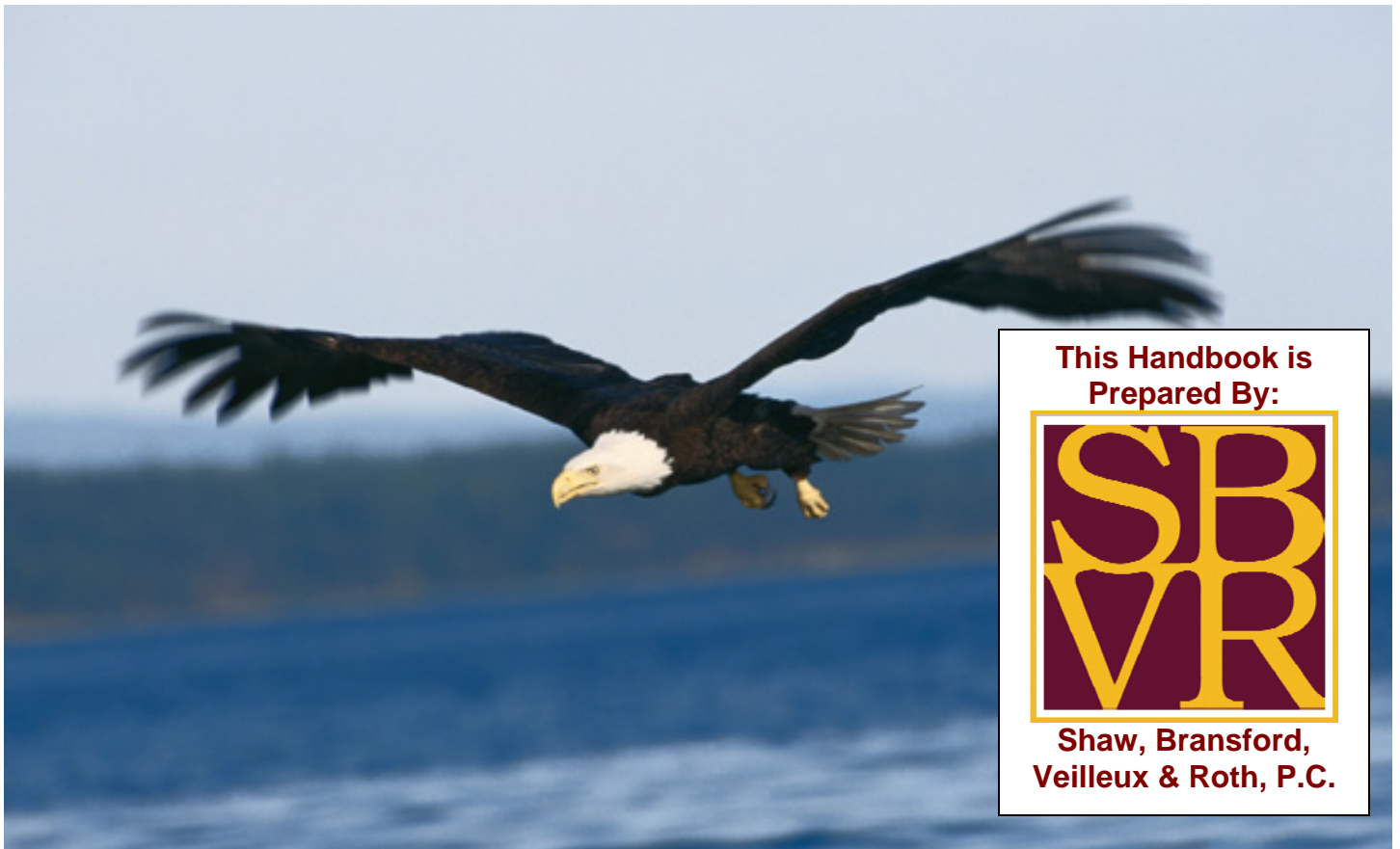


# 2008 Federal Leave Handbook



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# Introduction

The last several decades have brought significant changes to federal civil service leave policies and programs. One of the most important changes in recent history was when the Office of Personnel Management (OPM) issued final regulations, effective September 18, 2006, removing the requirement of federal employees to maintain a minimum sick leave balance in his or her sick leave account in order to use the maximum amount (12 weeks) of sick leave to care for a family member with a serious health condition. Such sick leave is in addition to the Family and Medical Leave Act of 1993 (FMLA), under which most federal employees are already entitled to a total of twelve weeks of unpaid leave within any 12-month period for the birth or adoption of a son or daughter, the care of a spouse, son, daughter, or parent with a serious health condition, or a serious health condition of the employee. Although significant, these provisions are only two of the many laws and regulations that govern leave issues faced by federal supervisors and employees, laws and regulations that are always subject to change.

Indeed, as of January 28, 2005, federal employees may now earn compensatory time off for official travel during uncompensated, non-work hours, under certain conditions. The new interim rules were published by OPM in the January 24, 2005 Federal Register. They were mandated by provisions in the Federal Workforce Flexibility Act of 2004 (P.L. 108-411, October 30, 2004). These new rules are discussed in detail in Chapter 5 of this handbook.

As federal leave policies and programs have changed, they have invariably become more detailed, comprehensive, and confusing. In some agencies, a culture of employee entitlement has emerged, leaving some supervisors unsure about whether and how to manage (*i.e.*, approve or disapprove) employee leave requests. The result in some workplaces has been almost certain approval of any employee leave request, despite the impact on the agency's operations.

Both federal employees and supervisors need to have an understanding of employee leave entitlements and responsibilities under the current federal leave policies and programs. While OPM provides leadership on these issues, agencies are ultimately responsible for administering leave policies and programs for their own employees. Supervisors must be knowledgeable about their employees' leave entitlements under the law as well as programmatic requirements, so that they can properly balance their employees' legitimate need to take leave with their agency's need to accomplish its mission. Supervisors must also be informed of changes in leave management rules so that they can exercise their authority in this area properly, consistently, and fairly. When in doubt about a particular kind of leave or its application, supervisors should seek guidance from their agency's Human Resources office.

Federal employees must take responsibility as well, by becoming fully informed about what leave they can take and under what circumstances. It is the duty of employees to ensure that they

follow their agency's leave procedures; do their best to minimize any disruption their leave may cause the agency; and take care not to abuse their leave. Employees should request leave as far in advance as possible, for example, so that their supervisors can ensure that the agency's goals are met even in the employees' absence. Employees need to understand that their employer – the federal government – has a legitimate interest in ensuring that they report for work every day, on time, unless they have been granted annual, sick, or some other kind of approved leave. Finally, employees need to know that abusing leave - such as taking sick leave to go on vacation, for instance - can lead to disciplinary action, up to and including removal.

## Annual Leave

While working for the government, federal employees generally earn, or “accrue,” two kinds of paid leave – annual leave and sick leave. Annual leave is used by employees for vacations, rest and relaxation, personal business, and emergencies. Sick leave, obviously, is leave that is taken when an employee is too ill to come into work, or must attend a medical or dentist appointment. Under some conditions, sick leave may be used to care for a family member or for the adoption of a child. Federal employees are also entitled to additional types of paid and unpaid leave under certain circumstances. For instance, a federal employee who is called to serve as a juror can take court leave, and one who is a bone-marrow donor is eligible for Bone-Marrow Donor Leave. Sick leave and these other kinds of leave will be covered in detail in the next few chapters. But first, we turn to annual leave.

### Accruing Annual Leave

Federal employees earn annual leave based on their number of years of service and whether they are full-time or part-time employees, or are employees who work uncommon tours of duty. The longer an employee has worked for the federal government, the more quickly he or she accrues annual leave.

The following chart illustrates the amount of annual leave to which federal employees are entitled, based on the type of employee they are and their length of federal service.

<b>Employee Type</b>	<b>Less than 3 years of service</b>	<b>3 years but less than 15 years of service</b>	<b>15 or more years of service</b>
<b>Full-time</b>	4 hours/pay period	6 hours/pay period, except 10 hours in last pay period	8 hours/pay period
<b>Part-time*</b>	1 hour/20 hours in a pay status	1 hour/13 hours in a pay status	1 hour/10 hours in a pay status
<b>Uncommon tours of duty*</b>	(4 hours) multiplied by (average number of hours per biweekly pay period) divided by 80 = biweekly accrual rate	(6 hours) multiplied by (average number of hours per biweekly pay period) divided by 80 = biweekly accrual rate	(8 hours) multiplied by (average number of hours per biweekly pay period) divided by 80 = biweekly accrual rate

\* Leave is prorated for part-time employees and employees on uncommon tours of duty. Employees need to remember that while they have a right to take annual leave, this right is subject to the right of their supervisor to schedule the time during which the leave may be taken. In other words, federal employees have the right to take annual leave at some time during the year, but it is not entirely up to the employee to decide when to take the leave. If an employee asks to take annual leave at a time when the agency needs him or her to be on the job because of a special project or a particularly heavy workload, for instance, the employee's supervisor can deny the employee's request for leave. The employee would then have to report for work during that period and request to take leave at another time when it would not interfere with the agency's operations. In addition, supervisors have the right to require employees to return to work from annual leave if the agency's work requires it. Thus, an employee could be called back from an approved vacation if there were a work-related emergency requiring the employee's immediate attention.

Clearly, the employee's right to take annual leave must be balanced with the agency's need for undisrupted and effective operation. For this reason, employees should always schedule annual leave in advance with their supervisors. Employees who fail to schedule annual leave in advance may be charged as absent without leave (AWOL). An agency determination that an employee was AWOL may result in disciplinary action being taken against the employee.

### **Annual Leave Accrual Rates for SES, SL and ST Positions**

As a result of the "Federal Workforce Flexibility Act of 2004," OPM issued a final regulation, 5 C.F.R. § 630.301, effective on November 20, 2006, mandating that members of the Senior Executive Service (SES), employees in senior level (SL) and scientific or professional (ST) positions accrue annual leave at the rate of 1 day (8 hours) for each full biweekly pay period.

In addition, OPM has extended coverage for the 8-hour category to employees in the following equivalent categories:

- Senior Foreign Service;
- Defense Intelligence Senior Executive Service;
- Senior Cryptologic Executive Service;
- Federal Bureau of Investigation Senior Executive Service;
- Drug Enforcement Administration Senior Executive Service.
- Department of Defense Highly Qualified Experts, paid under 5 U.S.C. 9303(b); and
- Defense Intelligence Senior Level employees paid under 10 U.S.C. 1602.

Agency heads may request that OPM authorize an 8-hour annual leave accrual rate for employees who hold positions covered by pay systems which they believe are equivalent to the SES or SL/ST pay system.

As of May 14, 2007, SES employees who accept political appointments may at the time of their appointment, elect to retain SES provisions relating to leave. The election will remain in effect for no less than 1 year, unless the appointee leaves the position sooner.

### **Advancing Annual Leave**

Sometimes, an employee may want to take more annual leave than he or she has accrued. It is within the agency's discretion to "advance" an employee annual leave. If the agency does advance the employee annual leave, the employee is expected to "pay back" the leave. For instance, an employee who just started working for the government may not have enough annual leave accrued to take a previously scheduled vacation. The agency could advance the annual leave so the employee could take the vacation, and as the employee's annual leave accrued, the leave would then be deducted to "pay back" the advance.

Supervisors may grant advance annual leave consistent with agency policy. The amount of annual leave that may be advanced is limited to the amount of annual leave an employee would accrue in the remainder of the leave year. Employees do not have an entitlement to advance annual leave. In most cases, when an employee who is indebted for advance annual leave separates from federal service, he or she is required to refund the amount of advance leave for which he or she is indebted.

### **Carrying Over Annual Leave**

It is common for employees not to use all of their annual leave within a given leave year. By law, federal employees may carry over unused annual leave into the new leave year, subject to certain limitations. Federal employees working within the United States may carry over 30 days of annual leave into the new leave year. Federal employees stationed overseas may carry over 45 days of annual leave into the new leave year. Members of the Senior Executive Service (SES) may carry over 90 days of annual leave into the new leave year. As of January 28, 2008, SL/ST employees may also carry over 90 days of annual leave into the new leave year.

### **Restoration of Annual Leave**

If an employee forfeited annual leave because it was in excess of the maximum leave ceilings (30 days for non-SES employees working in the U.S.; 45 days for non-SES employees stationed overseas; or 90 days for SES employees), or forfeited it because of an administrative error, exigency of the public business, or sickness of the employee, then the agency may restore the annual leave in a separate leave account.

Agencies have some discretion in determining whether an employee's annual leave should be restored for any of these reasons. For example, the employing agency is responsible for determining what constitutes an "administrative error." And the employing agency is also responsible for determining whether an exigency (meaning "a pressing or urgent situation") is of such major importance that the employee could not use his or her annual leave. For leave to be

restored because of sickness, the employing agency must determine whether the annual leave was forfeited because of a period of absence due to an employee's sickness or injury that occurred late in the leave year or was of such duration that the excess annual leave could not be rescheduled for use before the end of the leave year.

It is important to note that annual leave forfeited due to an exigency of the public business or sickness of the employee may only be restored if the annual leave was scheduled in writing before the start of the third biweekly pay period prior to the end of the leave year.

#### **Time Limit for Using Restored Annual Leave**

An employee must schedule and use restored annual leave not later than the end of the leave year ending 2 years after –

- the date of restoration of the annual leave forfeited because of administrative error;
- the date fixed by the head of the agency or designee as the date of termination of the exigency of the public business; or
- the date the employee is determined to be recovered from illness or injury and able to return to duty.

Restored annual leave that is not used within the established time limits is forfeited with no further right to restoration. Administrative error may not serve as the basis to extend the time limit within which to use restored annual leave. This is true even if the agency fails to establish a separate leave account, fix the date for the expiration of the time limit, or properly advise the employee regarding the rules for using restored annual leave, absent agency regulations requiring otherwise.

#### **Annual Leave to Establish Retirement Eligibility**

An employee may use annual leave to establish initial eligibility for retirement in reduction-in-force (RIF) and other restructuring situations. An employee who has received a specific notice of termination in a RIF situation may use annual leave past the date the employee would otherwise have been separated in order to establish initial eligibility for immediate retirement, including discontinued service or voluntary early retirement.

#### **Lump-Sum Payments for Annual Leave**

An employee will receive a lump-sum payment for any unused annual leave when he or she separates from federal service, or enters on active duty in the armed forces and elects to receive a lump-sum payment. Generally, a lump-sum payment will equal the pay the employee would have received had he or she remained employed until the expiration of the period covered by the annual leave.

#### **Calculating a Lump-Sum Payment**

An agency calculates a lump-sum payment by multiplying the number of hours of accumulated and accrued annual leave by the employee's applicable hourly rate of pay, plus other types of pay the employee would have received while on annual leave, excluding any allowances that are paid for the sole purpose of retaining a Federal employee in Government service (e.g., retention allowances and physicians comparability allowances).

### **Types of Pay Included in a Lump-Sum Payment**

- Rate of basic pay
- Locality pay or other similar geographic adjustment
- Within-grade increase (if waiting period met on date of separation)
- Across-the-board annual adjustments
- Administratively uncontrollable overtime pay, availability pay, and standby duty pay
- Night differential (for FWS employees only) –payment due for all regularly scheduled periods of night shift duty covered by unused annual leave as if the employee had continued to work beyond the effective date of separation, death or transfer to another agency.
- Regularly scheduled overtime pay under the Fair Labor Standards Act for employees on uncommon tours of duty
- Supervisory differentials
- Nonforeign area cost-of-living allowances and post differentials
- Foreign area post allowances

### **Returning to Federal Service**

In calculating a lump-sum payment, an agency projects forward an employee's annual leave for all the workdays the employee would have worked if he or she had remained in federal service. By law, holidays are counted as workdays in projecting the lump-sum leave period. If an employee is reemployed in the federal service prior to the expiration of the period of annual leave (i.e., the lump-sum leave period), he or she must refund the portion of the lump-sum payment that represents the period between the date of reemployment and the expiration of the lump-sum period. An agency recredits to the employee's leave account the amount of annual leave equal to the days or hours of work remaining between the date of reemployment and the expiration of the lump-sum leave period.

## Sick Leave

Normally, people think of sick leave as the kind of leave employees take if they personally are feeling too ill to report to work, or if they have an appointment with a doctor or dentist. And this is true, as far as it goes. But in the federal community, sick leave is more flexible than that. It can also be taken to care for an ill family member, to arrange for and attend a family member's funeral, and to adopt a child, as detailed below in this chapter.

### Accruing Sick Leave

Federal employees accrue sick leave as follows:

<b>Sick Leave Accrual</b>	
<b>Full-time Employees</b>	4 hours for each biweekly pay period
<b>Part-time Employees</b>	1 hour for each 20 hours in a pay status

Unlike annual leave, there are no limits on the amount of sick leave that can be accumulated. Federal employees can carry over all of their unused sick leave each year throughout their tenure with the federal government.

In addition, unused sick leave accumulated by employees covered by the Civil Service Retirement System will be used in the calculation of their annuities. (Employees covered by the Federal Employees Retirement System, however, will not have their unused sick leave used in the calculation of their annuities.)

### Requesting Sick Leave

An employee must request sick leave within the time limits the agency sets. Agencies may require employees to request sick leave in advance if they are planning on taking leave for their own or a family member's medical, dental, or optical examination or treatment. Obviously, not all sick leave can be requested in advance, since employees sometimes get sick overnight or over a weekend. In those cases, employees must follow their agency's procedures for ensuring that their supervisors are given timely notice that they will be taking sick leave.

## **Granting Sick Leave**

The rule is that an agency may grant sick leave only when the leave is supported by “administratively acceptable” evidence. (See Chapter 4, “Leave Abuse,” for a discussion of “administratively acceptable” evidence.)

For absences longer than 3 days - or for a shorter period if the agency finds it necessary - the agency may require the employee to produce a medical certificate, such as a doctor’s note, or other administratively acceptable evidence.

## **Advancing Sick Leave**

In cases where an employee has insufficient sick leave to meet his or her needs, the employing agency has the authority to advance the employee sick leave. An agency can advance an employee up to 30 days of sick leave in the case of a medical emergency or for purposes related to the adoption of a child. For family care or bereavement purposes, an agency can advance up to 5 days of sick leave.

## **Sick Leave for Personal Medical Needs**

An employee may use sick leave when he or she:

- receives medical, dental, or optical examination or treatment;
- is incapacitated for the performance of duties by physical or mental illness, injury, pregnancy, or childbirth; or
- 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.

## **Sick Leave for Family Care or Bereavement Purposes**

Most federal employees may use a total of up to 104 hours (13 workdays) of sick leave each leave year for general family care and bereavement purposes 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.

Effective September 18, 2006, an employee no longer needs to maintain a balance of at least 80 hours of sick leave in his or her sick leave account in order to use the maximum amount of sick leave provided for family and bereavement purposes. 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 purposes is pro-rated in proportion to the average number of hours of work in the employee’s scheduled tour of duty each week. Agencies may advance only the first 30 days of sick leave to a full-time employee at the beginning of a leave year (or a proportional amount for an employee on a part-time schedule or uncommon tour of duty).

A “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**

An employee may also use sick leave for purposes related to the adoption of a child. The agency may advance up to 30 days of sick leave for adoption-related purposes. Examples of the type of adoption-related activities for which an employee may take sick leave include (but are not limited to):

- Appointments with adoption agencies, social workers, and attorneys;
- Court proceedings;
- Required travel;
- Any periods of time the adoptive parents are ordered or required by the adoption agency or by the court to take time off from work to care for the adopted child; and
- Any other activities necessary to allow the adoption to proceed.

Adoptive parents who voluntarily choose to be absent from work to bond with or care for an adopted child, however, may not use sick leave for this purpose. Annual leave and leave without pay (both subject to approval by agency management) are options for employees who wish to take time off from work for these purposes. Agencies may ask their employees to produce administratively acceptable evidence for absences related to adoption.

### **Sick Leave to Care for a Family Member with a Serious Health Condition**

In addition to the sick leave entitlements described above, covered full-time federal employees may use 480 hours (12 workweeks) of sick leave each leave each year for providing care of a family member with a serious health condition, under final regulations issued by OPM. These final regulations went into effect on September 18, 2006.

Bear in mind that if an employee previously has used any portion of the 13 days of sick leave for general family care or bereavement purposes in a leave year, that amount must be subtracted from the 12-week entitlement. Conversely, if an employee has already used 12 weeks of sick leave to care for a family member with a serious health condition, then he or she cannot use an additional 13 days in the same leave year for general family care purposes. In short, OPM says that a federal employee may use a *total* of 12 weeks of sick leave each year under this provision for family care purposes.

Effective September 18, 2006, employees are no longer required to maintain a minimum sick leave balance of 80 hours in order to use the full 12 weeks of sick leave to care for a family member or bereavement purposes.

An agency may advance a maximum of 30 days of sick leave to a full-time employee at the beginning of a leave year. An agency may also advance sick leave at any time thereafter when required due to a serious disability or ailment of the employee or family member or for the purpose of adopting a child. An employee may only have, at most, 30 days of sick leave at any time. Part-time employees (or an employee on an uncommon tour of duty) may have a maximum amount that is prorated according to the number of hours in the employee's regularly scheduled administrative workweek.

### **Defining "Family Member"**

"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.

### **Serious Health Condition**

The term "serious health condition" is defined by law as an illness, injury, impairment or physical or mental condition that involves (1) inpatient care in a hospital, hospice or residential medical care facility, or (2) continuing treatment by a health care provider. However, exactly what constitutes a "serious health condition" is not always entirely clear. Courts apply a factual analysis on a case-by-case basis to determine if condition meets the criteria for a "serious health condition." Generally, courts consider factors such as the length of time an employee is absent from work, the severity of the condition, and the number of visits to a health care provider in making this determination.

Examples of "serious health conditions" include, but are not limited to, heart attacks, heart conditions requiring heart bypass or valve operations, cancers, back conditions requiring extensive therapy or surgical procedures, kidney dialysis, physical therapy, strokes, severe respiratory conditions, spinal injuries, appendicitis, pneumonia, emphysema, severe arthritis, severe nervous disorders, injuries caused by serious accidents on or off the job, clinical depression, recovery from major surgery, final stages of a terminal illness, and Alzheimer's disease. A "serious health condition" also includes ongoing pregnancy, miscarriages, complications or illnesses related to pregnancy (such as severe morning sickness), the need for prenatal care, childbirth, and recovery from childbirth. Conditions such as the common cold, the flu, earaches, an upset stomach, headaches (other than migraines) or routine dental or orthodontia problems (unless complications arise) do not qualify as "serious health conditions."

Federal supervisors need to be aware of the ailments that are - and are not - deemed "serious health conditions." In cases where the supervisor is unsure whether a particular illness qualifies, he or she should consult with the agency's personnel office.

## **Administration**

Employees are no longer required to maintain a sick leave balance in order to use the full 12 weeks of sick leave to care for a family member with a serious health condition. Any employee may use an initial 104 hours of sick leave for general family care or bereavement purposes. This limitation applies to any employee using sick leave to care for a family member.

Also, an employee is no longer required to have a sick leave balance in his or her account for entitlement to *no more than* 480 hours (12 workweeks) of sick leave, per sick leave year, to care for a family member with a serious health condition. Because of this limitation, OPM has made it clear that an agency may advance a maximum of 30 days of sick leave when required by the exigencies of the situation for a serious disability or ailment of the employee or a family member or adoption of a child. Supervisors should be careful not to advance more sick leave to an employee than the amount to which the employee is entitled.

Guidelines for requesting and granting such sick leave, as well as for advancing such sick leave, are generally at the discretion of the agency. Therefore, it is good practice to consult with your personnel office about your agency's policies when it comes to requesting, granting, and advancing sick leave. Be aware that the agency may require medical certification of a serious health condition before granting the leave. In addition, agencies may establish a time limit for employees to produce such documentation.

It is also important for supervisors to remember that an employee is entitled to sick leave for family care just as he or she is entitled to sick leave for his or her own incapacitation. Therefore, if an employee meets all of the agency's requirements (notification, medical evidence/certification, and so forth), then the agency must grant sick leave.

## **The Family and Medical Leave Act of 1993**

Finally, in addition to other paid time off available to federal employees, the Family and Medical Leave Act (FMLA), which was passed by Congress in 1993, entitles most federal employees to a total of up to 12 work weeks of unpaid<sup>1</sup> leave during any 12-month period under certain circumstances.

To be eligible, an employee is required to have worked for the employer for at least one year, and for 1250 hours in the 12-month period immediately preceding the leave request. Paid or unpaid leave may not be counted toward the 1250-hour requirement. FMLA leave may be used for the following purposes:

- 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 a spouse, son, daughter, or parent of the employee who has a serious health condition; or
- a serious health condition of the employee that makes the employee unable to perform the

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<sup>1</sup> Although the FMLA specifically entitles federal employees to unpaid leave, OPM's regulations permit an employee to elect to substitute annual leave and/or sick leave for any unpaid leave under the FMLA.

essential functions of his or her position.

At the outset, note that OPM's regulations allowing federal employees to take sick leave to care for a family member with a serious health condition, as discussed above, permit federal employees to take sick leave to care for "any individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship." The FMLA is not quite so broad, since it only allows employees to take leave for their own illness or to care for an actual close family member.

In addition, leave taken under the FMLA is generally unpaid, whereas leave taken under OPM's Family-Friendly Leave regulations is leave that has been *accrued* by the employee, meaning that it is paid leave the employee has earned. Bear in mind, though, that if the employee has accrued sufficient leave, he or she may substitute sick or annual leave for the unpaid FMLA leave.

Occasionally, an employee may want to take FMLA leave intermittently, to obtain monthly treatments for example. The rule is that an employee may use FMLA leave intermittently under certain circumstances. Agencies have their own policies when it comes to taking FMLA leave intermittently. Therefore, employees and supervisors should contact the agency's personnel office for guidance in such cases.

Under the FMLA, an employee must provide his or her employer with notice of his or her intent to take such leave 30 days prior to the date on which the leave is to begin. In emergency situations, the employee is responsible for notifying his or her supervisor 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. Be aware that while an agency may apply its own leave procedures to leave requests under the FMLA, an agency may not apply a more restrictive leave policy than that provided under the FMLA, and may not deny an employee leave under the FMLA for failure to follow the agency's leave procedures.

While OPM states that an employee may not retroactively invoke his or her entitlement to family or medical leave under the FMLA, there is some flexibility for unique situations. For example, where an employee and his or her personal representative are physically or mentally incapable of invoking the employee's entitlement to FMLA leave during the entire period in which the employee is absent from work, the employee may retroactively invoke his or her entitlement to FMLA leave within 2 work days after returning to work. However, in such cases, the employee's request must be documented by a written medical certification from a health care provider, and must include documentation acceptable to the agency explaining why the employee and his or her personal representative were unable to contact the agency to invoke the employee's entitlement to FMLA leave during the employee's absence.

OPM has also made it very clear that leave under the FMLA may be granted to an employee in addition to other paid time off available to that employee. Therefore, an employee could be entitled to 12 weeks of sick leave for family care under OPM's Family-Friendly regulations

("Sick Leave To Care for a Family Member With a Serious Health Condition," as discussed in the section above) and to 12 weeks of unpaid leave (for which paid leave may be substituted at the option of the employee if the employee has accrued sufficient leave) under the FMLA. Thus, it is conceivable that an employee could take up to 24 weeks of leave per leave year under these two entitlements.

Supervisors who are concerned about employees taking so much time off work need not worry, OPM says. OPM anticipates that only a small percentage of the federal workforce will have a need to use large amounts of leave for family care purposes.

The advantage to the agency in allowing employees to take leave for family care purposes is clear. Agencies will be able to retain valuable employees, and to benefit from reduced costs (including training costs) to replace employees forced to separate from federal service because of family responsibilities.

One last point. One of the most important benefits of the Family and Medical Leave Act is that it entitles an employee, upon return from FMLA leave, to the same position or to an equivalent position with equivalent benefits, pay, status, and other terms and conditions of employment. And an employee who takes FMLA leave is entitled to maintain health benefits coverage. An employee on unpaid FMLA leave may pay the employee share of the premiums on a current basis or pay upon return to work.

## **Fifteenth Anniversary of FMLA Brings Potential For Broad Spectrum of Changes**

2008 marks the fifteenth anniversary of the passage of the Family Medical Leave Act and on February 11, 2008, the Department of Labor ("DOL") issued a Notice of Proposed Rulemaking to update the FMLA in light of a number of different factors including court decisions invalidating portions of DOL's regulations and the passage of the military family leave provisions in the National Defense Authorization Act for FY 2008. A summary of the Notice of Proposed Rulemaking can be viewed at <http://www.dol.gov/esa/whd/FMLANPRM.htm>.

## **Unused Sick Leave Credit for Employees Covered by the Civil Service Retirement System**

Employees covered under the Civil Service Retirement System (CSRS) are allowed a credit for unused sick leave for annuity-computation purposes. With one exception, this credit for unused sick leave is not available to employees covered under the Federal Employees Retirement System (FERS). This exception includes employees who transferred to FERS with a CSRS annuity component. These employees may receive credit for the amount of unused sick leave they had at the date of transfer or the date of retirement, whichever is less.

As a general proposition, under the CSRS, the service of an employee who (1) retires on immediate annuity or (2) dies leaving a widow or widower entitled to a survivor annuity is

increased by the days of unused sick leave that the worker accrued under a formal leave system. The days of unused sick leave added are used only in counting the number of years and months of service for annuity-computation purposes. Finally, the unused sick leave cannot be added in computing the employee's average salary or for meeting the minimum length of service for retirement eligibility. For specific guidance on converting unused sick leave into additional service, you may consult the Office of Personnel Management's (OPM) website at <http://www.opm.gov>. The OPM has published a table on its website to assist in this conversion process.

## Leave Abuse

### **The Employee's Burden to Show Leave Entitlement**

As mentioned in a previous chapter, the employee – not the agency – always has the burden of showing that he or she is entitled to take leave. This is generally more of an issue with sick leave than it is with annual leave, since there are more restrictions on how sick leave can be used. Employees have a lot more flexibility when it comes to annual leave, because they can essentially take annual leave for any purpose, as long as they have the leave accrued (or had it advanced) and they have their supervisor's permission to be absent from duty.

With regard to federal sick leave entitlement, it is always the employee's burden to show that he or she (1) had the sick leave accrued (or was advanced the leave, or obtained it through a leave bank or leave transfer), and (2) is using the sick leave for an authorized purpose. An "authorized purpose" means that the employee is using the sick leave for one of the purposes outlined in the "Sick Leave" chapter. Using sick leave to go on vacation, for instance, is not an "authorized purpose."

In order to be granted sick leave, employees must file a written application for the leave within the time limits the agency has set. It is important for employees to remember that they generally must request sick leave in advance, whenever possible. While an employee may become ill suddenly overnight or over a weekend, preventing him or her from requesting sick leave in advance, employees should usually obtain approval *in advance* to take sick leave for the purposes of receiving a medical, dental, or optical examination or treatment. Such written applications may assert the employee's entitlement to the sick leave being requested.

The bottom line is that however the employee seeks to meet his or her burden of showing sick leave entitlement, federal supervisors should be aware that such a burden exists, and that sick leave may not be granted by the agency absent a showing that the employee is entitled to such leave.

### **Administratively Acceptable Evidence**

An agency may grant sick leave *only* when supported by administratively acceptable evidence. Administratively acceptable evidence is some form of evidence provided by the employee to his or her supervisor that the employee is either personally sick, the employee is caring for a family member with a serious health condition, the employee is taking sick leave for adoption-related purposes, or the employee is serving either as a bone-marrow or an organ donor. As a general rule, a federal supervisor may request whatever he or she deems to be administratively acceptable evidence.

For instance, an employee's certification as to the reason for his or her absence may be considered administratively acceptable evidence. Such evidence may be as simple as the employee's signature on a leave slip or a phone call from the employee when he or she is at home sick. However, a supervisor may also require a medical certificate as to the reason for an absence from work, where such an absence is in excess of 3 workdays, or for a lesser period when determined necessary by the agency.

At a minimum, any such certification as to sick leave entitlement should include the beginning and ending dates of the sick leave requested by the employee. Also, where an employee requests sick leave for family care or bereavement purposes, a supervisor may require an explanation as to the *specific nature* of the care that the employee will be providing the family member with a serious health condition. A supervisor may require an employee requesting sick leave for family care or bereavement purposes to provide a written statement from a health care provider regarding the family member's need for psychological comfort and/or physical care. The statement must certify that the family member requires psychological comfort and/or physical care, the family member would benefit from the employee's care or presence, and that the employee is needed to care for the family member for a specified period of time.

Agencies may establish uniformly applied policies and procedures that require employees to provide administratively acceptable evidence or medical certification for a request for sick leave. The Merit Systems Protection Board (MSPB) has decided a line of cases that offers general guidance on how supervisors should enforce agency sick leave policies and procedures regarding administratively acceptable evidence. Specifically, there is MSPB case law suggesting the point at which an agency *must* accept administratively acceptable evidence.

For instance, an employee may violate an agency's sick leave procedures by failing to provide medical certification supporting his or her illness *promptly* upon his or her return to duty. However, where the employee *subsequently* produces such medical certification, an agency must consider such certification before removing the employee. See *Nash v. U.S. Postal Service*, 8 M.S.P.R. 307 (1981). Thus, where an agency wishes to discipline an employee for untimely submission of medical certification, the proper procedure is not to propose his or her removal for AWOL, but instead to charge the employee with violating agency sick leave procedure, and to propose disciplinary action on that ground.

The MSPB has also held that, where an employee presents evidence to the MSPB that was not previously presented to the agency in support of the employee's incapacity from duty status during the relevant time period, a charge of AWOL will not be sustained. See *Young v. U.S. Postal Service*, 79 M.S.P.R. 25 (1998). As such, the MSPB has made it clear that if an employee has sufficient sick leave to cover the relevant time period, an agency must grant leave when the employee provides administratively acceptable evidence of his or her incapacitation, regardless of whether the employee has complied with agency sick leave policies and procedures.

The overall principle to remember, therefore, is that an employee's duty to comply with an agency's leave policies and procedures is not a condition precedent to the agency's duty to grant

sick leave, when the employee has presented administratively acceptable evidence of his or her incapacity from duty status. See *Stanford-Mitchell v. Department of Veterans Affairs*, 243F.3d 562 (Fed. Cir. 2000).

Bear in mind, though, that where an employee has exhausted all of his or her leave, an agency *may* deny leave without pay and place the employee on AWOL, even if the employee can establish an actual incapacitation. However, an agency may do this only where there is no foreseeable end to the employee's absence, and where the employee's absence is a burden to the agency. See *Patterson v. Dep't. of the Air Force*, 74 M.S.P.R. 648 (1997).

### **Leave Restriction Letters**

Employees who have abused leave or who are suspected of abusing leave (for instance, calling in sick every Friday or calling in the middle of the work day to say they are not coming in) can be put on leave restriction. In such cases, the agency may decide to issue the employee a leave restriction letter, which articulates the exact process the employee must follow to request leave. Sometimes, the employee may be instructed to call in by a particular time (for instance, 8:00 a.m.) to a particular person (a supervisor or the supervisor's administrative assistant, for example) if the employee wants to take sick leave that day. Or the employee may be required to bring in a doctor's note every time he or she takes unscheduled sick leave. Other requirements may be included in leave restriction letters as deemed appropriate by the agency.

Leave restriction letters are usually placed in the employee's supervisory file but not the Official Personnel File. Thereafter, if the employee fails to follow the instructions in the leave restriction letter when requesting leave, the employee may be subject to disciplinary action, up to and including removal.

## Other Kinds of Federal Leave

Besides annual and sick leave, federal employees are entitled to additional kinds of leave under particular circumstances, as described below.

### **Bone-Marrow and/or Organ Donation Leave**

Employees are also entitled to paid leave - in addition to their annual and sick leave - when they serve as a bone-marrow donor or an organ donor. An employee may use up to seven days of paid leave each calendar year to serve as a bone-marrow donor. An employee may also use up to 30 days of paid leave each calendar year to serve as an organ donor.

Leave for bone marrow and organ donation is a separate category of leave, which is in addition to annual and sick leave. This means that when an employee takes leave to donate bone marrow or an organ, the paid leave he or she takes is not subtracted from his or her annual or sick leave.

The only caveat when it comes to bone marrow donor leave is that employees may not take such leave for the removal of their own bone marrow for future use in their own medical treatment. An employee who has bone marrow removed and stored for subsequent use in his or her own medical treatment is not considered a “donor,” and therefore may not use bone-marrow donor leave for this procedure. Instead, the employee must use either sick leave or annual leave.

Agencies are responsible for notifying their employees of their entitlement to bone-marrow and organ donor leave. Therefore, supervisors should be informed of such entitlements and are responsible for allowing employees to take such leave when appropriate.

### **Military Leave**

Employees of the government are entitled to time off at full pay for certain types of active or inactive duty in the National Guard or as a Reserve of the Armed Forces. Any full-time federal civilian employee whose appointment is not limited to one year is entitled to military leave. Military leave is prorated for part-time career employees and employees on an uncommon tour of duty.

#### **Types of Military Leave**

Federal employees are entitled to 15 workdays per fiscal year for active duty, active duty training, and inactive duty training. Employees can carry over a maximum of 15 days into the next fiscal year. “Inactive duty training” is authorized training performed by members of a Reserve component not on active duty and performed in connection with the prescribed activities of the Reserve component. It consists of regularly scheduled unit training periods, additional training periods, and equivalent training. (5 U.S.C. 6323(a))

Employees are also entitled to 22 work days per calendar year for emergency duty as ordered by the President or a State governor. This leave is provided for employees who perform military duties in support of civil authorities in the protection of life and property. (5 U.S.C. 6323(b))

Members of the National Guard of the District of Columbia are provided unlimited military leave for certain types of duty ordered or authorized under title 39 of the District of Columbia Code. (5 U.S.C. 6323(c))

Reserve and National Guard Technicians *only* are entitled to 44 work days of military leave for duties overseas under certain conditions. (5 U.S.C. 6323(d))

**Days of Leave**

Military leave should be credited to a full-time employee on the basis of an 8-hour workday. The minimum charge to leave is 1 hour. **An employee may be charged military leave only for hours that the employee would otherwise have worked and received pay.**

Employees who request military leave for inactive duty training (which generally is 2, 4, or 6 hours in length) will now be charged only the amount of military leave necessary to cover the period of training and necessary travel. Members of the Reserves or and National Guard will no longer be charged military leave for weekends and holidays that occur within the period of military service.

A full-time employee working a 40-hour workweek will accrue 120 hours (15 days x 8 hours) of military leave in a fiscal year, or the equivalent of three 40-hour workweeks. Military leave under 6323(a) will be prorated for part-time employees and for employees on uncommon tours of duty based proportionally on the number of hours in the employee’s regularly scheduled biweekly pay period.

**Examples:**

Hours in the regularly scheduled biweekly pay period	Ratio of hours in the regularly scheduled pay period to an 80-hour pay period (the number of hours in the pay period ÷ 80)	Hours of military leave accrued each fiscal year	Pay Periods of military leave accrued each fiscal year
40	.5 (40 ÷ 80)	.5 x 120 = 60 hours	1.5 40-hour pay periods
106	1.325 (106 ÷ 80)	1.325 x 120 = 159 hours	1.5 106-hour pay

			periods
120	1.5 (120 ÷ 80)	1.5 x 120 = 180 hours	1.5 120-hour pay periods
144	1.8 (144 ÷ 80)	1.8 x 120 = 216 hours	1.5 144-hour pay periods

### **Effect on Civilian Pay**

An employee's civilian pay remains the same for periods of military leave under 5 U.S.C. 6323(a), including any premium pay (except Sunday premium pay) an employee would have received if not on military leave. For military leave under 5 U.S.C. 6323(b) and (c), employee's civilian pay is reduced by the amount of military pay for the days of military leave. However, an employee may choose not to take military leave and instead take annual leave in order to retain both civilian and military pay.

In addition, a November 14, 2003 presidential memorandum directed agencies to grant employees returning from active duty five (5) days of uncharged leave (excused absence) from their civilian duties, upon notification to the employing agency of their intent to return to Federal employment. This authority covers all employees who were activated for military service in connection with Operation Noble Eagle, Operation Enduring Freedom, Operation Iraqi Freedom, or any other military operations subsequently established under Executive Order 13223. Agencies may grant this period of excused absence prior to the employee's resumption of his duties, or at a time mutually agreeable to the agency and the employee, if the employee has already returned to duty.

Also, Section 563 of Public Law 107-107 authorizes use of the 15 days of military leave for "funeral honors duty" as described in 10 U.S.C. 12503 and 32 U.S.C. 115. Agencies are responsible for administering the use of military leave for funeral honor duty for its employees.

### **Absence for Funerals of Federal Law Enforcement Officers or Firefighters**

Federal law enforcement officers and firefighters are also entitled to be excused from duty to attend the funeral of a fellow law enforcement officer or firefighter. A law enforcement officer's or firefighter's attendance at such a service is to be considered official duty, and the employee's agency may pay the employee's travel, transportation, and subsistence expenses, as provided under 30 U.S.C. 1345.

### **Court Leave**

A federal employee is entitled to paid time off without charge to leave when summoned for service as a juror or witness. An employee is entitled to take court leave if he or she is summoned either (1) to serve as a juror in a judicial proceeding, or (2) as a witness in a judicial proceeding in which the Federal, State, or local government is a party. To avoid undue hardship, an agency may adjust the schedule of an employee who works nights or weekends and is called to jury duty.

It is important to distinguish court leave from official duty. That is, when an employee is summoned as a witness in an official capacity on behalf of the federal government, the employee is on official duty, not on court leave. Supervisors should be aware of this distinction so that they do not charge employees with court leave when they are acting in an official capacity on behalf of the federal government.

If, while serving on a jury or as a witness, an employee is excused from jury or witness service for 1 day or more, or for a substantial part of the day, then the employee must inform his or her supervisor of this. Supervisors have an interest in knowing where their employees are, especially in cases where employees have been granted paid leave.

Employees must reimburse to their agency fees paid for service as a juror or witness. However, monies paid to jurors or witnesses that are in the nature of “expenses” (e.g., transportation) do not have to be reimbursed to the agency.

### **Home Leave**

Home leave is a type of leave earned by employees serving in regular foreign or overseas assignments. Employees generally earn between 5 and 15 days of home leave annually, in addition to annual leave. Home leave is usually granted only after at least two years of continuous service outside the country. Supervisors should consult with their personnel office regarding their agency’s specific rules and regulations with respect to home leave.

### **Maternity and Paternity Leave**

There is no “maternity” or “paternity” leave in the federal system. However, an employee can use a combination of annual leave, sick leave, and paid or unpaid FMLA leave to cover the period of pregnancy, and for the delivery and care of a child, as described below.

### **Leave and Scheduling Flexibilities Available for Childbirth**

The federal government offers numerous leave and work scheduling flexibilities to assist employees in meeting their work and family obligations. The administration of these flexibilities typically is addressed in agency internal policies and/or collective bargaining agreements, so policies may vary by agency. Check with your Human Resources office for information on your agency’s policies.

### **Sick Leave**

A birth mother is entitled to use accrued sick leave for medical appointments, hospitalization, and her period of incapacitation following childbirth. A birth father may use a total of up to 12 weeks of accrued sick leave each year to accompany the mother to prenatal appointments, to be with her during her period of hospitalization, and/or to care for her during her recovery period. (Most doctors certify that the recovery period is about 6 weeks.) An agency may request administratively acceptable evidence of the mother’s period of incapacitation for the use of sick leave.

Both parents may use up to 12 weeks of sick leave each year to care for a child with a serious health condition. Both parents may use up to 13 days of that 12-week period to care for a child with a minor illness or to accompany a child to medical, dental, or optical appointments. An agency may request administratively acceptable evidence of a child's illness or treatment. Parents may not use sick leave to be absent from work to bond with or care for a healthy child.

#### Annual Leave

A mother may use accrued annual leave for pregnancy and childbirth, a father may use accrued annual leave to care for the mother during pregnancy and childbirth, and both parents may use accrued annual leave to be absent from work to bond with or care for a healthy newborn. The use of annual leave is subject to the right of the supervisor to approve a time at which annual leave may be taken.

#### Advance Annual and/or Sick Leave

An agency may advance employees annual and/or sick leave for purposes related to childbirth. An agency may advance the amount of annual leave an employee would accrue during the remainder of the leave year. An agency may advance a maximum of 30 days of sick leave to a mother during her period of incapacitation for pregnancy and childbirth. An agency may advance a father up to five days of sick leave to care for the mother during her period of incapacitation. Each parent may be advanced up to five days to care for a child who is ill.

#### Family and Medical Leave

Each parent is entitled to use a total of up to 12 weeks of leave without pay under the Family and Medical Leave Act (FMLA) for the birth of a child and care of the newborn. Subject to the supervisor's approval, FMLA leave may be used on an intermittent basis for absences in connection with childbirth and care of the newborn. An employee may elect to substitute annual leave and/or sick leave for any or all of the leave without pay used under the FMLA, consistent with the laws and regulations for using annual and sick leave. (See "Sick Leave," above, for the limitations on the use of sick leave for family care.) An employee's entitlement to FMLA leave expires 12 months following the date of birth of a child.

#### Donated Leave Under the Voluntary Leave Transfer and Leave Bank Programs

If either the mother or father exhausts her or his sick and/or annual leave, she or he may receive donated annual leave under the employing agency's voluntary leave transfer and/or leave bank programs. These programs allow federal employees to donate annual leave to assist another Federal employee who has a personal or family medical emergency (including pregnancy and childbirth) and who has exhausted her or his own available paid leave. An employee may receive donated annual leave from both the agency leave transfer and leave bank programs. Donated annual leave may be used only for a medical emergency - e.g., the mother's period of incapacitation or the illness of a child - and may not be used to care for a healthy child.

### Leave Without Pay

Subject to supervisory approval, both parents may use leave without pay for pregnancy and childbirth or to be absent from work to bond with or care for a healthy newborn. Supervisors should refer to agency internal policy and negotiated bargaining union agreements prior to approval.

### Flexible Work Schedules

If the work requirements and agency needs permit, an employee may consider working a flexible work schedule. Flexible work schedules enable employees to select and alter their work schedules to better fit their personal needs and help balance work, personal, and family responsibilities.

### Teleworking

Under an agency's telework policy, new parents may be permitted to work at home or from a remote telework site. Teleworking can provide employees with valuable additional time to spend with their family members by reducing commuting time. However, teleworkers should not be caring for family members while they are working from their home or alternative worksite.

### **Leave and Scheduling Flexibilities Available for Adoption**

As with the leave and work flexibilities available for the birth of a child, the federal government offers flexibilities to adoptive parents. These flexibilities are also addressed in agency internal policies and/or collective bargaining agreements, so be sure to check with your agency.

### Sick Leave

An employee may use sick leave for purposes related to the adoption of a child. Examples include, but are not limited to:

- Appointments with adoption agencies, social workers, and attorneys;
- Court proceedings;
- Required travel;
- Any periods of time during which adoptive parents are ordered or required by an adoption agency or by a court to take time off from work to care for the adopted child; and
- Any other activities necessary to allow the adoption to proceed.

An agency may request administratively acceptable evidence for the use of sick leave for absences related to adoption proceedings.

Both adoptive parents may use up to 12 weeks of sick leave each year to care for a child with a serious health condition. Both parents may use up to 13 days of that 12-week period to care for a child with a minor illness or to accompany a child to a medical, dental, or optical appointment.

An agency may request administratively acceptable evidence of a child's illness or treatment.

Parents may not use sick leave to be absent from work to bond with or care for a healthy child.

### Annual Leave

Adoptive parents may use annual leave for purposes related to the adoption of a child. In addition, adoptive parents may use annual leave to be absent from work to bond with or care for a healthy child. The use of annual leave is subject to the right of the supervisor to approve a time at which annual leave may be taken.

### Advance Annual and Sick Leave

An agency may advance annual and/or sick leave for adoption-related purposes. An agency may advance the amount of annual leave an employee would accrue during the remainder of the leave year. An agency may advance a maximum of 30 days of sick leave to each parent for adoption-related purposes. An agency may advance each parent up to five days of sick leave to care for a child who is ill.

### Family and Medical Leave

Each parent is entitled to use a total of up to 12 weeks of leave without pay under the Family and Medical Leave Act (FMLA) for adoption and care of a newly adopted child. Subject to the supervisor's approval, FMLA leave may be used on an intermittent basis for absences in connection with adoption. An employee may elect to substitute annual leave and/or sick leave for any or all of the leave without pay used under the FMLA, consistent with the laws and regulations for using annual and sick leave. (See "Sick Leave," above, for the limitations on the use of sick leave for adoption and family care.) An employee's entitlement to FMLA leave expires 12 months following the date of placement of a child for adoption.

### Donated Leave Under the Voluntary Leave Transfer and Leave Bank Programs

If either the mother or father exhausts her or his sick and/or annual leave, she or he may receive donated annual leave under the employing agency's voluntary leave transfer and/or leave bank programs. The federal leave sharing program allows federal employees to donate annual leave to assist another federal employee who has a personal or family medical emergency and who has exhausted her or his own available paid leave. An employee may receive donated annual leave from both the agency leave transfer and leave bank programs. Donated annual leave may be used only for a medical emergency - e.g., to care for a child with a serious health condition - and may not be used to care for or bond with a healthy child.

### Leave Without Pay

Subject to supervisory approval, both parents may use leave without pay for adoption proceedings or to be absent from work to bond with or care for a newly adopted child. Supervisors should refer to agency internal policy and negotiated bargaining union agreements prior to approval.

### Flexible Work Schedules

If the work requirements and agency needs permit, an employee may consider working a flexible work schedule. Flexible work schedules enable employees to select and alter their work schedules to better fit their personal needs and help balance work, personal, and family responsibilities.

### Teleworking

Under an agency's telework policy, new parents may be permitted to work at home or from a remote telework site. Teleworking can provide employees with valuable additional time to spend with their family members by reducing commuting time. However, teleworkers should not be caring for family members while they are working from their home or alternative worksite.

### **Leave Without Pay (LWOP)**

Leave without pay (LWOP) is a temporary nonpay status and absence from duty that, in most cases, is granted at the employee's request. In most instances, granting LWOP is a matter of supervisory discretion and may be limited by agency internal policy. Employees, however, have an entitlement to LWOP in the following situations:

- The Family and Medical Leave Act of 1993 (FMLA) provides covered employees with an entitlement to a total of up to 12 weeks of unpaid leave (LWOP) during any 12-month period for certain family and medical needs.
- The Uniformed Services Employment and Reemployment Rights Act of 1994 provides employees with an entitlement to LWOP when employment with an employer is interrupted by a period of service in the uniformed service.
- Executive Order 5396, July 17, 1930, provides that disabled veterans are entitled to LWOP for necessary medical treatment.
- Section 585(a) of The National Defense Authorization Act for FY 2008 allows eligible employees to take up to 26 workweeks of leave to care for a covered servicemember with a serious illness or injury and can use FMLA leave because of any qualifying exigency arising out of the fact that a covered family member is on active duty or called to active duty status.
- Employees may not be in a pay status while receiving workers' compensation payments from the Department of Labor.

Employees should be aware that LWOP affects their entitlement to, or eligibility for, certain federal benefits, as outlined in the chart below.

<b>Effect of Extended Leave Without Pay (LWOP) (or Other Nonpay Status) on Federal Benefits and Programs</b>	
<b>Type of Benefit/Program</b>	<b>The amount of LWOP (or other nonpay status) that is considered creditable service for purposes of determining an employee's entitlement to or eligibility for the following Federal benefits and programs:</b>
<b>Career tenure</b>	The first 30 calendar days of each nonpay period is creditable service.
<b>Completion of probation</b>	A total of 22 workdays in a nonpay status is creditable service.
<b>Time-in-grade requirements (requirements for</b>	Any nonpay status is creditable service.

<b>promotion)</b>	
<b>Retirement benefits</b>	A total of 6 months in a nonpay status in any calendar year is creditable service. Coverage continues at no cost to the employee while in a nonpay status. When employees are in a nonpay status for only a portion of a pay period, their contributions are adjusted in proportion to their basic pay.
<b>Health benefits</b>	Enrollment continues for no more than 365 days in a nonpay status. The nonpay status may be continuous or broken by periods of less than 4 consecutive months in a pay status. The government contribution continues while employees are in a nonpay status. The government also is responsible for advancing from salary the employee share as well. The employee may choose between paying the agency directly on a current basis or having the premiums accumulate and withheld from his or her pay upon returning to duty.
<b>Life insurance</b>	Coverage continues for 12 consecutive months in a nonpay status without cost to the employee or to the agency. The nonpay status may be continuous, or it may be broken by a return to duty for periods of less than 4 consecutive months.
<b>Within-grade increases</b>	A total of 2 workweeks in a nonpay status in a waiting period is creditable service for advancement to steps 2, 3, and 4 of the General Schedule; 4 workweeks for advancement to steps 5, 6, and 7; and 6 workweeks for advancement to steps 8, 9, and 10. For prevailing rate employees (WG, WL, and WS schedules), a total of 1 workweek in a nonpay status is creditable service for advancement to step 2, 3 workweeks for advancement to step 3, and 4 workweeks for advancement to steps 4 and 5.
<b>Accrual of annual and sick leave</b>	When a full-time employee accumulates 80 hours of LWOP during a pay period, the employee does not earn annual leave or sick leave during that pay period. The employee earns leave in the next succeeding pay periods until he or she again accumulates 80 hours of LWOP during a pay period. When a part-time employee is in a nonpay status, he or she will accrue less annual leave and sick leave, since part-time employees earn leave on a pro-rata basis - i.e., based on hours in a pay status.  For purposes of computing accrual rates for annual leave (i.e., 4, 6, 8 hours each pay period), 6 months of nonpay status in a calendar year is creditable service.
<b>Reduction in force (determining years of service)</b>	A total of 6 months of nonpay status in a calendar year is creditable service.
<b>Severance pay</b>	Nonpay status time is fully creditable for the 12-month continuous employment period to qualify for severance pay. However, for purposes of computing an employee's actual severance payment, any time in a nonpay status that is not creditable for leave accrual must be excluded from his or her creditable service.
<b>Thrift Savings Plan (TSP)</b>	Agencies should refer to the Thrift Savings Plan Bulletin for Agency TSP Representatives, No. 03-18, dated August 6, 2003. For additional information, agency representatives may contact the Federal Retirement Thrift Investment Board at (202) 942-1460. Employees should refer to the TSP Fact Sheet - Effect of Nonpay Status on TSP Participation. Both the Bulletin and the Fact Sheet are available from the TSP Internet web site at <a href="http://www.tsp.gov">www.tsp.gov</a> .
<b>Military duty or</b>	Nonpay status for employees who are performing military duty or being paid

<b>workers' compensation</b>	workers' compensation counts as a continuation of federal employment for all purposes upon the employee's return to duty.
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### **“Administrative Leave” (Excused Absence)**

There is no legal or regulatory category of so-called “administrative leave” in the federal system, even though both federal supervisors and employees often use the term. “Administrative leave” refers to situations in which agency supervisors are authorized to excuse employees from normal work duties without charge to leave or loss of pay. Thus, a more accurate term might be “excused absence” rather than “leave.” These excused absences must be authorized by agency management. There is no employee entitlement to this kind of “leave” or absence.

Common situations in which agency supervisors might allow employees to be out of the office on “administrative leave” include:

- bad weather which delays or prevents employees from reaching their duty stations on time, or requires them to leave work early in order to reach their homes safely;
- voting and voter registration;
- blood donation and recovery time, or other agency-sponsored health activities;
- participation in community defense or safety activities; and
- representation in employee organizations, including federal employee unions.

Occasionally, the President or agency heads will excuse federal employees from duty without being charged leave. One of the most common instances of this is when federal workers are told to go home early – or not to come in at all – the day before a major holiday.

### **Compensatory Time**

Compensatory time or “comp time” is also not really a type of “leave.” Comp time is when an agency permits an employee to take time off without being charged leave. It may be granted to eligible employees to compensate them for irregular or occasional overtime work. For employees above the salary level of GS-10, step 1, agencies may direct that compensatory time be taken. Agencies cannot, however, offer compensatory time in lieu of overtime pay entitlements earned under the Fair Labor Standards Act (FLSA).

Federal employees may ask to work compensatory overtime on an hour for hour basis (meaning they work one hour of overtime on another day in exchange for one hour of comp time) so that they can take off time without being charged leave for religious observances during the regular work day or work week. Be aware, though, that an agency may turn down the employee’s request for this type of leave if it interferes with the agency’s mission.

## **New Rules Concerning Compensatory Time Off For Official Travel**

As of January 28, 2005, federal employees may now earn compensatory time off for official travel during uncompensated, non-work hours, under certain conditions. The new interim rules were published by OPM in the January 24, 2005 Federal Register. They were mandated by provisions in the Federal Workforce Flexibility Act of 2004 (P.L. 108-411, October 30, 2004). These interim rules became final on May 17, 2007 and apply prospectively from January 28, 2005.

In addition, as of December 20, 2006, all Department of Justice attorneys can now receive compensatory time for after-hours business travel. (P.L. 109-425). The department's attorneys may claim compensation time when their work requires travel during irregular hours, such as evening or weekend flights to attend morning meetings.

### **Defining Compensatory Time Off For Travel**

Compensatory time off for travel is a new form of compensatory time off that may be earned by an employee for time spent in a travel status away from the employee's official duty station when such time is not otherwise compensable. As stated above, this provision is effective on January 28, 2005.

### **Employees Covered**

The new compensatory time off provision applies to an "employee" as defined in 5 U.S.C. 5541(2) who is employed in an "Executive agency" as defined in 5 U.S.C. 105, without regard to whether the employee is exempt from or covered by the overtime pay provisions of the Fair Labor Standards Act of 1938, as amended. The definition includes employees in senior-level (SL) and scientific or professional (ST) positions, but not members of the Senior Executive Service. Under the National Defense Authorization Act for FY2008, Federal Wage Service employees are now covered under the compensatory time off for travel provision of 5 U.S.C. §5550(b).

### **Defining "Travel" For The Purpose Of This Provision**

To qualify for this purpose, travel must be officially authorized. In other words, travel must be for work purposes and must be approved by an authorized agency official or otherwise authorized under established agency policies.

### **What Qualifies As Time In A Travel Status**

Travel status includes only the time actually spent traveling between the official duty station and a temporary duty station, or between two temporary duty stations, and the usual waiting time that precedes or interrupts such travel.

### **Defining "Usual Waiting Time"**

Airline travelers generally are required to arrive at the airport at a designated pre-departure time (e.g., 1 or 2 hours before the scheduled departure, depending on whether the flight is domestic or international). Such waiting time at the airport is considered usual waiting time and is creditable time in a travel status. In addition, time spent at an intervening airport waiting for a connecting

flight (e.g., 1 or 2 hours) also is creditable time in a travel status, subject to exclusions for bona fide meal periods. In all cases, determinations regarding what is creditable as “usual waiting time” are within the sole and exclusive discretion of the employing agency.

### **When An Employee Experiences An “Extended” Waiting Period**

If an employee experiences an unusually long wait prior to his or her initial departure, or between actual periods of travel during which the employee is free to rest, sleep, or otherwise use the time for his or her own purposes, the extended waiting time that is outside the employee’s regular working hours is not creditable time in a travel status. An extended waiting period that occurs during an employee’s regular working hours is compensable as part of the employee’s regularly scheduled administrative workweek.

### **Meal Periods**

For the purpose of earning compensatory time off for travel, bona fide meal periods are not considered time in a travel status. For example, if an employee spends an uninterrupted hour eating a meal at an airport restaurant while waiting for a connecting flight, that hour is not considered time in a travel status.

### **Once An Employee Reaches A Temporary Duty Station**

Once an employee arrives at the temporary duty station, he or she is no longer considered to be in a travel status. Any time spent at a temporary duty station between arrival and departure is not creditable travel time for the purpose of earning compensatory time off.

### **Offsetting Creditable Time By Normal Commuting Time**

If an employee travels directly between his or her home and a temporary duty station outside the limits of the employee’s official duty station (e.g., driving to and from a 3-day conference), the agency must deduct the employee’s normal home-to-work/work-to-home commuting time from the creditable travel time. The agency must also deduct an employee’s normal commuting time from the creditable travel time if the employee is required - outside of regular working hours - to travel between home and a transportation terminal (e.g., an airport or train station) outside the limits of the employee’s official duty station.

### **Travel To A Transportation Terminal Within The Limits Of The Official Duty Station**

An employee’s time spent traveling outside of regular working hours to or from a transportation terminal within the limits of his or her official duty station is considered equivalent to commuting time and is not creditable time in a travel status for the purpose of earning compensatory time off.

### **Travel From A Worksite To A Transportation Terminal**

If an employee travels between a worksite and a transportation terminal, the travel time outside regular working hours is creditable as time in a travel status, and no commuting time offset applies.

### **Travel in Connection with a Permanent Change of Station**

If an employee's travel is in connection with a permanent change of station, that time is not creditable as time in a travel status.

### **Earning And Crediting Compensatory Time Off For Travel**

Compensatory time off for travel is earned for qualifying time in a travel status. Agencies may authorize credit in increments of one-tenth of an hour (6 minutes) or one-quarter of an hour (15 minutes). Agencies must track and manage compensatory time off for travel separately from other forms of compensatory time off.

### **Limitations On The Amount Earned**

There is no limitation on the amount of compensatory time off for travel an employee may earn.

### **Requesting Credit For Compensatory Time**

Agencies may establish procedures for requesting credit for compensatory time off for travel. An employee must comply with his or her agency's procedures for requesting credit of compensatory time off, and the employee must file a request for such credit within the time period established by the agency.

### **Using Accrued Compensatory Time**

An employee must request permission from his or her supervisor to schedule the use of his or her accrued compensatory time off for travel in accordance with agency policies and procedures. Compensatory time off for travel may be used when the employee is granted time off from his or her scheduled tour of duty established for leave purposes. Employees must use accrued compensatory time off for travel in increments of one-tenth of an hour (6 minutes) or one-quarter of an hour (15 minutes).

### **New Rules Concerning Reimbursement for Unused Compensatory Time**

As of May 14, 2007, if a FLSA exempt federal employee has not used accrued compensatory time within 26 pay periods after the pay period in which it was earned, it is within the sole discretion of the Agency head to require that the employee either: 1) forfeit the unused compensatory time, unless the employee was unable to use the compensatory time due to exigent circumstances beyond the employee's control, in which case the employee must provide payment for the unused compensatory time at the rate provided; or 2) receive payment for overtime work at the rate of pay during which the compensatory time was earned for performing overtime work. If the employee transfers or separates from an agency before the compensatory time is used, the employee will be paid for the unused time at the same rate.

Compensatory time accrued as of May 14, 2007 must be used by the end of the pay period ending 3 years after May 14, 2007. If an employee fails to use the compensatory time by this date, the Agency is afforded the same options as described above in order to address the unused compensatory time.

If an employee with unused compensatory time off separates from Federal Service, is placed in a leave without pay status in order to perform service in the uniform services or because of an on-

the-job injury with entitlement to injury compensation, the employee must be paid for the unused compensatory time at the rate of pay during which it was earned.

Similar rules apply for FLSA non-exempt employees with the exception that such employees who do not use their accrued compensatory time within 26 pay periods of when it was earned must be compensated at the rate of pay during which the compensatory time was earned.

### **Time Limits On Using Accrued Compensatory Time**

An employee must use his or her accrued compensatory time off for travel by the end of the 26<sup>th</sup> pay period after the pay period in which it was earned or the employee must forfeit such compensatory time off, except in certain circumstances.

Unused compensatory time off for travel will be held in abeyance for an employee who separates, or is placed in a leave without pay status, and later returns following: (1) separation or leave without pay to perform service in the uniformed services (as defined in 38 U.S.C. 4303 and 5 CFR 353.102) and a return to service through the exercise of a reemployment right, or (2) separation or leave without pay due to an on-the-job injury with entitlement to injury compensation under 5 U.S.C. chapter 81. The employee must use all of the compensatory time off held in abeyance by the end of the 26<sup>th</sup> pay period following the pay period in which the employee returns to duty, or such compensatory time off will be forfeited.

### **Restoring Unused Compensatory Time**

Except in certain circumstances described in the paragraphs immediately above, any compensatory time off for travel not used by the end of the 26<sup>th</sup> pay period after the pay period in which it was earned must be forfeited.

### **When Separating From Federal Service**

Except in certain circumstances described above, an employee must forfeit all unused compensatory time off for travel upon separation from Federal service.

### **Lump-Sum Payments**

If an employee has accrued compensatory time off for travel and separates from his or her agency, he or she may not receive a lump-sum payment for the time. The law prohibits payment for unused compensatory time off for travel under any circumstances.

### **Transferring To Another Agency**

When an employee voluntarily transfers to another agency (including a promotion or change to lower grade action), the employee must forfeit all of his or her unused compensatory time off for travel.

### **Employee Moves To A Non-Covered Position**

When an employee moves to a position in an agency that is not covered by the compensatory time off for travel provisions (e.g., the United States Postal Service), the employee must forfeit

all of his or her unused compensatory time off for travel. However, the gaining agency may use its own legal authority to give the employee credit for such compensatory time off.

### **Premium Pay And Aggregate Pay Caps**

Compensatory time off for travel may not be considered in applying the biweekly or annual premium pay limitations established under 5 U.S.C. 5547 or the aggregate limitation on pay established under 5 U.S.C. 5307.

### **When Criminal Investigators Receiving Availability Pay Cannot Earn Comp Time Off For Travel**

Compensatory time off for travel is earned only for hours that are not otherwise compensable. The term “compensable” is defined in 5 CFR 550.1403 to include any hours of a type that are creditable under other compensation provisions, even if there are compensation caps that limit the payment of premium pay for those hours (e.g., the 25 percent cap on availability pay and the biweekly premium pay cap). For availability pay recipients, this means that hours of travel are not creditable as time in a travel status for compensatory time off purposes if the hours are: (1) compensated by basic pay, (2) regularly scheduled overtime hours creditable under 5 U.S.C. 5542, or (3) “unscheduled duty hours” as described in 5 CFR 550.182(a), (c), and (d).

### **Traveling On A Federal Holiday**

Although most employees do not receive holiday premium pay for time spent traveling on a holiday (or an “in lieu of” holiday), an employee continues to be entitled to pay for the holiday in the same manner as if the travel were not required. Thus, employees may not earn compensatory time off for travel during basic (non-overtime) holiday hours because they are entitled to their rate of basic pay for those hours. Compensatory time off for travel may be earned by an employee only for time spent in a travel status away from the employee’s official duty station when such time is *not otherwise compensable*.

### **Credit Hours**

Federal employees may, at the discretion of their agency, earn credit hours. Credit hours are hours that an employee elects to work, with supervisory approval, in excess of the employee’s basic work requirement under a flexible work schedule. The basic work requirement for full-time employees is 80 non-overtime hours in a 2-week pay period. Agency policies or union agreements may place restrictions on earning or using credit hours.

Employees are not paid basic pay or overtime pay for credit hours when they earn them. An employee may use credit hours during a subsequent day, week, or pay period, with supervisory approval, to allow the employee to be absent from an equal number of hours of the employee’s basic work requirement with no loss of basic pay. Only 1 credit hour is earned for each hour of voluntary work in excess of the basic work requirement.

Full-time or part-time employees under flexible work schedules may earn credit hours if agency policies for flexible work schedules or union agreements permit. Agencies may permit GS employees, wage employees, and DOD nonappropriated fund employees under flexible work

schedules to earn credit hours. Members of the Senior Executive Service (SES) may not earn credit hours.

For a full-time employee, only 24 credit hours may be carried over to the next pay period. For a part-time employee, only ¼ of the hours in the employee's biweekly basic work requirement may be carried over to the next pay period. An agency policy or union agreement may place stricter limitations on how many credit hours may be accumulated or carried over.

### **Unscheduled Leave Policy**

When the federal government announces an "unscheduled leave policy," employees not designated as "emergency employees" may take annual leave or leave without pay without the prior approval of their supervisors. In addition, each agency has discretionary authority to determine when it is appropriate to grant a reasonable amount of excused absence to employees who are unavoidably delayed in arriving for work. Factors such as distance, availability of transportation, and the success of other employees in similar situations should be considered in determining the amount of excused absence to grant. Employees are responsible for notifying their supervisors of their situation.

It is up to each supervisor to determine what is a reasonable amount of time to allow for excused absences for late arrival to ensure that the employee's work requirements are fulfilled and that the agency's operations are conducted efficiently and effectively.

Employees designated as "emergency employees" are expected to report for work on time.

### **Time Off to Participate in Volunteer Activities**

Federal departments and agencies are provided with considerable flexibility in scheduling hours of work and time off. In the Office of Personnel Management Director's April 2004 Memorandum regarding participation of Federal employees in volunteer activities, Kay Coles James encourages Federal employees to participate in volunteer activities. The Director further encourages each department 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.

OPM guidance notes that each department and agency has discretion to excuse employees from their duties without loss of pay or charge to leave. Therefore, in addition to the leave status mentioned above, OPM advises that the granting of excused absence (administrative leave) is appropriate, in certain circumstances, for volunteer activities, but should be limited to those situations in which the employee's absence, in the government'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.

## **Time Off Incentive**

Federal employees are eligible for paid time off as an incentive and agencies may grant employees time off from duty, without loss of pay or charge to leave, in or to reward excellent employee performance. Agencies may grant time-off awards in conjunction with monetary awards or non-monetary awards, or may grant time-off awards alone.

However, agencies have discretion to exclude certain categories of employees from eligibility for time-off incentives, such as Senior Executive Service members and intermittent employees. Unless agencies make such an exclusion, all Federal employees who meet the definition of employee under 5 U.S.C. 2105 are eligible for time-off awards.

## **Federal Holidays**

Federal employees are entitled to the following ten (10) regular holidays:

- New Year's Eve, January 1
- Martin Luther King, Jr.'s Birthday, 3<sup>rd</sup> Monday in January
- President's Day, 3<sup>rd</sup> Monday in February
- Memorial Day, last Monday in May
- Independence Day, July 4
- Labor Day, 1<sup>st</sup> Monday in September
- Columbus Day, 2<sup>nd</sup> Monday in October
- Veterans Day, November 11
- Thanksgiving Day, 4<sup>th</sup> Thursday in November
- Christmas Day, December 25

In addition, when Inauguration Day falls within the regularly scheduled tour of duty of an employee in the Metropolitan Washington, D.C., area, it is observed as a holiday. There is no provision for an "in lieu of" day when an employee is not scheduled to work on Inauguration Day.

Finally, when a holiday falls on a non-workday outside a full-time employee's 40-hour basic workweek or the employee's basic work requirement for the week, the day to be treated as the employee's holiday is the workday immediately preceding the non-workday. Following are four (4) exceptions to this:

- When the workday is Sunday (or "in lieu" of Sunday), the next workday is the "in lieu of" holiday;
- There is no provision in law for an "in lieu" of holiday if Inauguration Day falls on a non-workday;
- Under Public Law 104-201, an agency head may issue rules under which a different "in lieu of" holiday may be designated than would otherwise be required for full-time employees under compressed work schedules; and
- Whenever Monday is designated as a holiday, the first regularly scheduled workday is the

holiday for a Federal employee working overseas whose basic workweek includes Monday but is not the typical Monday through Friday work schedule found in the United States.

## Leave Transfer and Leave Bank Programs

The Leave Transfer and Leave Bank Programs were designed to help federal employees who are experiencing a medical or family emergency, and who have exhausted all of their available leave. Employees coping with their own or a family member's serious illness that prevents them from coming into work for long periods may receive donations of annual leave from fellow employees under agency leave transfer programs, or draw on their agency's leave bank. These employees use the donated annual leave so that they can avoid going into a leave without pay (LWOP) status. The programs are described in detail below.

### Leave Transfer Program

An employee may donate annual leave directly to another federal employee who has a personal or family medical emergency and who has exhausted his or her available paid leave. Each agency must administer a voluntary leave transfer program for its employees. There is no limit on the amount of donated annual leave a leave recipient may receive from the leave donor(s). However, any unused donated leave must be returned to the leave donor(s) when the medical emergency ends.

A potential leave recipient's employing agency must determine that a full-time employee's absence from duty without available paid leave because of the medical emergency is (or is expected to be) at least 24 hours. For part-time employees or employees on uncommon tours of duty, the period of absence without paid leave is prorated. An employee may receive donated annual leave when he or she becomes an approved leave recipient.

As of January 28, 2008, 5 U.S.C. §6333(b) has been amended to allow certain veterans to participate in the Voluntary Leave Transfer Program without having first exhausted all of their own available paid leave. This provision will apply to an employee who sustains a combat-related disability while serving as a member of the Armed Forces (including a reserve component) and is undergoing medical treatment for that disability. A qualified leave recipient is eligible to receive donated annual leave for up to 5 years from the start of the employee's treatment, as long as the employee continues to undergo such medical treatment.

### Limitations on Leave Donations

In any leave year, an employee may donate not more than one-half of the amount of annual leave he or she would accrue during a leave year. For employees with "use or lose" annual leave, the employee may donate the lesser of one-half of the annual leave he or she would accrue in a leave year or the number of hours remaining in the leave year for which the employee is scheduled to work and receive pay.

### Set-Aside Accounts

While using donated leave, a leave recipient can accrue no more than 40 hours of annual leave and 40 hours of sick leave in "set-aside accounts." The leave in the "set-aside accounts" will be

transferred to the employee's regular leave accounts when the medical emergency ends or if the employee exhausts all donated leave.

### **Emergency Leave Transfer Program**

In the event of major disasters or emergencies declared by the President, such as floods, earthquakes, tornadoes, bombings, etc., that result in severe adverse effects for a substantial number of employees, the President may direct the Office of Personnel Management (OPM) to establish an emergency leave transfer program. Under such a program, an employee in any Executive agency may donate annual leave for transfer to employees of his or her agency or to employees of other agencies who are adversely affected by the disaster or emergency. This program provides federal employees with an opportunity to help their fellow workers in times of need.

Agencies are in the best position to determine whether donated annual leave is needed by their employees in disaster situations and can quickly facilitate the transfer of donated annual leave within their agencies. Therefore, each agency is responsible for determining whether, and how much, donated annual leave is needed by affected employees; approving leave donors and/or leave recipients within the agency; and facilitating the distribution of donated annual leave from approved leave donors to approved leave recipients within the agency.

When a federal agency notifies OPM that the amount of annual leave donated by its employees is not sufficient to meet the needs of its approved emergency leave recipients, OPM will coordinate a governmentwide transfer of annual leave from donating agencies to affected agencies for crediting to their emergency leave recipients. Forms for donating and receiving annual leave under the emergency leave transfer program can be accessed on OPM's Internet web site <http://www.opm.gov/forms/html/emerg.htm>.

### **Leave Bank Program**

An employee who is a member of his or her agency's voluntary leave bank may receive annual leave from the leave bank if the employee experiences a personal or family medical emergency and has exhausted his or her available paid leave. The agency's leave bank board operates the leave bank and determines how much donated annual leave an employee may receive from the leave bank. Any unused donated annual leave is returned to the leave bank. To become and remain a leave bank member, an employee must donate each leave year not less than the amount of annual leave he or she normally accrues in one pay period (i.e., 4, 6, or 8 hours).

A potential leave recipient's employing agency must determine that the full-time employee's absence from duty without available paid leave because of the medical emergency is (or is expected to be) at least 24 hours. For part-time employees or employees on uncommon tours of duty, the period of absence without paid leave is prorated. An employee may receive donated annual leave when he or she becomes an approved leave recipient.

### **Minimum and Maximum Limitations on Leave Donations**

In any leave year, an employee may donate not more than one-half of the amount of annual leave he or she would accrue during the leave year. For employees with "use or lose" annual leave, the employee may donate the lesser of one-half of the annual leave he or she would accrue in a leave

year or the number of hours remaining in the leave year for which the employee is scheduled to work and receive pay.

**Set-Aside Accounts**

While using donated leave, a leave recipient may accrue no more than 40 hours of annual leave and 40 hours of sick leave in “set-aside accounts.” The leave in the set-aside accounts will be transferred to the employee’s regular leave accounts when the medical emergency ends or if the employee exhausts all donated leave.

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