

2004



Federal Leave Handbook

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October 27, 2003

MEMORANDUM FOR HEADS OF DEPARTMENTS AND AGENCIES

FROM: KAY COLES JAMES
Director

SUBJECT: Wildfires in California

I am deeply concerned about the losses and destruction caused by the wildfires in Southern California. Many parts of the Federal Government are being mobilized to respond to this disaster and to assist you in those relief and recovery efforts, I want to:

- advise you of actions OPM is taking in response to the fires and their aftermath; these actions are consistent with our guidance in previous natural disasters such as Hurricane Isabel earlier this year; and
- remind you of the various human resources (HR) flexibilities already available to you to immediately hire and/or deploy additional staff to respond to this disaster.

Excused Absence

I am asking heads of departments and agencies to excuse from duty without charge to leave or loss of pay employees who are affected by the fires (and their aftermath) and who can be spared from their usual responsibilities. Specifically, I am requesting that excused absence be granted to employees who have been requested to assist in authorized emergency law enforcement, relief, or clean-up efforts by Federal, State, or other officials having jurisdiction and whose participation in such activities has been approved by their employing agency. (This policy does not apply to Federal employee members of the National Guard or Reserves who are called up to assist, since they are entitled to military leave under 5 U.S.C. 6323(b).) In addition, I also am requesting that employees who are prevented from reporting for work or faced with a personal emergency because of the fires and their aftermath be granted excused absence.

Premium Pay for Employees Performing Emergency Overtime Work

Agencies are reminded of their authority under the law (5 U.S.C. 5547(b)) and OPM regulations (5 CFR 550.106) to make exceptions to the biweekly premium pay limitations. When the head of an agency or his or her designee determines that an emergency posing a direct threat to life or property exists, an employee who is receiving premium pay for performing overtime work in connection with the emergency will be subject to an annual pay limitation rather than the biweekly pay limitation (with the exception of certain fixed premium payments, such as availability pay, as specified in 5 CFR 550.107). Employees paid under an annual limitation receive premium pay only to the extent that the aggregate of basic pay and premium pay for the calendar year does not exceed the greater of the annual rate for:

1. GS-15, step 10 (including any applicable special salary rate or locality rate of pay), or
2. level V of the Executive Schedule.

(Section 1114 of Public Law 107-107, December 28, 2001, modified the biweekly and annual limitations on premium pay under 5 U.S.C. 5547. For additional information on administering the annual premium pay limitation, see OPM's interim regulations on premium pay limitations at 67 FR 19319, April 19, 2002, or <http://www.opm.gov/fedregis/2002/66-0019319-a.htm>.)

I encourage you to exercise this authority in the case of any employee who performs emergency overtime work in connection with the wildfires or their aftermath. You must make the determination as soon as practicable and make entitlement to premium pay under the annual limitation effective as of the first day of the pay period in which the emergency began.

Emergency Leave Transfer Program

The President may direct OPM to establish an emergency leave transfer program to assist employees affected by an emergency or major disaster. The emergency leave transfer program would permit employees in an executive agency to donate unused annual leave for transfer to employees of the same or other agencies who have been adversely affected by the fires and who need additional time off from work without having to use their own paid leave. If you believe there is a need to establish an emergency leave transfer program to assist employees affected by the fires, please contact your OPM Human Capital Officer.

Emergency Critical Hiring

Under 5 CFR 213.3102(i)(2), you may make 30-day appointments in the excepted service to fill a critical hiring need. You may extend these appointments for an additional 30 days. You may use this authority to fill Senior Level positions, as well as positions at lower grades; you also determine what qualifications are required. Career Transition Assistance Plan (CTAP), Reemployment Priority List (RPL), and Interagency CTAP (ICTAP) requirements under 5 CFR part 330 do not apply to these appointments.

Direct-Hire Authority

This authority allows you to appoint candidates directly where OPM determines there is a critical hiring need, or a shortage of candidates, for particular occupations, grades (or equivalent), and/or geographic locations. This authority can be Governmentwide or limited to one or more specific agencies depending on the circumstances.

OPM has granted Governmentwide direct-hire authority for GS-0602 Medical Officers, GS-0610 Nurses, GS-0647 Diagnostic Radiologic Technicians, and GS-0660 Pharmacists at all grade levels and all locations; and for GS-2210 Information Technology Specialists (Information Security) positions at GS-9 and above, at all locations, in support of Governmentwide efforts to carry out the requirements of the Government Information Security Reform Act and the Federal Information Security Management Act.

You may give individuals in the categories, occupations and specialties, and grades listed above competitive service career, career-conditional, term, temporary, emergency indefinite, or overseas limited appointments, as appropriate. In all cases, you must adhere to public notice requirements in 5 U.S.C. 3327 and 3330, and ICTAP requirements.

If you feel you have one or more occupations for which an agency-specific direct-hire authority may be appropriate in support of wildfire relief and recovery efforts, please contact your OPM Human Capital Officer.

Other Flexibilities

You may contract with private sector temporary employment firms for services to meet your emergency staffing needs. These contracts may be for 120 days and may be extended for an additional 120 days, subject to displaced employee procedures.

You may make competitive service appointments for 120 days or less without clearing CTAP or ICTAP. However, these programs may help you identify one or more well-qualified, displaced Federal employees who are available for immediate employment.

Current/former employees on your agency RPL are another immediate source of qualified individuals available for temporary, term, or permanent competitive service appointments. Conversely, in some cases, you may wish to make an exception to the RPL provisions to appoint someone else under 5 CFR 330.207(d).

For additional information on any of these flexibilities, agency Chief Human Capital Officers and/or Human Resources (HR) Directors may contact their assigned OPM Human Capital Officer. Employees should contact their agency human resources offices for assistance.

cc: Chief Human Capital Officers

Human Resources Directors

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Annual Leave

An employee may use annual leave for vacations, rest and relaxation, and personal business or emergencies. An employee has a right to take annual leave, subject to the right of the supervisor to schedule the time at which annual leave may be taken. An employee will receive a lump-sum payment for accumulated and accrued 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.

Accrual Rates

Employee Type	<i>Less than 3 years of service*</i>	<i>3 years but less than 15 years of service*</i>	<i>15 or more years of service*</i>
Full-time employees	½ day (4 hours) for each pay period	¾ day (6 hours) for each pay period, except 1¼ day (10 hours) in last pay period	1 day (8 hours) for each pay period
Part-time employees**	1 hour of annual leave for each 20 hours in a pay status	1 hour of annual leave for each 13 hours in a pay status	1 hour of annual leave for each 10 hours in a pay status
Uncommon tours of duty**	(4 hours) times (average # of hours per biweekly pay period) divided by 80 = biweekly accrual rate.***	(6 hours) times (average # of hours per biweekly pay period) divided by 80 = biweekly accrual rate.***	(8 hours) times (average # of hours per biweekly pay period) divided by 80 = biweekly accrual rate.***

* See Creditable Service for Leave Accrual

** Leave is prorated for part-time employees and employees on uncommon tours of duty.

*** In computing leave accrual for uncommon tours of duty, the accrual rate for the last full pay period in a calendar year must be adjusted to ensure the correct amount of leave is accrued.

Creditable Service for Leave Accrual

Civilian Service

All civilian service that is *potentially* creditable for Civil Service Retirement Service (CSRS) purposes, including service covered by the Federal Employee Retirement Service (FERS) is also creditable for

annual leave accrual. Potentially creditable service includes service that *could* be credited if the employee made deposits to the retirement fund. Such deposits are *not required* before the employee gets credit for annual leave accrual purposes. (See OPM's Guide to Processing Personnel Actions, Chapter 6 - Creditable Service for Leave Accrual.)

Uniformed Service

- o For non-retired members, full credit for uniformed service (including active duty and active duty for training) performed under honorable conditions is given for annual leave accrual purposes.
- o For retirees, annual leave accrual credit is given only for:

Actual service during a war declared by Congress (includes World War II covering the period December 7, 1941, to April 28, 1952) or while participating in a campaign or expedition for which a campaign badge is authorized.

(See Vets Guide -- War Service Creditable for Veterans Preference.)

or

All active duty when retirement was based on a disability received as a direct result of armed conflict or caused by an instrumentality of war and incurred in the line of duty during a period of war as defined in 38 U.S.C. 101(11). "Period of war" includes World War II, the Korean conflict, Vietnam era, the Persian Gulf War, or the period beginning on the date of any future declaration of war by the Congress and ending on the date prescribed by Presidential proclamation or concurrent resolution of the Congress.

Advance Annual Leave

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.

Annual Leave Ceilings

Maximum Annual Leave That May be Carried Over into the New Leave Year	
Federal Employees Stationed within the United States	30 days
Federal Employees Stationed overseas	45 days
Members of the Senior Executive Service	90 days

Any accrued annual leave in excess of the maximum allowed by law will be forfeited. Forfeited annual leave may be restored under 5 U.S.C. 6304(d). (See Restoration of Annual Leave.)

Annual Leave to Establish Retirement Eligibility

An employee may use annual leave to establish initial eligibility for retirement in reduction-in-force 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.

Restoration of Annual Leave

Agencies may restore annual leave that was forfeited because it was in excess of the maximum leave ceilings (i.e., 30, 45, or 90 days) if the leave was forfeited because of an administrative error, exigency of the public business, or sickness of the employee. An agency must restore the annual leave in a separate leave account.

Administrative Error

The employing agency determines what constitutes an administrative error.

Exigency of the Public Business

The employing agency determines that an exigency is of major importance and that excess annual leave cannot be used.

Sickness

The employing agency determines that 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.

An agency may consider for restoration annual leave that was forfeited due to an exigency of the public business or sickness of the employee **only** 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--

- o the date of restoration of the annual leave forfeited because of administrative error;
- o the date fixed by the head of the agency or designee as the date of termination of the exigency of the public business; **or**
- o 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 so 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.

Family and Medical Leave

Entitlement

Under the Family and Medical Leave Act of 1993 (FMLA), most Federal employees are entitled to a total of up to 12 workweeks of unpaid leave during any 12-month period for the following purposes:

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

Under certain conditions, an employee may use the 12 weeks of FMLA leave intermittently. An employee may elect to substitute annual leave and/or sick leave, consistent with current laws and OPM's regulations for using annual and sick leave, for any unpaid leave under the FMLA. (The amount of sick leave that may be used to care for a family member is limited. (See "Sick Leave to Care for a Family Member with a Serious Health Condition") FMLA leave is in addition to other paid time off available to an employee.

Job Benefits and Protection

- o Upon return from FMLA leave, an employee must be returned to the same position or to an "equivalent position with equivalent benefits, pay, status, and other terms and conditions of employment."
- o 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.

Advance Notice and Medical Certification

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

Leave Bank Program

Description

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.

Leave Bank Member

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 a pay period (i.e., 4, 6, or 8 hours).

Leave Recipient

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.

Leave Transfer Program

Description

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.

Leave Recipient

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.

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.

Leave Without Pay

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:

- o The Family and Medical Leave Act of 1993 (FMLA) (Public Law 103-3, February 5, 1993), 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. (See 5 CFR part 630, subpart L.)
- o The Uniformed Services Employment and Reemployment Rights Act of 1994 (Pub.L. 103-353) provides employees with an entitlement to LWOP when employment with an employer is interrupted by a period of service in the uniformed service. (See 5 CFR 353.106.)
 - o Executive Order 5396, July 17, 1930, provides that disabled veterans are entitled to LWOP for necessary medical treatment.
 - o 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. See Effect of Extended Leave without Pay (or other Nonpay Status) on Federal Benefits and Programs.

Effect of Extended Leave Without Pay (LWOP) (or Other Nonpay Status) on Federal Benefits and Programs	
Type of Benefit/Program	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:
Career tenure	The first 30 calendar days of each nonpay period is creditable service.
Completion of probation	A total of 22 workdays in a nonpay status is creditable service.
Time-in-grade requirements (requirements for promotion)	Any nonpay status is creditable service.
Retirement benefits	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 (5 U.S.C. 8332 and 8411).
Health benefits	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 (5 CFR 890.303(e)). 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.
Life insurance	Coverage continues for 12 consecutive months in a nonpay status without cost to the employee (5 CFR 870.401(c)) or to the agency (5 CFR 870.401(d)). The nonpay status may be continuous, or it may be broken by a return to duty for periods of less than 4 consecutive months.
Within-grade increases	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 (5 CFR 531.406(b)). 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 (5 CFR 532.417(b)).
Accrual of annual and sick leave	<p>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 (5 CFR 630.208). 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 (5 CFR 630.303 and 630.406).</p> <p>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 (5 U.S.C. 6303(a) and 8332(f)).</p>
Reduction in force (determining years of service)	A total of 6 months of nonpay status in a calendar year is creditable service.
Severance pay	Nonpay status time is fully creditable for the 12-month continuous employment period to qualify for severance pay (5 U.S.C. 5595(b)(1) and 5 CFR 550.705). 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. (5 U.S.C. 5595(c)(1) and 5 CFR 550.707-708.)
Thrift Savings Plan (TSP)	Agencies should refer to the Thrift Savings Plan Bulletin for Agency TSP Representatives, No. 01-22, dated May 3, 2001. 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 issuances are available from the TSP internet web site at www.tsp.gov .

Military duty or workers' compensation	Nonpay status for employees who are performing military duty or being paid workers' compensation counts as a continuation of Federal employment for all purposes upon the employee's return to duty.
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Leave and Work Scheduling Flexibilities Available for Adoption

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.

Sick Leave

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

- o Appointments with adoption agencies, social workers, and attorneys,
- o Court proceedings,
- o Required travel,
- o 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
- o 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 and Work 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.

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 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

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.

Military Leave

An employee is 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.

Coverage

Any full-time Federal civilian employee whose appointment is not limited to 1 year is entitled to military leave. Military leave under 5 U.S.C. 6323(a) is prorated for part-time career employees and employees on an uncommon tour of duty.

Types of Military Leave

5 U.S.C. 6323 (a) provides 15 calendar days per fiscal year for active duty, active duty training, and *inactive duty training*. An employee 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. For further information, see Department of Defense Instruction Number 1215.6, March 14, 1997.

5 U.S.C. 6323 (b) provides 22 workdays 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(c) provides unlimited military leave to members of the National Guard of the District of Columbia for certain types of duty ordered or authorized under title 39 of the District of Columbia Code.

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

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 employ 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.

Frequently Asked Questions on Military Leave

Q: Is a Federal employee who is called to active duty as a member of the National Guard or Reserves entitled to military leave?

A: Yes. A Federal employee who is a member of the National Guard or Reserves is entitled to 15 days (120 hours) of paid military leave under 5 U.S.C. 6323(a) each fiscal year for active duty, active duty training, or inactive duty training. An employee on military leave under section 6323(a) receives his or her full civilian salary, as well as military pay. This leave accrues at the beginning of each fiscal

year, and all Guard or Reserve members, including those on extended active duty, should be credited with 15 days of paid military leave on October 1 of each year. An agency now may charge military leave only for hours the employee otherwise would have worked. An employee no longer "loses leave" on weekends and other nonworkdays and will be paid his or her full civilian pay for all 120 hours. Employees also are entitled to use any accrued or accumulated annual leave for periods of active military duty. Employees using annual leave will receive their full civilian pay, as well as compensation for their military service.

Q: May an employee on active duty or active/inactive duty training choose to use annual leave or military leave intermittently with leave without pay each pay period to maintain sufficient income?

A: Yes. OPM's regulations at 5 CFR 353.208 implementing the Uniformed Service Employment and Reemployment Rights Act (USERRA) state that an employee performing service with the uniformed services must be permitted, upon request, to use any accrued annual or military leave during such service. An employee is entitled to use annual leave or military leave intermittently with leave without pay while on active duty or active/inactive duty training.

Q: When are employees eligible for the additional 22 days of military leave to support civil authorities in the protection of life and property?

A: Reservists or National Guard members who perform military duty in support of civil authorities in the protection of life and property are eligible for an additional 22 workdays of military leave under 5 U.S.C. 6323(b). An employee is eligible for the additional 22 days of leave only when activated for full-time military duty under sections 331, 332, 333, or 12406 of title 10, or other provision of law, as applicable, or when activated for full-time military service for his or her State. We have conferred with the Office of the Assistant Secretary of Defense for Reserve Affairs and determined that military orders based on 10 U.S.C. 12301(d) or 12302, which cover most of the National Guard members and Reservists called up under Presidential authority, are not entitled to the additional 22 days. Each agency must determine on a case-by-case basis whether an employee is being activated in support of civil authorities. Agencies may ask for military orders or any other evidence (such as a statement by the appropriate military command) to make this determination.

Q: I have an employee who is a military policeman in the Reserves. He is being activated to perform base security at Andrews AFB. Is he entitled to the additional 22 days of military leave?

A: No. Although the employee is being activated to protect life and property (in this case Andrews AFB), he is supporting military activity on an Air Force base and will not be working in support of civil authorities.

Q: I have an employee who is a member of the National Guard. His unit has been activated, at the request of the Governor of his State, to provide additional security at local airports. Is he entitled to the additional 22 days of military leave?

A: Yes. The President has authorized the Governors of several States and territories to use National Guard forces to provide supplemental security personnel for airport operations. Guard members ordered to such duty under 32 U.S.C. 502(f) are clearly assisting civil authorities in the protection of

life and property. Therefore, in addition to military leave available under 5 U.S.C. 6323(a) for active duty and active and inactive duty training, a member of the National Guard also may be authorized military leave under 5 U.S.C. 6323(b) for assisting civil authorities in the protection of life and property.

Q: Are employees entitled to both their military and civilian pay during periods of military leave to support civil authorities in the protection of life and property (i.e., during the 22 days of military leave available under 5 U.S.C. 6323(b))?

A: No. An employee is entitled to the greater of his civilian or military pay, not both. Under 5 U.S.C. 5519, the military pay received by an individual who has been activated to support civil authorities in the protection of life and property must be credited (less any travel, transportation, or other per diem allowances) against any Federal civilian pay the employee received during the 22 workdays of military leave. An agency may calculate the amount of military pay (less any travel, transportation, or per diem allowances) an employee will receive for the time period that corresponds to the 22 workdays of military leave and reduce the employee's civilian pay by that amount during the 22 workdays of military leave. In contrast, many agencies choose to continue to pay the employee his or her full civilian pay during the 22 workdays of military leave. At the end of the 22-day period of military leave, the agency requires the employee to refund to the agency an amount equal to the amount of military pay received (less any travel, transportation, or per diem allowances) up to the amount of his or her civilian pay for the time period that corresponds to the 22 workdays of military leave.

Q: May a Federal civilian employee who has been called to active duty continue to work as a civilian at his or her Federal agency?

A: No. The Comptroller General has ruled that an individual on active duty military service may not be employed in a civilian capacity with the Government. The Comptroller General has held that the rendition of services to the Government in a civilian capacity by a member of the armed services on active duty is incompatible with the member's actual or potential military duties and payment for such services is not authorized in the absence of specific statutory authority. This is the case even though the civilian services are rendered during the military member's hours of relaxation or time provided to attend to personal affairs. (See 64 Comp. Gen. 395, 399-400 (1985), and 47 Comp. Gen. 505-506 (1968).)

Q: Is a member of the National Guard of the District of Columbia eligible for additional military leave under 5 U.S.C. 6323(c)?

A: Yes. However, military leave under 5 U.S.C.6323(c) may be used only for limited purposes. A Federal civilian employee who is also a member of the DC National Guard is entitled to additional military leave as provided in 5 U.S.C. 6323(c) to participate in a "parade or encampment." The law provides that this type of duty must be authorized under title 39 of the District of Columbia Code. Generally, this category of military leave is limited to drills and training under the authority of the Commanding General of the DC National Guard and is not appropriate for extended active duty in connection with the current national emergency.

Q: What kinds of personnel actions should an agency process when an employee is using annual leave, military leave, and/or leave without pay to perform duties with the uniformed services?

A: Agencies do not need to process any personnel actions (SF 50s) for periods of annual leave or military leave, since the payroll system documents an employee's use of paid leave. Agencies should document an employee's use of leave without pay (LWOP) to perform duty with the uniformed services by processing a personnel action (SF 50) using nature of action "LWOP-US" (nature of action code 473). The effective date is the first day the employee begins to use leave without pay for duty with the uniformed services. Employees may use annual leave or military leave intermittently with leave without pay while performing duty with the uniformed services. OPM does not require that agencies process return-to-duty actions for each period of paid leave. Periods of "LWOP-US" may be interrupted by periods of annual leave or military leave without the need to process any additional personnel actions.

Q: We have an employee who has been on military leave without pay (LWOP-US) since October 2001. He is requesting to be paid for his 15 days of military leave for the new fiscal year. Is he entitled to this?

A: Yes. An employee who is a member of the Reserves or National Guard serving on active military duty which extends into a second or succeeding fiscal year may accrue and use the 15 days of military leave which accrue at the beginning of the second fiscal year and each succeeding fiscal year without return to civilian status.

Sick Leave

An employee may use sick leave for--

- o personal medical needs
- o care of a family member
- o care of a family member with a serious health condition
- o adoption related purposes

Sick Leave Accrual	
Full-time Employees	1/2 day (4 hours) for each biweekly pay period.
Part-time Employees	1 hour for each 20 hours in a pay status.
There are no limits on the amount of sick leave that can be accumulated. Unused sick leave accumulated by employees covered by the Civil Service Retirement System will be used in the calculation of their annuities.	

Requesting Sick Leave

An employee must request sick leave within such time limits as the agency may require. An agency may require employees to request advance approval for sick leave for their own or a family member's medical, dental, or optical examination or treatment.

Granting Sick Leave

An agency may grant sick leave only when supported by evidence administratively acceptable by the agency. For absences in excess of 3 days, or for a lesser period when determined necessary by the agency, an agency may require a medical certificate or other administratively acceptable evidence.

Advance Sick Leave

At the discretion of the agency, a maximum of 30 days of sick leave may be advanced to an employee with a medical emergency or for purposes related to the adoption of a child. A maximum of 5 days of sick leave may be advanced for family care or bereavement purposes.

Sick Leave for Personal Medical Needs

An employee may use sick leave when he or she (1) is incapacitated for the performance of duties by physical or mental illness, injury, pregnancy, or childbirth; (2) receives medical, dental, or optical examination or treatment; or (3) 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.

Requesting Sick Leave

An employee must request sick leave within such time limits as the agency may require. An agency may require employees to request advance approval of sick leave for medical, dental, or optical examination or treatment.

Granting Sick Leave

An agency may grant sick leave only when supported by evidence administratively acceptable to the agency. For absences in excess of 3 days, or for a lesser period when determined necessary by the agency, an agency may require a medical certificate or other administratively acceptable evidence.

Advance Sick Leave

At the discretion of the agency, a maximum of 30 days of sick leave may be advanced to an employee with a medical emergency.

Sick Leave for Family Care or Bereavement Purposes

(Also see: Sick Leave to Care for a Family Member with a Serious Health Condition)

Most Federal employees may use a total of up to 104 hours (13 workdays) of sick leave each leave year to--

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

A covered full-time employee may use 40 hours (5 workdays) of sick leave each leave year for these purposes. An additional 64 hours (8 workdays) of sick leave may be used each year if the employee maintains a balance of at least 80 hours of sick leave in his or her account. Part-time employees and employees with uncommon tours of duty are also covered, and the amount of sick leave permitted for family care and bereavement 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 40 hours of sick leave (or a proportional amount for an employee on a part-time schedule or uncommon tour of duty).

"Family member" is defined as:

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

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

Entitlement

Most Federal employees may use a total of up to 12 administrative workweeks of sick leave each leave year to care for a family member with a serious health condition. 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. If an employee has already used 12 weeks of sick leave to care for a family member with a serious health condition, he or she cannot use an additional 13 days in the same leave year for general family care purposes. An employee is entitled to a total of 12 weeks of sick leave each year for *all* family care purposes.

Definition of Family Member

"Family member" is defined as--

- o spouse, and parents thereof;
- o children, including adopted children, and spouses thereof;
- o parents;
- o brothers and sisters, and spouses thereof; and
- o 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" has the same meaning as used in OPM's regulations for administering the Family and Medical Leave Act of 1993 (FMLA). That definition includes such conditions as cancer, heart attacks, strokes, severe injuries, Alzheimer's disease, pregnancy, and childbirth. The term "serious health condition" is not intended to cover short-term conditions for which treatment and recovery are very brief. The common cold, the flu, earaches, upset stomach, headaches (other than migraines), routine dental or orthodontia problems, etc., are not serious health conditions unless complications arise. The agency may require medical certification of a serious health condition.

Administration

The same limitations apply to the use of sick leave to care for a family member with a serious health condition as apply to the use of sick leave for general family care or bereavement purposes. A covered full-time employee may use 40 hours (5 workdays) of sick leave each leave year for these purposes. An employee may use additional sick leave for general family care or bereavement purposes or to care for a family member with a serious health condition if he or she maintains a balance of at least 80 hours of sick leave in his or her account. Only the first 40 hours of sick leave (or a proportional amount for an employee on a part-time schedule or uncommon tour of duty) may be advanced. (See Sick Leave for Family Care and Bereavement Purposes.)

Sick Leave for Adoption

An employee may 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 may include but are not limited to:

- o Appointments with adoption agencies, social workers, and attorneys
- o Court proceedings;
- o Required travel;
- o 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
- o 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 may not use sick leave for this purpose. Parents may use annual leave or leave without pay for these purposes. An agency may request administratively acceptable evidence for absences related to adoption.

Frequently Asked Questions About Leave

Annual Leave - Conditions for Restoration

Q - Can forfeited annual leave be restored?

A - Yes, in certain situations. Annual leave that was forfeited because it was in excess of the maximum amount permitted for carry over into the next leave year may be restored because of an administrative error, exigency of the public business, or sickness of the employee. The annual leave must be restored in a separate leave account. Leave that is forfeited because of an exigency of the public business or sickness of the employee may be considered for restoration only 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.** (See 5 CFR 630.308.)

The determination as to what constitutes an administrative error is the responsibility of the employing agency. A determination that an exigency is of major importance and that excess annual leave cannot be used must be made by the head of the agency or his or her designee.

Annual Leave - Forfeiture of Restored Leave

Q - Can restored leave that is not used within the established time limits be restored a second time?

A - No. The Comptroller General has ruled consistently that if restored leave is forfeited again, there is no legal authority for its further restoration. Any restored leave unused at the expiration of the established time limits is again forfeited with no further right to restoration. In addition, administrative error may not serve as the basis to extend the time limit for using restored annual leave. This is so 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. (See Comptroller General opinions B-188993, December 12, 1977; B-213380, August 20, 1984; and B-256975, October 11, 1994.)

Annual Leave - Time Limits on Restored Leave

Q - What are the time limits for using restored leave?

A - Restored annual leave must be scheduled and used not later than the end of the leave year ending 2 years after --

- o the date of restoration of the annual leave forfeited because of administrative error;

- o the date fixed by the head of the agency or designee as the date of termination of the exigency of the public business; **or**
- o the date the employee is determined to be recovered and able to return to duty.

The above limitations do not apply to Department of Defense employees at installations undergoing closure or realignment. (See 5 CFR 630.306(b).)

The time limits for using annual leave restored because of an "extended" exigency are found in 5 CFR 630.309.

Annual Leave - Use of Annual Leave to Qualify for Retirement

Q - My agency is undergoing downsizing, and I received a reduction-in-force (RIF) notice and will be terminated on September 15. I would have been eligible for retirement on November 1. Is there any way I can stay on the rolls until November 1 and qualify for retirement?

A - Yes. An employee who has received a RIF notice and is being involuntarily separated from an agency due to reduction in force or transfer of function may elect to use annual leave and remain on the agency's rolls after the date the employee otherwise would have been separated in order to establish initial eligibility for immediate retirement, including discontinued service or voluntary early retirement. The same option is also available to acquire eligibility to continue health benefits into retirement.

In addition, an employee who is being involuntarily separated under adverse action procedures because of his or her decision to decline relocation (including transfer of function) may use annual leave to remain on the agency's rolls after the effective date of the relocation to establish initial eligibility for immediate retirement (including discontinued service or voluntary early retirement) and/or to establish initial eligibility to continue health benefits coverage into retirement.

For further information, contact your agency personnel office or retirement counselor.

Bone Marrow/ Organ Donation Leave

Q - I will be undergoing a procedure that involves the removal of my bone marrow for future use in my own medical treatment. May I use Bone Marrow/Organ Donation leave for those days that I am absent from work for the removal of my bone marrow?

A - The legislative history regarding leave for bone marrow/organ transplantation leave makes clear that the intent of legislation was to encourage the registration and donation of bone marrow by individuals who might not otherwise donate. It was hoped that providing such an incentive to Federal workers to be bone marrow donors would increase the size and diversity of the donor registry. It was felt that Federal workers should not be required to use their own leave *to save the life of another person*. There was no intent that this leave be a benefit to the donor.

An individual having bone marrow removed and stored for future use is not a "donor," and the benefit of 7 days of paid time off was not intended for someone who is undergoing such a procedure for his

or her own needs. Sick leave, annual leave, and advanced annual and sick leave are available to an employee facing this type of medical procedure. In addition, leave donated under the Federal leave sharing program and leave without pay under the Family and Medical Leave Act may be used if the condition meets the requirements of these programs.

Family and Medical Leave - Appeal Rights

Q - What are my appeal rights under the Family and Medical Leave Act?

A - If an employee believes an agency has not fully complied with the rights and requirements provided by Title II of the Family and Medical Leave Act and the Office of Personnel Management's implementing regulations at 5 CFR 630.1201 through 630.1211, the employee may file a grievance under applicable agency administrative procedures or negotiated grievance procedures. For more information about initiating a grievance in your agency, contact your servicing personnel office or a representative of the labor organization representing you.

Family and Medical Leave - Chronic Conditions

Q - If an employee has been approved for intermittent leave under the Family and Medical Leave Act of 1993 to care for a child with a chronic condition, may an agency request documentation that the intermittent absences are being used for FMLA purposes?

A -Typically, an agency may require recertification of a serious health condition every 30 calendar days. However, if the agency receives information that casts doubt upon the continuing validity of the original medical certification, including the need for care, it may require recertification more frequently. In addition, the agency may also require an employee to state on the medical recertification the care he or she will provide and an estimate of the amount of time needed to provide such care. (See 5 CFR 630.1207(b)(4)(ii).) To assist agencies and employees, OPM's regulations also allow a health care provider representing the agency to contact the health care provider of the employee, with the employee's permission, to clarify medical information pertaining to the serious health condition. (See 5 CFR 630.1207(c).)

Family and Medical Leave - Disability Retirement

Q - May an employee who has requested approval of his or her application for disability retirement use leave under the Family and Medical Leave Act of 1993?

A - Yes. Under the Family and Medical Leave Act of 1993 (FMLA), a covered employee is entitled to a total of 12 workweeks of unpaid leave during any 12-month period for certain family and medical needs, including the serious health condition of an employee. An employee may substitute annual leave or sick leave for any or all of the period of unpaid leave, consistent with current law and regulations. An employee awaiting approval of his or her request for disability retirement is entitled to use any or all of the 12 workweeks of leave under the FMLA, if he or she continues to meet the requirements and obligations under the FMLA.

Employees should contact their agency personnel offices to receive additional information on their entitlements and responsibilities under the Family and Medical Leave Act of 1993.

Family and Medical Leave - Entitlement

Q - I have been told that I must maintain 80 hours of sick leave in my account in order to use leave under the Family and Medical Leave Act. Is that correct?

A - There appears to be confusion as to the entitlements and requirements under the Family and Medical Leave Act of 1993 (FMLA) and the leave balance requirements for the use of sick leave for family care and bereavement purposes.

The Family and Medical Leave Act of 1993 entitles covered Federal employees to a total of 12 workweeks of unpaid leave (leave without pay) during any 12-month period for certain family and medical needs. There is no requirement that an employee maintain 80 hours of sick leave in his or her account in order to use unpaid leave under the FMLA. An employee may elect to substitute paid leave (e.g., annual or sick leave) for the unpaid FMLA leave, but only to the extent that such paid leave is permitted under current law and regulations.

The regulations permitting the use of sick leave for family care and bereavement allow most full-time employees to use a total of up to 104 hours of sick leave each leave year for these purposes. An employee may use 40 hours of sick leave for these purposes without any further requirements regarding the employee's sick leave balance. An employee may use up to 64 additional hours of sick leave if he or she maintains a balance of at least 80 hours in his or her sick leave account.

Family and Medical Leave - Employee on Leave Restriction

Q - My supervisor placed me on leave restriction 3 months ago and said I must call him at least 2 hours before the beginning of my shift if I cannot be at work that day. In addition, I must provide medical documentation for each unscheduled absence. Earlier this month I hurt my back, and my doctor certified that my condition qualifies as a chronic serious health condition under the Family and Medical Leave Act. My agency agreed to give me intermittent leave under the FMLA, but my supervisor says I must still follow the conditions of the letter of restriction. Is this legal?

A - When the need for leave is foreseeable, an employee must give 30 days notice of his or her intent to take FMLA leave. When the need for leave is not foreseeable, an employee must provide notice as soon as is practicable. In addition, an agency may require an employee on leave for a serious health condition to provide initial medical certification and recertification every 30 calendar days. If the health care provider has specified on the initial medical certification a minimum duration of the period of incapacity, the agency may not request recertification until that period has passed unless other conditions arise that permit the agency to require recertification more frequently. (See 5 CFR 630.1207(h)(2)(i).)

An agency's policies or procedures for notification of FMLA leave or medical certification may not be more stringent than required by OPM's regulations. If an employee who has been placed on leave

restriction invokes his or her entitlement to FMLA leave, the agency must follow OPM's rules for notification and medical certification of FMLA leave.

Leave Earned in Two Part-Time Positions - Accrual and Use

Q - If an individual is employed concurrently in two part-time Federal jobs, how is leave earned and used?

A - In general, no employee may receive basic pay from more than one position for more than a total of 40 hours of work in 1 calendar week (5 U.S.C. 5533). A part-time employee earns annual leave and sick leave on a pro-rata basis. (See 5 CFR 630.303 and 630.406.) Therefore, an employee who works concurrently in two part-time Federal positions earns annual and sick leave on a pro-rata basis for the hours worked in each part-time position. In addition, only the leave earned in a given part-time position may be used for absences from that position.

For example, if an employee who works 4 hours a day/20 hours a week in the first part-time position and 4 hours a day/20 hours a week in the second position is ill for 1 workday, he or she should be charged 4 hours of sick leave in the first part-time position and 4 hours of sick leave in the second part-time position.

Leave Earned in Two Part-Time Positions - Family and Medical Leave

Q - How many hours of leave is an employee working two part-time Federal jobs entitled to use under the Family and Medical Leave Act?

A - Under the Family and Medical Leave Act of 1993 (FMLA), a covered employee is entitled to use a total of 12 administrative workweeks of unpaid leave (leave without pay) during any 12-month period for certain family and medical needs. For a part-time employee, the 12 administrative workweeks of unpaid leave is calculated on an hourly basis and equals 12 times the average number of hours in the employee's regularly scheduled administrative workweek. An employee working two part-time positions may use only the amount of FMLA leave earned in each part-time position for absences from that position.

Leave Earned in Two Part-Time Positions - Military Leave

Q - How is the use of military leave affected by employment in two part-time positions?

A - Military leave is available to full-time and "part-time career" (PTC) employees only. Normally, PTC employees must work between 16 and 32 hours per workweek (5 U.S.C. 3401(2)). When an employee works two PTC positions, the amount of military leave that may be credited in each PTC position is in direct proportion to the number of hours scheduled for duty in each PTC position, not to exceed in the aggregate 15 days of military leave each fiscal year. However, military leave credited to one PTC position cannot be used for hours of absence from a second PTC position.

Leave Earned in Two Part-Time Positions - Sick Leave for Family Care and Bereavement

Q - How many hours of sick leave may an employee working two part-time Federal jobs use for family care or bereavement purposes?

A - An employee may use only the sick leave earned in a given part-time position for absences from that part-time position. The total amount of sick leave a part-time employee may use for family care or bereavement purposes in a leave year may not exceed the number of hours of sick leave normally accrued by that employee in that position during a leave year. To use this total amount, the part-time employee must retain in his or her account a balance of sick leave equal to twice the average number of hours in the employee's scheduled tour of duty each week in that position. (See 5 CFR 630.401(b) and (c).)

Leave Sharing - Disability Retirement

Q - Can an employee receive donated annual leave under the Federal leave transfer and leave bank programs if he or she has filed a claim for disability retirement?

A - Yes. An employee may apply for and receive donated annual leave while their application for disability retirement is being processed. Under the Federal leave transfer and leave bank programs, an employee who is experiencing a personal or family medical emergency and who has exhausted his or her available paid leave may request to become an approved leave recipient and receive donated annual leave. Once the disability retirement application has been approved by the Office of Personnel Management, the leave recipient may no longer receive or use donated annual leave beyond the end of the pay period in which the agency receives the notice of allowance of disability retirement.

Additionally, donated annual leave may be substituted retroactively for periods of leave without pay or used to liquidate a debt for advanced annual or sick leave granted on or after a date fixed by the agency as the beginning of the period of the medical emergency for which leave without pay or advance annual or sick leave was granted. Therefore, a leave recipient awaiting approval of his or her application for disability retirement may retroactively substitute donated annual leave for leave without pay or advance leave that was taken during the medical emergency.

Agencies should advise employees concerning the possible effects of substituting donated annual leave for leave without pay or advance leave on his or her retirement income. If an employee has had a substantial period of leave without pay, the period of time for which the donated annual leave is substituted can make a substantial difference in the accrued annuity payment to which the employee is entitled. This is because an annuity cannot commence until the day after the employee's last day of pay. If the donated annual leave is substituted for the leave without pay period just prior to the employee's separation from the Federal Government for disability purposes, the annuity will commence on the day after separation. However, if the donated annual leave is substituted for an earlier period of leave without pay (e.g., at the beginning of the medical emergency), the annuity may commence at an earlier time, the day after the last day in a pay status.

Employees should contact their agency personnel offices to receive additional information on the Federal leave transfer and leave bank programs.

Lump-Sum Payments for Annual Leave - Refund Upon Reemployment

Q - Is an employee required to pay back a lump-sum payment for annual leave when he or she is reemployed in the Federal Government?

A - Yes. Under 5 U.S.C. 6306, when an individual who received a lump-sum payment for accumulated and accrued annual leave under 5 U.S.C. 5551 is reemployed in the Federal service before the end of the period covered by the lump-sum payment, he or she must refund to the employing agency an amount equal to the pay covering the period between the date of reemployment and the expiration of the lump-sum period. The refund is deposited in the Treasury of the United States to the credit of the employing agency. The refund is based on the rate of pay used to compute the lump-sum payment; e.g., an employee who received a lump-sum payment based on a GS-7 special salary rate must refund the lump-sum payment based on that same pay rate, even if he or she is reemployed at a lower grade level that is not covered by special salary rates.

When an individual is reemployed in the Federal service in a position covered by the Federal leave system under 5 U.S.C. 6301(2), an amount of annual leave equal to the leave represented by the refund is recredited to the employee by the employing agency. When an individual is reemployed in the Federal service in a position not covered under 5 U.S.C. 6301(2), but is covered by a formal leave system, the amount of annual leave to be recredited to the employee will be determined using the rule for recrediting annual leave in 5 CFR 630.501(b).

Individuals who are reemployed in a position excepted from the Federal leave system by 5 U.S.C. 6301(2)(ii), (iii), (vi), or (vii) are not required to refund a lump-sum payment. Individuals who are reemployed in the Federal service after expiration of the lump-sum period and individuals who are reemployed in the Federal service in a position that does not have a formal leave system in which the employee's annual leave may be recredited are not required to refund the lump-sum payment. Individuals who are reemployed in a position excepted from the Federal leave system by 5 U.S.C. 6301(2)(x)-(xiii) must refund the lump-sum payment, and the annual leave will be held in abeyance until the employee transfers to a position in which the annual leave may be recredited or the employee later becomes eligible for a lump-sum payment.

A number of Comptroller General opinions on lump-sum payments may be found in the Civilian Personnel Law Manual, Title II--Leave, chapter 3, Lump-Sum Leave Payments.

Lump-Sum Payments for Annual Leave - No Waiver of Refund

Q - Can an agency waive a refund of a lump-sum payment for annual leave?

A - No. The Comptroller General has advised that a lump-sum payment for unused annual leave which is correctly and legally made to a Federal employee upon his or her separation from Government service may not later be considered an "erroneous" payment within the meaning of the statute authorizing waiver of erroneous overpayments of compensation (5 U.S.C. 5584). This is true

even though the employee accepts another Federal appointment without any awareness that he will then become legally obligated to refund part of that lump-sum leave payment by accepting reemployment. (See B-200327, November 13, 1980.)

Sick Leave - Restoration of Sick Leave

Q - I forfeited sick leave in 1991 when I returned to Federal employment after a break in service of more than 3 years. Can I now have that sick leave recredited in light of OPM's new sick leave regulations, which remove the 3-year break-in-service limitation?

A - Previously, OPM's regulations in 5 CFR 630.502(b) provided that an employee was entitled to a recredit of sick leave if he or she was reemployed in another Federal position within 3 years after separation. On December 2, 1994, OPM issued final regulations that removed the 3-year break-in-service limitation on the recredit of sick leave for former employees who are reemployed on or after December 2, 1994. Sick leave may not be recredited to employees who were reemployed in the Federal service before December 2, 1994, and who previously forfeited sick leave under the former rule.

Sick Leave - Family Care and Bereavement

Q - In the use of sick leave for family care and bereavement purposes, what is the meaning of the phrase "to give care or otherwise attend to a family member?"

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

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