slip, a phone call when ill, etc., to be sufficient in most cases. When an employee has no leave to use, agencies often require more formal procedures for requesting LWOP or advanced leave. If there is a lengthy absence, agencies usually request a greater amount of documentation, typically selecting some or all of the medical documentation items listed in 5 CFR, part 339. Finally, if a problem with excessive absenteeism is developing, agencies typically have policies for leave restriction letters or memos. These set out the reasons for requiring more evidence, types of acceptable evidence, conditions for presenting the evidence, and include time limits that will enable the employee to obtain approval of subsequent emergency and nonemergency leave requests, and the consequences of not doing so.

9. What are an employee's appeal rights under the Family and Medical Leave Act (FMLA)?

If an employee believes an agency has not fully complied with the rights and requirements provided by Title II of FMLA and the OPM's implementing regulations at 5 CFR 630.1201 through 630.1211, the employee may file a grievance under applicable agency administrative procedures or negotiated grievance procedures.

10. Does the invocation of FMLA delay the processing of an adverse action?

No. As long as the action taken (or proposed to be taken) by the agency is based on a particular set of circumstances and charges unrelated to FMLA, the agency can proceed with the action.

11. In a situation involving a long-term absence that prompts the agency to propose removal for medical inability or inability to maintain a regular schedule, would entitlement to FMLA prevent the agency from proceeding with the removal?

No. The invocation and granting of FMLA leave would not alter the agency's charges.

12. If an employee is working under leave restriction requirements, would those requirements also apply to the employee's request for leave under FMLA?

If the employee is incapacitated due to illness or injury, the leave restriction documentation requirements would likely overlap with those of FMLA. However, an agency may not require any additional personal or confidential information on the medical certification than that required by OPM's regulations. In other situations covered by FMLA, e.g., care of a family member with a serious health condition, FMLA requirements would supersede the leave restriction requirements.

13. Can an agency require an employee to take a medical exam upon returning to duty after being absent on FMLA leave?

Yes. OPM's final regulations that implement the Family and Medical Leave Act permit an agency to require medical certification upon return to work. Agencies now have the flexibility to decide whether or not medical certification will be required when the employee returns to work after using FMLA leave. Agencies that implement a policy that requires medical documentation upon return to work are cautioned to apply the policy consistently among its workforce.

14. What is the relationship between an agency's duty to offer reasonable accommodation to a qualified handicapped employee and the employee's entitlement to leave under FMLA?

Nothing in FMLA modifies an agency's duty to offer accommodation to an employee under the Rehabilitation Act. An agency must comply with whichever statute provides the greater rights to the employee. More specifically, an agency may not offer accommodation which would result in the employee foregoing his or her entitlement to FMLA. For example, if an employee who in now employed in the Washington, DC area needs to work in St. Louis for several months in order to care for a family member who is recovering from surgery, an agency could not require the employee to accept a temporary detail to the St. Louis branch office instead of taking LWOP under FMLA.

Leave - Other Frequently Asked Questions

15. Must an employee maintain 80 hours of sick leave in his or her sick leave account in order to use leave under FMLA?

There appears to be confusion as to the entitlement and requirements under the FMLA and the Federal Employees Family Friendly Leave Act.

FMLA entitles covered Federal employees to a total of 12 workweeks of unpaid leave (LWOP) during any 12-month period for certain family and medical needs. There is no requirement that an employee maintain 80 hours of sick leave in his or her account in order to use unpaid leave under FMLA. An employee may elect to substitute paid leave (e.g., annual or sick leave) for the unpaid FMLA leave, but only to the extent that such paid leave is permitted under current law and regulations.

The Federal Employees Family Friendly Leave Act permits most full-time employees to use a total of up to 104 hours of sick leave each leave year to provide care for a family member or to make arrangements for or attend the funeral of a family member. An employee may use 40 hours of sick leave for these purposes without any further requirements regarding the employee's sick leave balance. An employee may use up to 64 additional hours of sick leave if he or she maintains a balance of at least 80 hours in his or her sick leave account.

16. Under the Federal Employees Family Friendly Leave Act, what is the meaning of the phrase "to give care or otherwise attend to a family member?"

The Act authorizes the use of sick leave to give care for or otherwise attend to a family member having an illness, injury, or other condition which, if an employee had such a condition, would justify the use of sick leave by the employee. In other words, if the family member were an employee, and his or her condition would justify the use of sick leave, the employee's use of sick leave to care for the family member is justified.

OPM believes that the intent of law is to allow an employee to provide physical care and other assistance to a family member, as appropriate. This may include, for example, an employee providing transportation and/or accompanying a family member to a health care provider's office or to a hospital or other health care facility, providing assistance during examination and/or treatment, and providing care and assistance during recovery. Under agency policies, managers and supervisors must use their judgment in administering the use of sick leave for family care or bereavement in a fair and equitable manner. It is not possible for OPM to regulate or specify the criteria for every situation that may arise.

17. What recent changes were made to OPM's regulations on the recredit of sick leave after a break in service?

Previously, OPM's regulations in 5 CFR 630.502 (b) provided that an employee was entitled to a recredit of sick leave if he or she was reemployed in another Federal position within 3 years after separation. On December 2, 1994, OPM issued final regulations that

removed the 3-year break-in-service limitation on the recredit of sick leave for former employees who are reemployed on or after December 2, 1994. Sick leave may not be recredited to employees who were reemployed in the Federal service before December 2, 1994, and who previously forfeited sick leave under the former rule.

Reasonable Accommodation

18. What is the definition of an individual with a "disability" and an individual with a "qualified disability?"

In its regulations at 29 CFR 1614, the Equal Employment Opportunity Commission (EEOC) defines an individual with a "disability" as:

> An individual who has a physical or mental impairment which substantially limits one or more major life activities (e.g., caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working); has a record of an impairment; or is regarded as having an impairment; and the impairment must generally foreclose the type of employment involved.

An individual with a "qualified disability" is defined as:

> An individual, who with or without reasonable accommodation, can perform the essential functions of the position without endangering the health and safety of either the individual or other employees; and who meets the requirements of the position.

In determining whether the agency is obligated to reasonably accommodate an employee who alleges that he or she is disabled, the agency must first determine if a "disability" exists, and, if so, whether or not the individual is a "qualified disabled" person.

In some situations, the agency may not be aware of a disability and may have already proposed or even effected a performance based action or an adverse action (such as removal for AWOL, excessive absence, failure to maintain a regular work schedule, or medical inability to perform the duties of the position) against the employee. On appeal of the agency's action, the employee raises the allegation that he or she was discriminated against by their agency, and that the agency took the action because of the employee's disability.

19. What types of reasonable accommodation must the agency provide?

This is determined on a case-by-case basis. Generally, the employee will ask for a specific accommodation--a request for approved absence, flexible work schedule, work at home schedule, modified hours of working each pay period, restructuring the position, specialized equipment or devices for the disability, reassignment to another position, etc.

While the employee requests the accommodation, it is up to the agency to decide whether or not it can accommodate the employee. In making this determination, the agency decides whether an accommodation would impose an undue hardship on the operation of the agency--ability to accomplish its work given the size and number of employees in the organization, available budget, cost of the accommodation, etc.

20. Must the disability be permanent?

Yes, the agency is not required to reasonably accommodate an employee who has a temporary medical condition. However, often times the agency is more than willing to accommodate an employee who experiences a temporary medical or emotional condition.

21. Who should the employee contact if he or she has a disability?

Again, this would depend on the policies of the agency and the employee's concern about confidentiality. In many cases, the employee will inform his or her supervisor of record about his or her impairment; in other cases, the employee may not want anyone to know. However, an agency cannot assist an employee through accommodation unless the agency is aware of the impairment. It's to the employee's benefit to contact someone in the agency to request accommodation. Keep in mind that employers are required to keep all information concerning a medical or emotional condition confidential, including any medical information that an employee voluntarily tells his or her agency. To request accommodation, we suggest that the employee contact at least one of the following: immediate supervisor, staff in Personnel, the Employee Assistance Program coordinator, the agency nurse, or the medical officer.

QUESTIONS AND ANSWERS
ADDRESSING MEDICAL DOCUMENTATION

U.S. Office of Personnel Management
Office of Workforce Relations
Employee Relations and Health Services Center
January 1998

This document was prepared by Office of Personnel Management staff and is intended as a resource for those employee and labor relations specialists who are responsible for providing technical advice and assistance to supervisors. The case descriptions are necessarily concise and are only intended to provide enough detail to allow the user to identify relevant caselaw and proceed with further research. The information provided is accurate as of the date of issuance but regulations, laws and third party decisions can be amended and this document should not be relied upon without verifying that the information is still accurate.

1. Why are agencies sometimes in a position only to offer a medical examination while at other times, agencies may order an employee to participate in an examination?

As explained in the answers below, there is a distinction between an agency's authority to order a medical examination and its discretion to offer an examination. The situations under which an agency may order an employee are limited by the restrictions defined in the answer to question #2. Agencies may offer examinations when legitimate business needs exist for obtaining medical information about an employee. This is more fully outlined in the answer to question #4. It is important for agencies to understand the authority, and limitations on that authority, when requiring medical information and when dealing with an employee's possible refusal to participate in an examination or provide medical information. The important distinction between an offer and an order is the penalty attached to a refusal (see questions 6 and 7).

2. When can an agency order an employee to take a medical or psychiatric examination?

An agency's right to order a medical or psychiatric examination is restricted by the provisions of 5 CFR 339.301. These exams may be ordered in the following situations:

1. An employee who occupies a position with medical standards or physical requirements or which is part of an established medical evaluation program may be required to submit to an examination

- prior to reemployment on the basis of full or partial recovery from a medical condition;

- on a regularly recurring, periodic basis; or

- whenever there is a direct question about the employee's ability to meet the physical or medical requirements of a position.

2. An agency may require an employee who has applied for or is receiving continuation of pay or compensation under OWCP to submit to an examination to determine the medical limitations that may affect placement.

3. An employee released from his/her competitive level during RIF may be required to undergo a relevant medical exam if the position to which the employee has reassignment rights has medical standards or physical requirements which differ from those required in the employee's current position.

Agencies must demonstrate a link between an order for a medical examination (or for medical information from a personal physician) and a legitimate business concern relating to the requirements of the job. NOTE: Unless a psychiatric examination is specifically called for under medical standards or a medical evaluation program, an agency may only require a psychiatric examination after receiving the results of a medical examination. (5 CFR §339.301(e))

3. What are the differences between a medical standard, physical requirements and medical surveillance programs?

Each of these terms is used in the regulations at 5 CFR Part 339 to describe job qualifications, job requirements, and agency efforts to monitor the health of employees in certain types of jobs.

A medical standard is a qualification standard set by OPM (or an agency if it has more than 50% of the positions in that occupation Governmentwide) that identifies certain medical conditions that would be disqualifying because there is a direct relationship between the condition and the essential duties of the specific positions to be filled.

A medical standard means that a particular medical condition, by its very nature, is disqualifying in all cases because no individual with this condition would be presumed to able to successfully perform the duties of the position without undue hazard to himself or others.

For example, it would be permissible to exclude, without an individual evaluation, all persons who are blind in both eyes from eligibility for a license to operate a Government vehicle, but it may not be permissible to automatically disqualify all those who are blind in just one eye. (See the attachment for a summary of the occupational series that have medical requirements.)

A physical requirement is established by an agency to describe specific activities that an employee must be able to do in order to accomplish the duties of the position. Any physical requirement established must be clearly tied to the requirements of the job. For example, a firefighter position would probably include the ability to climb ladders and a materials handler position would probably include a requirement that the employee be capable of lifting a certain weight. Generally speaking, however, pushups, situps, mile runs and other fitness related activities are not appropriate as physical requirements because they do not relate directly to an employee's ability to do the duties in question.

A medical surveillance program is a program established by the agency to monitor and determine the effect of certain jobs on the health of the individual. Under these programs, employees participate in medical and/or psychiatric examinations on a routine basis to monitor the effect of high stress jobs or jobs in which the employees may be exposed to contagious diseases, hazardous chemicals, or other environmental contaminants.

4. Can an agency offer a medical or psychiatric examination at any time?

An agency must have a legitimate need for the medical or psychiatric evaluation in order to offer an employee an examination under 5 CFR 339.302. This offer is appropriate in any situation where the agency needs additional medical documentation to make an informed employment decision. In offering the examination to the employee, an agency must document the specific reason(s) for making the offer.

5. What information should be included in a letter requesting medical documentation from an employee?

Always include a straightforward explanation of why the information is needed at this time. Identify who will review the medical information. Provide information for the physician that explains the problem, the key aspects of the job, and what you need to know to make a determination about the employment status of his/her patient. Avoid confusing language. Be direct about what you need to know. If you are preparing a separate letter directly to the physician, ask questions like:

- If the employee has a medical condition, how does that condition affect his/her ability to do the critical aspects of the job?
- When will the employee be able to return to his/her job?
- Will there be any restrictions? What are these restrictions?
- The employee has requested a part-time schedule as an accommodation for his condition. Will this accommodation allow him to perform the critical aspects of his job? Please state the medical basis for your conclusion.

Do not routinely request all of the information listed in 5 CFR 339.104 *(Medical documentation or documentation of a medical condition)*. Select the information necessary to resolve the employment decision that is pending.

6. What are the options available to agencies when an employee refuses an offer of an examination?

Where there are deficiencies in the employee's performance or conduct, the agency may take appropriate action based upon the information available at the time. In responding to proposed performance-based or adverse actions, the employee may elect to provide appropriate medical documentation as a part of an affirmative defense against the action. Agencies should not attempt to address performance or conduct problems by way of a medical examination. An employee's medical condition is generally not an agency concern unless it affects the employee's conduct or ability to perform.

7. What are the options available to an agency when an employee refuses to comply with a proper order to submit to a medical examination?

In those cases where an agency exercises its right to order a medical examination, an employee's refusal constitutes misconduct and the agency should respond with appropriate disciplinary action under the provisions of Part 752. Agencies should

always insure that its order is based on one of the conditions cited in the answer to question #2 before proceeding with disciplinary action.

8. Can an employee submit medical documentation from a physician of his/her own choosing?

Yes. Under the provisions of 5 CFR 339.303 (b), when a medical exam is required, an agency must offer the employee an opportunity to submit medical documentation from his/her own physician or practitioner. The agency must consider all medical documentation received from the employee. In situations described in the answer to question #2, if the information received does not satisfy the agency's need for information, an employee remains obligated to submit to a properly ordered medical examination.

9. If an agency determines that the medical documentation submitted is insufficient or does not support the employee's request for accommodation, what options are available to the agency in situations which do not require an employee to submit to a medical examination?

An agency may request additional medical information from the employee and/or offer an agency examination. If both are refused, the agency may act on the basis of information currently before it. In situations where the documentation is found to be inconclusive or insufficient, the agency will need to defend that finding if the action is appealed. This usually requires the opinion of an agency physician or a contract physician who is qualified to review the documentation and point out the inconsistencies or the lack of information about the condition.

If, on the other hand, the agency takes an action which is not in accord with the recommendations of the employee's physician, the agency will have to defend its decision to accept the opinion of the medical officer over the opinion of an attending physician who has the benefit of having treated the employee. Third parties give significant deference to the opinion of a physician with first-hand knowledge of the employee.

It is very important for agency officials who are making determinations based on medical information to remember that any agency action must be based on a management decision, not just a medical opinion, regarding the employee's ability on the job. Physicians or practitioners provide opinions regarding an employee's medical status and potential limitations for certain duties, but it is management's responsibility to

make a determination as to whether or not the employee can do the job (considering reasonable accommodation) and to take appropriate action.

10. Is there a requirement that medical documentation submitted by an employee be prepared by a board certified physician?

No. The regulations at 5 CFR 339.104 state that medical documentation is a statement from a "licensed physician or other appropriate practitioner." Practitioner is defined as a "person providing health services who is not a medical doctor, but who is certified by a national organization and licensed by a State to provide the service in question." Agencies should note that if an attempt is made to refute documentation submitted by an employee, the medical opinion of a Board certified physician or specialist may carry more weight before a third party.

11. Can an agency ask for the credentials/qualifications of the individual submitting the documentation?

Yes. But agencies should consider the relevance of the information. In most instances, this becomes an issue because the information is insufficient to answer the agency's questions regarding the medical/psychiatric status of an employee. Rather than challenging the individual's credentials, the agency may just want to inform the employee that the documentation is not sufficient. In some cases involving a claim of disability discrimination, however, the lack of medical credentials may be a part of the agency's argument that the employee has not met his/her burden of proof (see *Bordelon v. HHS*, 54 MSPR 400 (1992)).

12. How long should an employee be given to submit medical documentation?

This will depend upon the nature of the condition and the accessibility of qualified physicians. Other relevant considerations are the amount of documentation the employee has already submitted, the recency of his/her last examination by an attending physician, and how long the physician has been treating the employee for the specific condition. Another factor will be the need of the agency to make a decision in order to keep up with the needs of the organization.

SAMPLE 7

Letter of Warning

Date

MEMORANDUM

From:
To:

Ref (a):

Subj: LETTER OF WARNING REGARDING LEAVE USE

1. This letter is being issued to warn you of requirements for obtaining approval of leave requests and of the effect your unreported absences are having on this office.

2. On March 3 and 4, 1997, you failed to call in to report your absences and failed to report to work. Medical documentation indicates that chronic migraine headaches caused you to fail to call in for leave approval or to report to work. You also failed to call in and properly request leave on January 10, January 23, February 14, and February 28.

3. This is to notify you of the requirement to call me, your first-line supervisor, within the first hour of your shift, if you are unable to report to work. This requirement is in accordance with Reference (a).

4. Any failure to adhere to this procedure in the future will result in your being considered absent without leave (AWOL), which is a non-pay status, and may be subject to disciplinary action for AWOL and/or failure to follow leave procedures.

5. Your position of Budget Analyst is the sole budget position in our Administrative Office. Your absences without calling in are causing great stress on the Administrative Office, including missed budget deadlines,

SAMPLE 7

unfiled reports, and the necessity for the Administrative Officer and other employees to pick up and do your work as well as theirs. The absences are having a detrimental impact on the functioning of the Administrative Office and the efficient accomplishment of the Department's mission.

6. According to your latest medical information, these absences are expected to continue for an indefinite period of time. However, your absences must be authorized in the future, as indicated above. In addition, your services are needed on a full-time basis. If you do cannot work on a full-time basis, it may be necessary to consider reassignment to a less critical position, if possible, or separation from the service for inability to perform the duties of your position on a full time basis.

Signature

SAMPLE 10

Letter of Warning

Date

MEMORANDUM

From:
To:

Subj: LETTER OF WARNING REGARDING EXCESSIVE ABSENCES

1. This letter is being issued to warn you that your excessive absences can no longer be tolerated and that leave without pay (LWOP) will no longer be granted.

2. Your leave record indicates that in 1996, you took 206 days of sick and annual leave due to illness, along with 50 days of LWOP. In 1997, your record indicates you have taken 125 days of sick leave and annual leave and 50 days of LWOP. These absences can no longer be tolerated.

3. Your position of Budget Analyst is the sole budget position in our Administrative Office. Your absences have caused great stress on the Administrative Office, including missed budget deadlines, unfiled reports, and the necessity for the Administrative Officer and other employees to pick up and do your work as well as theirs. Your absences have had a detrimental impact on the functioning of the Administrative Office and the efficient accomplishment of the Department's mission.

4. According to your latest medical information, these absences are expected to continue for an indefinite period of time. However, due to the detrimental effects of these absences, this office can no longer tolerate them. Therefore, you are hereby notified no further LWOP will be granted to you. Should you not have leave to cover your medically certified

SAMPLE 10

absences, you will not be granted LWOP and will be required to report to work. If you do not report to work, you will be placed on AWOL.

5. In addition, you are hereby notified that your services are needed on a full-time basis. If you do not return to work on a full-time basis, it may be necessary to separate you from the service for inability to perform the duties of your position on a full time basis, excessive use of LWOP, or AWOL.

COMPENDIUM OF SELECTED DECISIONS ON LEAVE AND REASONABLE ACCOMMODATION

Federal Leave Programs--Putting the Pieces Together
U.S. Office of Personnel Management
Employee Relations Branch

SOELR '1998

This document was prepared by Office of Personnel Management staff and is intended as a resource for those employee and labor relations specialists who are responsible for providing technical advice and assistance to supervisors. The case descriptions are necessarily concise and are only intended to provide enough detail to allow the user to identify relevant caselaw and proceed with further research. The information provided is accurate as of the date of issuance but regulations, laws and third party decisions can be amended and this document should not be relied upon without verifying that the information is still accurate.

LEAVE

General

As a general rule, an agency may not take an adverse action against an employee based on the employee's use of approved leave. There are situations where an agency can take action based on the use of approved leave and the Board has identified specific criteria that must be met when removing an employee on approved leave.

Webb v. U.S.P.S., 10 M.S.P.R. 536 (1982)
Cook v. Army, 18 M.S.P.R. 610 (1984)
Wilkinson v. Air Force, 68 M.S.P.R. 4 (1995)
Holderness v. Defense Commissary Agency, 75 M.S.P.R. 401 (1997)

An agency may take an adverse action against an employee only for such cause as will promote the efficiency of the service (5 U.S.C. §7513 (a)). The Board and the courts have held that an employee's absence, by its very nature, adversely affects the agency's ability to accomplish its mission and that disciplinary action based on a charge of unauthorized absence is warranted to promote the efficiency of the service.

Attendance is an essential element of any job and an agency has a right to expect its employees to attend work, absent a valid excuse. Prolonged absence with no foreseeable end constitutes just cause for removal. In addition, an employee's frequent and unscheduled absences from work may be cause for removal.

Desiderio v. Navy, 4 M.S.P.R. 84 (1980)
Giesler v. Transportation, 3 M.S.P.R. 277 (1980)
Mckenzie v. U.S.P.S., 1 M.S.P.R. 496 (1980)

Hayes v. Navy, 727 F.2d, 1535 (Fed. Cir. 1984)
Davis v. Veterans Affairs, 792 F.2d 1111 (Fed. Cir 1986)
Law v. U.S.P.S., 852 F.2d 1278 (Fed. Cir. 1988)
Honeyman v. Navy, 46 M.S.P.R. 136 (1990)
Ely v. U.S.P.S., 56 M.S.P.R. 103 (1992)
Fisher v. Department of Defense, 54 M.S.P.R. 678 (1992)

An agency's decision to deny leave is not reviewable by the Board when that denial of leave does not involve a disciplinary action.

Gavette v. Treasury, 44 M.S.P.R. 166 (1990)

Annual Leave

An agency may not automatically deny annual leave to an employee who must serve a jail sentence, but must consider the impact of the employee's absence on agency operations and the length of the sentence in comparison to the amount of annual leave available.

Benally v. Interior, 71 M.S.P.R. 537 (1996)

The Board found that the agency's denial of annual leave was proper, given conflicting information about the timing of the spouse's accident and when the appellant actually requested leave.

Dobert v. Navy, 74 M.S.P.R. 148 (1997)

Sick Leave

Generally, employees have a right to use sick leave as needed for proper reasons. Moreover, an agency is required to grant sick leave to an employee who provides administratively acceptable evidence that he or she is incapacitated for the performance of duties due to illness or injury. However, an agency may disapprove sick leave in nonemergency situations or if an employee does not submit administratively acceptable evidence. An employee must apply for sick leave within the time limits set by the agency. In addition, an agency may request administratively acceptable evidence for *any* duration of sick leave.

Rison v. Navy, 23 M.S.P.R. 118 (1984)
Wade v. Navy, 829 F.2d 1278 (Fed. Cir. 1987)
Holderness v. Defense Commissary Agency, 75 M.S.P.R. 401 (1997)

Documentation which supports an absence for sick purposes may be presented as late as the Board hearing and the unapproved absence may ultimately be approved.

However, in cases where the employee was on notice to submit evidence and fails to do so, the late submission of evidence may not be sufficient to overturn the charge.

Zeiss v. VA, 8 M.S.P.R. 15 (1981)
Riley v. Army, 53 M.S.P.R. 683 (1992)

Submission of medical evidence that does not provide the agency with sufficient information about the employee's prognosis, restrictions of work duties, or expected return to duty may not support the request for leave.

Goens v. Army, 40 M.S.P.R. 456 (1989)

Leave Without Pay (LWOP)--General

Agency authorization of LWOP is a matter of discretion and employees are not entitled to it as a matter of right.

Kelmon v. Justice, 27 M.S.P.R. 581 (1985)
Johnson v. DLA, 54 M.S.P.R. 370 (1992)
Benally v. Interior, 71 M.S.P.R. 537 (1996)

Note: For decisions on the *Family and Medical Leave Act of 1993* (FMLA), refer below under "Family and Medical Leave Act."

Denial of LWOP

When an agency bases a disciplinary action on a charge of AWOL because of a denial of LWOP, the circumstances of the denial will be reviewed by the Board to determine if the denial was reasonable. A denial of LWOP may be supported when there is no foreseeable end in sight to the absence which has resulted in a burden to the agency.

Desiderio v. Navy, 4 M.S.P.R. 84 (1980)
Kamer v. Navy, 6 M.S.P.R. 184 (1981)
Conte v. Treasury, 707 F.2d 517 (9th Cir. 1983)
Lehnerd v. OPM, 27 M.S.P.R. 525 (1985)
Henderson v. U.S.P.S., 36 M.S.P.R. 11 (1987)
Gaskins v. Air Force, 36 M.S.P.R. 331 (1988)
Compana v. Navy, 873 F.2d 289 (Fed. Cir. 1989)
Haine v. Navy, 41 M.S.P.R. 462 (1990)
Fisher v. Department of Defense, 54 M.S.P.R. 675 (1992)
Riley v. Army, 53 M.S.P.R. 683 (1992)
Joyner v. Navy, 57 M.S.P.R. 154 (1993)
Bologna v. Department of Defense, 73 M.S.P.R. 110 (1997)

Absence Without Leave (AWOL)

AWOL is a serious offense because it seriously impedes the function of an agency by imposing additional burdens on other employees.

Ajanaku v. Department of Defense, 44 M.S.P.R. 350 (1990)

To prove a charge of AWOL, the agency must show that the appellant was absent, and that his absence was either not authorized, or that his request for leave was properly denied.

Digiulio v. Treasury, 66 M.S.P.R. 659 (1995)

It is permissible to take an adverse action for AWOL and failure to follow established leave procedures, even in cases where the leave is later approved by the agency or a third party. In cases where the unauthorized leave is ultimately approved, the Board will sustain the agency's charge of failure to follow established leave procedures as long as the employee was on proper notice of the established procedures.

Fleming v. U.S.P.S., 30 M.S.P.R. 302 (1986)--Postal Service only
Wilkinson v. Air Force, 68 M.S.P.R. 4 (1995)--non-Postal agencies

Failure to follow leave requesting procedures and unauthorized absence disrupts the efficiency of the service by its very nature.

Desiderio v. Navy, 4 M.S.P.R. 84 (1980)
Roberson v. Veterans Affairs, 27 M.S.P.R. 489 (1985)

In order to support a charge of unauthorized absence, the agency must show that the employee was absent from duty and that the absence was not authorized or that the request for leave was properly denied.

Staten v. U.S.P.S., 26 M.S.P.R. 206 (1985)
Boscoe v. Agriculture, 54 M.S.P.R. 315 (1992)
Castellanos v. Army, 62 M.S.P.R. 315 (1994)

A charge of AWOL must be viewed in light of the accompanying specifications and circumstances and should not be technically construed.

Robb v. Department of Defense, SF0752970055I-1, January 6, 1998

In reviewing an AWOL charge, the Board will review medical evidence presented for the first time to the Board as well as any documentation presented to the agency.

Carr v. Department of Defense, 61 M.S.P.R. 172 (1994)

Law enforcement officials may be held to a higher standard of conduct than other Federal employees, even for charges of AWOL.

Hartigan v. Veterans Affairs, 39 M.S.P.R. 613 (1989)

An agency may not rely on absences that occurred subsequent to the charged period of AWOL.

Smith v. Department of Labor, 25 M.S.P.R. 102 (1984)

AWOL charge was sustained in case where appellant reported for duty but left the worksite. Evidence supported the finding that the employee was required to request leave for his absence and that he was properly charged with failure to obtain leave for his absence.

Meads v. Veterans Affairs, 36 M.S.P.R. 574 (1988)

A charge of AWOL was sustained for appellant who failed to report to work for a temporary duty assignment, notwithstanding the fact that he continued to report to duty at his previous office. The Board held that an employee cannot choose where to work in derogation of an agency order.

Rodriquez v. Agriculture, 27 M.S.P.R. 78 (1985)

A charge of AWOL cannot be sustained if the employee's claim with the Office of Workers' Compensation (OWCP) is approved.

Stith v. HUD, 21 M.S.P.R. 328 (1984)
Mainor v. Navy, 38 M.S.P.R. 528 (1988)
Parkinson v. U.S.P.S., 55 M.S.P.R. 528 (1988)

When an employee is incarcerated, an agency is not required to participate in a prison work-release program (absent any agency regulation to the contrary). An AWOL charge will be supported, even though the agency could have chosen to have the employee work.

Abrams v. Navy, 22 M.S.P.R. 480 (1984), aff'd
770 F.2d 181 (Fed. Cir. 1985)
Huettner v. Army, 54 M.S.P.R. 472 (1992)

Removal for AWOL will be sustained when the appellant was sentenced to 10 year's imprisonment and was immediately placed under custody of the state authorities and, as a result, was unable to report to duty.

Rojas, Jr. v. U.S.P.S., 74 M.S.P.R. 544 (1997)

Appellant left worksite without permission and was found sleeping on duty. The Board found the penalty of removal was unreasonable considering appellant's 20 years of satisfactory service and his prior disciplinary record. The removal was mitigated to a 21-day suspension.

Platt v. Navy, 8 M.S.P.R. 495 (1981)

Removal of appellant is sustained in case where employee failed to report for assigned overtime work.

Farrell v. Veterans Administration, 14 M.S.P.R. 94 (1982)
Abrams v. Navy, 12 M.S.P.R. 515 (1982)

Excessive Absence

An agency cannot take action against an employee based on a charge of excessive absence for a period under which the employee was on approved sick leave. However, the charge of excessive absence may be appropriate in circumstances where certain criteria are met and there is no foreseeable end in sight to the absence.

Holderness v. Department of Defense, 75 M.S.P.R. 401 (1997)
Allen v. Army, SF0752960550-I-1, October 3, 1997

Family and Medical Leave Act (FMLA)

The Board held that it has jurisdiction over FMLA claims and that because FMLA has its own leave requesting procedures, an AWOL charge will be reviewed in light of an appellant's right to absence under the Act. The Family and Medical Leave Act does not augment an employee's leave balance; rather, it only entitles an employee to approved absence, under which the employee could substitute accrued paid leave. Current regulations do not permit an employee to retroactively invoke his or her entitlement to leave under the Act for a previous absence from work.

Manuel v. Westlake Polymers Corp., 66 F.3d 758 (5th Cir. 1995)
Ramey v. U.S.P.S., 70 M.S.P.R. 463 (1996)
Crutchfield v. Navy, 73 M.S.P.R. 444 (1997)

Bryant v. National Science Foundation, 105 F.3d 1414 (Fed.Cir. January 29, 1997)
Joos v. Treasury, 74 M.S.P.R. 684 (1997)
Ellshoff v. Interior, 76 M.S.P.R. 54 (1997)

Voluntary Leave Transfer Program

Where the denial of leave is reasonable because there is no foreseeable end in sight to the absence, it is not improper for an agency to deny the use of donated annual leave under the leave transfer program.

Joyner v. Navy, 57 M.S.P.R. 154 (1993)

Where an employee has been in a leave status for over a year and there is no end in sight to the medical emergency, the agency should take steps to initiate disability retirement, rather than allow the employee to remain on the roles by using donated annual leave. The leave transfer program was not established as a substitute for disability retirement.

Comp. Gen. B-271561.2, July 26, 1996

REASONABLE ACCOMMODATION

General

In order to make a *prima facie* showing of disability discrimination, the appellant must show that he or she is a disabled person under 29 CFR, section 1614.203 (a), show that the action appealed is based on the disability, and articulate a reasonable accommodation by which the appellant could either perform the necessary duties of his or her position, or be reassigned to a vacant position.

Savage v. Navy, 36 M.S.P.R. 148 (1988)
Miller v. U.S.P.S., 37 M.S.P.R. 473 (1990)
Gillory v. Navy, 50 M.S.P.R., 244 (1991)
Lynch v. Education, 52 M.S.P.R. 541 (1992)
Wilson v. Veterans Affairs, 63 M.S.P.R. 63 (1994)
Jackson v. U.S.P.S., 73 M.S.P.R. 512 (1997)
Spencer v. Navy, 73 M.S.P.R. 15 (1997)

Medical Documentation

The persuasiveness of medical evidence stems from its explanation of how certain aspects of a particular condition render the employee unable to perform specific work assignments. For example, a physician's conclusion that an employee is disabled must

explain how the medical condition affects the employee's essential duties of the position and other specific work requirements. In addition, briefly stated clinical findings, generalized diagnoses and failure to explain how a condition causes a particular problem may diminish or entirely eliminate the value of the medical evidence. A report from a physician who is qualified will not be discredited because the physician works for the agency who took the adverse action under appeal.

Witt v. Air Force, 24 M.S.P.R. 31 (1984)
Vaughn v. U.S.P.S., 33 M.S.P.R. 496 (1987)
Bernard v. Office of Personnel Management, 37 M.S.P.R. 486 (1988)
Miller v. U.S.P.S., 43 M.S.P.R. 473 (1990)
Whitmer v. Office of Personnel Management, 48 M.S.P.R. 312 (1991)
Maulding v. Health and Human Services, 961 F.2d 694 (8th Cir. 1992)
Crew v. Navy, 59 M.S.P.R. 495 (1993)
Frye v. Army, 63 M.S.P.R. 242 (1994)
Brown v. Navy, 65 M.S.P.R. 245 (1994)
Royster v. Office of Personnel Management, 68 M.S.P.R. 655 (1995)
Merzweiler v. U.S.P.S., 69 M.S.P.R. 274 (1996)

Other

If a signature is forged (even if the medical information is correct), a charge of falsification may be sustained where the employee intentionally submitted it.

Rigilano v. U.S.P.S., 37 M.S.P.R. 614 (1988)

Prior assignment to light duty does not establish a continuing entitlement to light duty, even when a disabling condition is permanent An agency is not required to accommodate a disabled employee by permanently assigning the employee to light duty tasks, when those tasks do not comprise a complete and separate position.

Bauman v. Navy, 55 M.S.P.R. 209 (1992)
Crew v. Navy, 59 M.S.P.R. 495 (1993)

In considering reassignment as a form of reasonable accommodation, the agency's obligation is limited to offering reassignment to a funded vacant position, inter alia, located within the same commuting area and serviced by the same appointing authority.

Hurst v. Navy, 61 M.S.P.R. 277 (1994)
Joe v. Navy, 62 M.S.P.R. 408 (1994)

Under the definition of disability, working is a major life activity and the general foreclosure test applies only to claims brought under the major life activity of working. Inability to perform a single, particular job does not constitute substantial limitation. A

substantial limitation means that the appellant is significantly restricted in the ability to perform either a class of jobs or a broad range of jobs in various classes.

Miller v. U.S.P.S., 43 M.S.P.R. 473 (1990)
Groshans v. Navy, 67 M.S.P.R. 629 (1995)
Williams v. Channel Master Satellite Systems, Inc., 101 F.3d 346 (4th Cir. 1996)
Corrigan v. Department of Defense, 1997 WL 177544 (E.DVa), April 10, 1997

Restoration of Forfeited Annual Leave

General: For non-SES employees, any annual leave in excess of 240 hours is lost at the end of the leave year. Annual leave earned by an SES employee prior to being converted to the SES is also subject to this limit. Restoration of annual leave is intended to rectify serious inequities and not simply to protect an employee from his/her own negligence in requesting leave early enough in the year to prevent its loss.

Requirements: An excessively demanding, urgent, or unforseen work situation, which is referred to as an "exigency of the public business," may arise late in the leave year which:

- Is of such importance as to preclude the use of the scheduled leave, and
- Is evidenced by documentation that the leave was requested and approved at least by the third biweekly pay period before the end of the leave year.

Except for bona fide emergencies that make prior approval impossible, the determination that an exigency exists must be made in advance of the cancellation of scheduled leave. If a request for declaration of an exigency is disapproved or not made in time, the affected employee(s) must be permitted to use properly scheduled and approved annual leave.

If a supervisor fails to act on a timely request by an employee to schedule annual leave or declare that an exigency exists, then the negligence is regarded as an administrative error, in which case the leave may be restored[21].

If an employee was unable to take scheduled annual leave due to an illness, then the annual leave may be restored provided that:

- The illness occurred so late in the leave year or was of such duration that the annual leave could not be rescheduled before the end of the leave year, and
- Documentation exists which gives evidence that the leave was requested and approved at least by the third biweekly pay period before the end of the leave year.

When an employee is ill and annual leave has not been scheduled sufficiently in advance so it may be forfeited, the employee should use the "use or lose" annual leave rather than sick leave; however retroactive substitution of annual leave for

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[21] See 57 Comptroller General Decision 325. Such negligence can form the basis for a disciplinary action against the supervisor.

sick leave is not permitted, except to liquidate advanced sick leave[22]. Exceptions to the scheduling requirement may be allowed for very prolonged illness before the end of the leave year[23].

Restoration Requests: The decision to restore annual leave is normally separate from the determination that an exigency exists. An employee's request for restoration of annual leave should address the following:

- Evidence that the leave was approved before the cutoff date;
- The period and amount of leave which was approved and subsequently canceled (if official records are not available to substantiate the amount to be restored, an estimate of the employee's leave account is acceptable when accompanied by statements from payroll and/or the employee's supervisor which clearly reflect the factors that form the basis for the estimate; and
- For requests involving illness or administrative error, the reason(s) why the annual leave could not be rescheduled.

Use of Restored Leave Restored annual leave must be scheduled and used no later than the end of the leave year following the second anniversary of:

- The date fixed as the termination date of the exigency which resulted in forfeiture of the annual leave;
- The date of restoration of the annual leave forfeited because of administrative error; or
- The date the employee is determined to be recovered and able to return to duty if the leave was forfeited because of illness.

Notice: Servicing personnel offices should issue an annual reminder to all employees, preferably at the beginning of the vacation season, to remind them and their supervisors of the requirements specified in this section.

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22 See 38 Comptroller General Decision 354 and 37 Comptroller General Decision 439.

23 See Comptroller General Decision B-182608, dated 2-19-76, in which an employee was on continuous sick leave for the last 10 months of the leave year.

Appendix A • Group Dismissal or Closure of Activities in Emergency Situations

A-1 • Introduction

a. This appendix offers guidance for agencies to use in preparation of plans for handling an emergency situation. (Definitions of terms are found in subchapter 3 of this chapter.)

b. The procedures in this appendix are offered as guidance for preparing emergency plans. This appendix does not apply to essential employees.

c. Nothing in this appendix is intended to limit an agency's authority to manage its workforce or to grant or deny leave or excused absence with pay.

d. Federal agencies should work with Federal Executive Boards or similar organizations of Federal officials in their local area to establish coordinated emergency plans.

A-2 • Procedures for Emergency Plan Development

a. Identify the people or the organizations responsible for:

(1) assessing the emergency and making recommendations for handling it.

(2) deciding what action to take, and

(3) notifying affected parties of the action taken.

b. Exclude any functions or localities that are subject to different conditions. (Those activities should develop their own plans.)

c. Identify and maintain a current list of critical positions.

d. Establish procedures for telling employees, local governments, transit systems, and news media about dismissals:

(1) Maintain a current list of supervisors to inform employees of dismissals during work hours.

(2) Maintain a current list of radio and television contacts to release emergency information to employees during non-work hours. At least annually, give the news media the following:

(a) Code words to identify the person authorized to tell them the agency will close or allow delayed arrival.

(b) Brief announcement texts, such as "Federal agencies are open; reasonable tardiness will be excused."

(3) Give written notices annually to local governments, transit systems, and news media about dismissals.

(4) Give written notices annually to employees to explain how they will be informed about dismissals. Notices should include:

(a) text of messages,

(b) meaning of messages,

(c) which employees messages are directed to, and

(d) how shift workers will be notified.

A-2 • Procedures for Emergency Plan Development (*Contd.*)

e. Consider options and establish policies for charging leave in emergency situations occurring before the start of the workday and during the workday. Agencies should base their decisions concerning dismissal, closure, and leave charges on the effect of the emergency on the employees and worksites and the duty status of the employees at the time of dismissal or closure. (See Decision Charts 1 and 2 at the end of this appendix.)

f. Provide for staggered or zoned dismissal and identify order of release when dismissal is likely to disrupt road or transit systems.

g. Ensure that plans are consistent with applicable bargaining agreements and/or existing practices.

Decision Chart 1

Emergency Situations Occurring *BEFORE* Start of the Workday

Agency Decision	Options for Charging Leave
Open agency—employees expected to report for work on time.	Grant annual leave, LWOP, accrued compensatory time, or excuse reasonable tardiness **for employees who experience commuting delays.** If employees might be prevented from reporting to work or if they believe that they might not be able to return home if they do come to work, annual leave, accrued compensatory time, or LWOP may be granted without prior approval.
Close all or part of agency.	Excuse absences without charge to leave for all employees affected **whether or not leave was previously approved.** (Leave cannot be charged for nonworkdays even if previously approved.) Continue current status of employees on LWOP pending disability retirement or while in receipt of Workers' Compensation, on military leave, on suspension, or in a nonpay status the workday before **and** after the closure.

Decision Chart 2

Emergency Situations Occurring *DURING* the Workday

Agency Decision	Options for Charging Leave
Continue operations—employees expected to complete day's tour.	Agencies may grant annual leave, accrued compensatory time, or LWOP to employees who request it.
Suspend operations as much as practical.	Excuse absences without charge to leave for all employees on duty at the time of dismissal even if employee was scheduled to take leave later in the day.
	Grant annual leave, accrued compensatory time, excused absence, or LWOP to avoid hardship to employees who leave after official notice of dismissal, but before official departure time for the period remaining until official departure time.
	Grant annual leave, accrued compensatory time or LWOP, or charge AWOL (if appropriate) to employees who leave before official notice of dismissal for the period remaining until end of regular workday.
	For employees scheduled to return from leave during the dismissal period, grant excused absence **from the time scheduled to return to duty** in the same manner as absences of employees on duty when dismissed. Charge appropriate leave until scheduled return.
	For employees scheduled to report for work before the dismissal, but who don't report, charge leave or AWOL (if appropriate) for the entire workday. (Make exceptions only in unusual situations.)

Employee/Labor Management Relations Policy Branch

Use of Administrative Leave for Extended Periods

Those on the Attached List

It has been brought to the attention of the Office of Personnel via various sources, including a recent Office of Inspector General inspection, that there have been instances in which excused absence (administrative leave) has been used for extended periods. Administrative leave is intended to be used for brief periods, i.e., an hour up to a few days (see DOE 3630.1B, LEAVE ADMINISTRATION, page 18, paragraph 8n); however, there is no statutory or regulatory time period strictly limiting its use.

The only extended period situation that has been authorized in DOE policies to date has been an exception to the 30-day notice period for effecting a proposed disciplinary action in accordance with DOE 3750.1, page II-4, paragraph (2)(a)3. However, extended periods of administrative leave have been granted as a result of alternative dispute resolution processes when management is unable to resolve employee problems in a timely manner.

The following procedures should be considered in effectively monitoring the use of administrative leave.

1. Managers and supervisors should consult with their servicing personnel offices on the granting of administrative leave over five working days, up to and including 30 days for alternative dispute resolution purposes, and up to 10 days as an exception to the 30-day notice period for effecting a proposed disciplinary action.

2. Extensions beyond 30 days should be monitored monthly by the servicing personnel office.

3. If such leave is needed for more than 30 days, then it may be beneficial to solicit assistance from the Employee/Labor Management Relations Policy Branch in an effort to bring an early closure to the situation and/or avoid a possible reversal of a disciplinary action.

Administrative leave of more than 30 days should be used only in rare cases and only where the justification is fully documented for the record. As a minimum, the following situations are considered appropriate:

1. As a result of a settlement agreement which is determined to be in the best interest of the Government or best interest of justice.

2. As required by a decision of the EEOC, MSPB, or other outside regulatory agency in a decision reversing an agency action and it would not be in the best interest of the agency to place the employee in his or her old position or a comparable one.

3. As a result of suspending an employee's security clearance and the employee can not be effectively placed in a nonsensitive position pending termination.

Please remember that the granting of administrative leave should be as internally consistent as possible; it should always be for the good of the Government; it should be equitably applied; and it should give due regard to local collective bargaining agreements and past management practice.

In addition, I have asked the Director, Personnel Systems and Oversight Division to include a review of administrative leave usage of more than five days in all reviews of servicing personnel offices over the next four/five year review cycle.

In closing, I urge you to work closely with managers and supervisors in your organizations to ensure the appropriate use of administrative leave. If you have any questions regarding this guidance, you should contact Ronald Knisley on (202) 586-8519.

Timothy M. Dirks
Director of Personnel

cc: Director, Personnel Systems and Oversight Division
Director, Office of Civil Rights
Director, Financial Policy Division
Director, Special Accounts & Payroll Division

Leave Transfer Program

(Reserved)

Refer to former DOE 3630.2, VOLUNTARY LEAVE TRANSFER PROGRAM as a guide to implementing the program until PAY/PERS or its successor system can be modified to accommodate changes to the program.

April 23, 1998

MEMORANDUM FOR HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

FROM: JANICE R. LACHANCE
DIRECTOR

SUBJECT: Participation of Federal Employees in Volunteer Activities

President Clinton has signed a memorandum for heads of departments and agencies requesting that you reexamine the ways in which the Federal Government can support its employees' commitment to community service and ensure that all employees are aware of the various flexibilities available to them to participate in volunteer activities. (See Attachment 1.)

The President has directed Federal departments and agencies to review their work scheduling practices and to make maximum use of existing flexibilities, when possible, to allow Federal employees to plan and take time off to perform community service. Each department and agency should review the extent to which alternative work schedules are authorized and encouraged to allow Federal employees to participate in volunteer activities. Likewise, each department and agency is directed to review its policies and practices for granting employees annual leave, leave without pay, credit hours under flexible work schedules, and compensatory time off, where appropriate, to perform community service.

The President's memorandum directs each department and agency to report to the Office of Personnel Management (OPM) within 90 days on the steps that have been taken to grant Federal employees time off to perform community service. Attachment 2 provides guidance on the flexibilities that may be used for granting Federal employees time off to participate in volunteer activities. Agency reports are due to OPM by July 21, 1998.

By direct involvement in community activities, I believe Federal employees can become an invaluable resource in the effort to make our country a better place to live.

Attachments

THE WHITE HOUSE

Office of the Press Secretary

April 22, 1998

MEMORANDUM FOR HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

SUBJECT: Strengthening Our Commitment to Service

Citizen service is one of the most important ways we demonstrate that we care for and are responsible for one another. It is also an American tradition that we meet our challenges as members of a true community, with all of us working together. Thus, citizen service should not just be a temporary pursuit of only a week or a month. The ethic of service must extend throughout a lifetime.

Over the years, great numbers of Federal employees have been generous with their time and talents and have made positive contributions to their local communities, even as they have fulfilled their official responsibilities. At the same time, as the Nation's largest employer, the Federal Government has a responsibility to set an example by helping to make it possible for its employees to dedicate time to serve others.

Therefore, I am today directing Federal departments and agencies to explore additional measures to expand service opportunities for Federal employees. Each department and agency should review its work scheduling practices and make maximum use of existing flexibilities to allow Federal employees to plan and take time off to perform community service as the public business permits. Each department and agency should also inform its employees of the various flexibilities available to them to participate in volunteer activities. The Office of Personnel Management should provide information to departments and agencies in support of this effort. Each department and agency should then report to the Office of Personnel Management within 90 days on the measures taken to implement this memorandum.

WILLIAM J. CLINTON

Guidance on Scheduling Work and Granting Time Off to Permit Federal Employees to Participate in Volunteer Activities

The Office of Personnel Management (OPM) has prepared the following guidance to support the efforts of departments and agencies to encourage employee participation in volunteer activities. Departments and agencies should also review any applicable regulations or policies and collective bargaining agreements before making determinations on these matters.

A. SCHEDULING WORK AND TIME OFF

(1) GENERAL. The Federal personnel system provides departments and agencies with considerable flexibility in scheduling hours of work and time off. Departments and agencies are encouraged to make appropriate use of this flexibility in responding to requests for changes in work schedules or time off to allow employees to engage in volunteer activities, while giving due consideration to the effect of the employee's absence or change in duty schedule on work operations and productivity.

(2) ALTERNATIVE WORK SCHEDULES. Departments and agencies have the flexibility to approve a variety of work arrangements for employees seeking to engage in volunteer activities during normal work hours.

Alternative Work Schedules (AWS) -- Flexible or compressed work schedules may be established for employees who wish to engage in volunteer activities during normal working hours. Employees represented by an exclusively-recognized union may participate in a flexible or compressed work schedule "only to the extent expressly provided under a collective bargaining agreement between the agency and the exclusive representative." (See 5 U.S.C. 6130(a)(2).) To review the extent to which AWS programs have already been applied, departments and agencies should review their internal AWS policies and practices and collective bargaining agreements. To determine how additional AWS flexibilities may be implemented, departments and agencies may also consult subchapter II of chapter 61 of title 5, United States Code; regulations in 5 CFR part 610, subpart D, Flexible and Compressed Work Schedules; and the Handbook on Alternative Work Schedules (available on OPM's web site at http://www.opm.gov/oca/aws and via modem on OPM's electronic bulletin board system (OPM ONLINE) by dialing (202) 606-4800 (Compensation Administration Forum) and OPM's Labor-Management Relations Guidance Bulletin: Negotiating Flexible and Compressed Work Schedules (available on OPM ONLINE).

Credit Hours -- Credit hours are those hours within a flexible work schedule that an employee elects to work in excess of his or her basic work requirement (e.g., 80 hours in a pay period for a full-time employee) so as to vary the length of a workweek or workday. Employees may use credit hours to fulfill their basic work requirement, thereby gaining time off from work to pursue volunteer activities and for other purposes. If a department

or agency authorizes credit hours under its flexible work schedules program, the maximum amount of credit hours that may be carried over from one pay period to another is 24 hours.

(3) SCHEDULING TIME OFF FROM WORK. Employees seeking to participate in volunteer activities during basic working hours may be granted annual leave, leave without pay, compensatory time off, or, in very limited and unique circumstances, excused absence, as discussed below. (Employees may also be permitted to use accumulated credit hours under flexible work schedules, as discussed above.)

Annual Leave -- When employees request annual leave to perform volunteer service, departments and agencies should be as accommodating as possible in reviewing and approving such requests consistent with regulations in 5 CFR part 630, subpart C, Annual Leave, and applicable collective bargaining agreements.

Leave Without Pay -- At the discretion of the agency, leave without pay (LWOP) may be granted to employees who wish to engage in volunteer activities during normal working hours. As with annual leave, OPM encourages departments and agencies, whenever possible, to act favorably upon requests by employees for LWOP to perform volunteer services. However, LWOP is appropriate for extended periods only if the employee is expected to return to his or her job at the end of the LWOP. Agencies should review their internal policies on LWOP and applicable collective bargaining agreements.

Compensatory Time Off -- Departments and agencies may approve requests from employees for compensatory time off in exchange for performing an equal amount of time in irregular or occasional overtime work. For employees under flexible work schedules, departments and agencies may approve employee requests for compensatory time off for both regularly scheduled and irregular or occasional overtime work.

Excused Absence (administrative leave) -- Each department or agency has discretion to excuse employees from their duties without loss of pay or charge to leave. OPM advises that the granting of excused absence for volunteer activities should be limited to those situations in which the employee's absence, in the department's or agency's determination, is not specifically prohibited by law and satisfies one or more of the following criteria: (1) the absence is directly related to the department or agency's mission; (2) the absence is officially sponsored or sanctioned by the head of the department or agency; (3) the absence will clearly enhance the professional development or skills of the employee in his or her current position; or (4) the absence is brief and is determined to be in the interest of the agency. Ultimately, it is the responsibility of each department or agency head to balance support for employees' volunteer activities with the need to ensure that employees' work requirements are fulfilled and that agency operations are conducted efficiently and effectively. Agencies should review their internal guidance on excused absence and applicable collective bargaining agreements.

The Secretary of Energy
Washington, DC 20585

April 25, 2001

MEMORANDUM FOR DEPARTMENT OF ENERGY EMPLOYEES

FROM : SPENCER ABRAHAM

SUBJECT: EMPLOYEE WORK LIFE PROGRAMS

As I have learned more about the Department's activities, I have been especially impressed by the Department's work life programs. Many of these programs are designed to help us balance our responsibilities at the Department with our responsibilities at home--and I support them, because they help us realize the value of the human resources that are so crucial to the accomplishment of DOE's mission.

I would like to support two employee work life programs at this time:

DOE-FLEX: Known as telecommuting or Flexiplace, DOE-FLEX can help us save on energy consumption, commuting costs, time, and wear and tear on ourselves and our automobiles. Further, by focusing on energy conservation, this program is responsive to our Agency mission. I was pleased to see that Congress shares this view--the Transportation Appropriations Act for FY 2000 now mandates government-wide telecommuting policy. I fully support the existing DOE-FLEX policy and I encourage all DOE managers and supervisors to support DOE-FLEX by working to identify and remove barriers to employees' working at their homes or at other approved telecommuting locations.

Preventive Health Measures: It is important to maintain good personal health in order to maintain the health of the Agency. In this regard, I want the Department of Energy to establish and maintain leadership in employee preventive health care. Accordingly, I am directing that all Department of Energy employees are to be granted up to 4 hours of excused absence each leave year in order to participate in preventive health screenings. The Office of Management and Administration will issue guidelines in support of this new policy in the near future.

I am pleased that there are so many programs at DOE designed to improve the quality of work life such as family friendly leave, transit subsidies, child care subsidies, wellness programs, and Employee Assistance Programs. Through these and other programs, we can demonstrate our commitment to the employees of our Department and their families.

Department of Energy
Washington, DC 20585
May 18, 2001

MEMORANDUM FOR HEADS OF DEPARTMENTAL ELEMENTS

FROM: TIMOTHY M. DIRKS
DIRECTOR OF HUMAN
RESOURCES MANAGEMENT

SUBJECT: PREVENTIVE HEALTH SCREENINGS

As you know, the Secretary recently issued a statement on Work/Life Programs, specifically addressing the issues of telecommuting and preventive health measures; a copy of the statement, which was distributed via DOECAST, is attached to this memorandum. The statement provided that the Office of Management and Administration would issue guidelines in support of the new Secretarial policy which authorizes all Department of Energy Federal employees "up to 4 hours of excused absence each leave year in order to participate in preventive health screenings." The following responds to the Secretary's direction for guidelines and provides related information.

Application of health screening policy:

(1) Examples of preventive health screenings include, but are not limited to, screening for prostate, cervical, colorectal, and breast cancer, sickle cell anemia, blood lead level, and blood cholesterol level. Other examples include screening for immune system disorders, such as HIV, and blood sugar level testing for diabetes. Questions regarding the scope of the term "preventive health screening" as it relates to an individual medical test can be referred to the local medical support staff.

(2) Absence from the work site due to health screenings should be recorded as "excused absence," formerly termed "administrative leave," time and attendance code "060." The U.S. Office of Personnel Management (OPM) has advised us that absences due to preventive health screenings are not expected to be tracked; accordingly, no new time and attendance code has been established. When Standard Form 71 or its analog is used for leave requests, the reason for the absence should be recorded in the appropriate comment space. Requests for absence for preventive health screenings are subject to prior approval similar to requests for annual leave or sick leave for medical appointments. The period of time in which the 4 hours' excused absence may be used is one ~~calendar~~ leave year; unused leave may not be accumulated from one ~~calendar~~ leave year to the next. Employee visits to the health unit for on-site preventive health screenings, or participation in health fairs, should be treated according to local practice.

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Other health-related activities:

As managers of DOE programs, you have a substantial role in promoting employee participation. Your responsibilities in this area will be further described in the DOE directive on leave and the directive on employee health services. Both directives will be modified shortly to reference your authority to grant excused absence for preventive health screenings. In the meantime; however, you may grant excused absence for this purpose consistent with guidance in the above paragraph.

The Office of Human Resources Management will soon be issuing guidance templates on the new DOE excused absence policy that can be adapted for distribution and use by local human resources servicing offices. In establishing site-specific programs, management at affected locations should fulfill any associated collective bargaining obligations.

Questions about the administration of local leave policy or practice, including negotiated agreements, may be directed to your local human resources servicing offices. Questions on Departmental health services and Federal leave policy may be directed to Bruce Murray, (202) 586- 3372, in the Human Resources Policy and Programs Division; Bruce is also available via electronic mail on bruce.murray@hq.doe.gov.

Attachment

cc: Human Resource Directors
Presidents of the DOE Federal Unions