



# Hours of Work & Leave Handbook

Supplements 226 FW 1

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## CHANGE LOG

This section documents changes made to the print and online version of this handbook. The first publication of this handbook was on October 28, 2022, with the approval of U.S. Fish and Wildlife Service Manual chapter 226 FW 1, Hours of Work and Leave. The Division of Human Capital developed this handbook as an employee tool. After initial Director approval, the Assistant Director – Management and Administration (AD-MA) may approve subsequent updates (see 011 FW 4), which we will record on the following table.

Version Release Date	Summary of Changes
Version 2022	Initial Handbook Release
March 2023	<p>Leave Advisement 1 added: <i>Use of Official On-Duty Time for Engagement with Employee Organizations</i> (Clarifying the Use of Administrative Leave)</p> <p>Updates the numeric designation and link for the '<i>AUTHORIZATION FOR EXPIRED COMPENSATORY TIME TO BE PAID AS OVERTIME FOR THE EXEMPT EMPLOYEE</i>'-Form from A0-1 to POD-02</p>

To request changes or updated examples, please send an email to [Joseph\\_Blaeuer@fws.gov](mailto:Joseph_Blaeuer@fws.gov).

## CHAPTER 1, INTRODUCTION

### PURPOSE

This handbook gives you, the managers, supervisors, and employees of the U.S. Fish and Wildlife Service (Service), information you need to set up tours of duty and administer leave benefits. Human Capital integrated these topics because achieving work life balance often requires using work scheduling flexibilities along with leave options. We designed the handbook to acquaint you with the benefits, policies, and rules that apply to you. It does not replace required supervisory training, employee orientation, or the advisement of Human Resources or legal professionals.

This guidance does not supersede existing Department of the Interior (Department) or Service policies; rather, it clarifies responsibilities and provides summaries and general overviews. Regulations, procedures, and delegations of authority governing employee entitlements to leave and establishing tours of duty and premium pay are contained in Service Manual chapters 226 FW 1, 225 FW 7, Departmental directives, and Office of Personnel Management (OPM) regulations.

You should read this handbook with:

- The Interior Business Center's [Time and Attendance Guide](#) (T&A Guide)
- Departmental Personnel Bulletin (PB) 09-14, [Alternative Work Schedules](#)
- Departmental [PB 15-05, Advanced Sick and Annual Leave Policy Changes](#)
- Departmental [Absence and Leave Handbook, 2012](#)

The Joint Administrative Operations (JAO) organization's Human Resources Operations staff is available to help you with questions about this handbook's content. Our [SharePoint site](#) offers comprehensive information, forms, and helpful links. For more information, please use [my Support](#) to contact a Human Resources professional.

### AUTHORITIES AND RESPONSIBILITIES

See 226 FW 1 for the authorities and overall responsibilities for hours of work and leave administration within the Service.

### DEFINITIONS

See [Appendix A](#), Glossary, for the definitions of terms we use in this handbook and Service policy (226 FW 1).

### SCOPE

This handbook applies to all Service employees except those excluded in whole or in part from a specific provision or section, as shown below.

### NAVIGATING THIS HANDBOOK

When navigating this handbook, keep in mind that work schedules and leave advisements depend on the circumstances. Often, multiple independent leave entitlements are available to an employee, some of which you can use consecutively or concurrently. Individual circumstances may require the consideration of topics not covered by this handbook, such as light duty assignments, exploring reasonable accommodations, or disability retirement.

The topics covered by this handbook affect working conditions. Supervisors must be skilled in recognizing requests for accommodations, as requests for changes to an employee's working conditions

may be connected to either a medical or a religious request for accommodation. Accommodations are civil rights.

Supervisors must know if any of their employees are covered by a bargaining unit, and if so, follow proper procedures for changing working conditions for unit employees. Failure to do so may result in unfair labor practices.

The following illustrates how these various programs can work together.

1. Dave (*pronouns: he/him/his*), a full-time permanent employee, is expecting the birth of his first child and wants to maximize his time with his newborn and support his partner's recovery. He stressed he wanted to stay engaged in the office when he met with Human Resources (HR) to discuss his options. His HR advisor explained proper uses of sick leave and the potential for taking paid parental leave on a reduced schedule.

Dave and his supervisor discussed a reduced schedule. They agreed to him working core hours on Wednesdays and Thursdays and working flexible hours during the week on Monday through Saturday.

Dave took 6 weeks of accrued sick leave to care for his partner during her postpartum recovery, and when she recovered, he took paid parental leave on Mondays, Tuesdays, and Fridays under the Family Medical Leave Act (FMLA) to bond with his child.

*Note:* If Dave had previously invoked FMLA, perhaps to care for a sick family member within the preceding 12 months, he may not have been immediately eligible to take paid parental leave. If Dave's spouse was also a Service employee, they too would have been eligible for paid parental leave.

2. Morgan (*pronouns: they/them/their*) is a new employee with a serious health condition that requires treatments every Friday. Morgan spoke with their supervisor, who explained that the office's work scheduling program does not include required hours on Friday, and the supervisor was happy to approve Morgan's requested tour of duty. After 2 years, Morgan's condition worsened to the point of requiring surgery. Under their flexible work schedule, Morgan had accrued sufficient leave to cover absences.

*Note:* The universal design of the work scheduling program removed the need for Morgan to request reasonable accommodation.

3. Aliyah (*pronouns: she/her/hers*), a full-time employee, has a chronic serious health condition that has periodic flare-ups. She uses a combination of sick leave and FMLA to cover her absences.

*Note:* Unlike Morgan's situation above, Aliyah's intermittent use of FMLA is not subject to her supervisor's agreement because it is medically necessary.

The next few chapters will explain pay and leave options. However, HR is available to help all employees and supervisors navigate the complexity of the hours of work and leave administration landscape.

## **CHAPTER 2, GENERAL TOUR OF DUTY INFORMATION AND LEAVE PROCEDURES**

The following chapter supplies information about setting up tours of duty and leave procedures. You may find information pertinent to specific leave programs in later chapters.

### **TOURS OF DUTY**

Supervisors must set up hours of duty that result in the most efficient use of human resources, equipment, and facilities, creating and fostering work schedules that are a positive benefit to the Service and to its employees. Managers and supervisors must consider the duties of a position and the organizational mission when establishing work schedules and making work arrangements.

A work schedule has a direct effect on an employee's pay entitlements. Supervisors must ensure nonexempt employees do not exceed an 8-hour workday unless overtime is officially approved or as allowed by regulations governing flexible or compressed tours.

Supervisors must establish work schedules that conform, when possible, to the following, except as explained in this chapter (see [5 CFR 610.121](#)):

- “(1) Assignments to tours of duty are scheduled in advance of the administrative workweek over periods of not less than 1 week;
- (2) The basic 40-hour workweek is scheduled on 5 days, Monday through Friday when possible, and the 2 days outside the basic workweek are consecutive;
- (3) The working hours in each day in the basic workweek are the same;
- (4) The basic nonovertime workday may not exceed 8 hours;
- (5) The occurrence of holidays may not affect the designation of the basic workweek; and
- (6) Breaks in working hours of more than 1 hour may not be scheduled in a basic workday.”

### **CLARIFICATION OF TERMS**

Work schedule, tour of duty, basic work requirements, and administrative workweek can be confusing terms. However, to understand the broad continuum of workplace scheduling options available and how they interact with the Fair Labor Standards Act (FLSA), overtime regulations, travel pay, or holiday entitlements, supervisors should understand them.

Work schedules are the time basis on which an employee is paid:

- A full-time work schedule requires employees to work a prearranged scheduled tour of duty that is 40 hours per week.
- A part-time work schedule requires employees to work a prearranged scheduled tour of duty for a specific number of hours between 16 and 32 hours per week.
- An intermittent employee works on an irregular basis for which there is no prearranged tour of duty.

- A rotating tour of duty is a regularly scheduled tour that periodically requires service on a different shift.
- A seasonal employee works on an annual recurring basis for periods of less than 12 months each year; they may have full-time, part-time, or intermittent work schedules during their work season.

Work schedules are shown on Block 32 of an employee's SF-50-B, Notification of Personnel Action, and coded as follows:

- F- Full-Time
- G- Full-Time Seasonal
- I- Intermittent
- J- Intermittent Seasonal
- P- Part-Time
- Q- Part-Time Seasonal
- R- Phased Employment/Phased Retirement
- S- Part-Time Job Sharer
- T- Part-Time Seasonal Job Sharer
- B- Baylor Plan (not applicable to Service positions)

In the Federal service, we have a 'basic' work schedule that is described in 5 CFR 610.121 and conforms to the rules listed above. We often refer to these schedules as 'straight 8 schedules.' The term 'basic work schedule' is a retronym because in a flexible work scheduling framework, the term 'work schedule' lacks qualitative meaning, as a full-time work schedule may not equate to 40 hours spread equally over 5 days, Monday through Friday, 8:30 a.m. to 5:00 p.m. Hence, the need for more terms.

A basic work requirement is the total number of hours an employee must work or otherwise account for by leave. For example, a full-time employee will have a basic work requirement of 80 hours.

The tour of duty includes all hours and days that an employee can work to meet their basic work requirement and comprises all the flexible and core (inflexible) hours that have been designated.

With the issuance of paid parental leave regulations, we received a new term—scheduled tour of duty. A scheduled tour of duty means the regular work hours in an established full-time or part-time work schedule during which an employee is charged leave or time off when absent.

An administrative workweek is the seven consecutive 24-hour periods used for scheduling and pay purposes. For most employees, the administrative workweek coincides with the calendar week. You would be informed in writing if we set another administrative workweek for you.

When you have an established and scheduled administrative workweek, it is called the "regularly scheduled administrative workweek" and has much the same meaning as "scheduled tour of duty."

Regularly scheduled administrative workweek means:

- (1) For full-time employees, the period in an administrative workweek within which employees are scheduled to be on duty regularly.



(2) For part-time employees, it means the days and hours within an administrative workweek during which employees are scheduled to be on duty regularly.

#### ALTERNATIVE WORK SCHEDULES

The phrase Alternative Work Schedule (AWS) is slightly misleading because these schedules are common. To explain the name and understand how they are used you need a bit of context. 5 U.S.C. 6101 sets forth the basic 40-hour workweek for use by Federal organizations, which agencies had to follow unless they would be seriously handicapped or incur a substantial increase in operating costs. The basic 40-hour workweek was scheduled work over 5 days, with 2 consecutive days off and with consistent hours that do not exceed 8 hours. An unusual tour of duty was any schedule the agency creates under 5 U.S.C. 6101 where the scheduled 5 days were not Monday through Friday or because the basic 40-hour workweek would seriously handicap the organization or substantially increase operating costs. The statutory basic 40-hour workweek, as well as some of the overtime rules related to FLSA, constrained agencies' flexibilities.

Legislation made it possible for Federal organizations to offer two AWS options, flexible and compressed work schedules, which can take varied forms within the constraints set by the organization.

*Table 1*

COMPRESSED WORK SCHEDULES	FLEXIBLE WORK SCHEDULES
Compressed work schedules are work schedules with a fixed starting and ending time, which allow for an increase in the number of hours worked each day so the employee can work their scheduled hours for the pay period in fewer than 10 workdays. (For example, a 4/10 schedule is a compressed schedule where employees work four 10-hour days within a week rather than five 8-hour days.)	<p>Flexible work schedules allow, within constraints set by the agency, variation in the hours and days an employee may work. Under such a system, the workday is split into two distinct kinds of time, i.e., core time and flexible time.</p> <ul style="list-style-type: none"><li>• Flexible time is the time employees may choose to work.</li><li>• Core time is when employees must be present for work or account for absences through use of leave or credit hours, if applicable.</li></ul> <p>Credit hours: Flexible work schedules may also include a provision that allows employees to use or earn credit hours, which are those hours an employee elects to work over their basic work requirement to vary the length of a workweek or workday.</p> <p>Employees must receive the approval of their supervisor to earn or use credit hours.</p>

*Note:* Employees may not combine elements from flexible and compressed work schedules to create a hybrid schedule. An employee on a flexible work schedule may have one or more days in their tour of duty with no core hours assigned, and their schedule may appear to be compressed; however, if they have flexible start and end times, despite the appearance, this is not a compressed schedule; it is a

flexible work schedule.

We distinguish credit hours from overtime hours in that management does not officially order and approve them in advance. A full-time employee can carry over a maximum of 24 credit hours from one biweekly pay period to the succeeding one. A part-time employee carries over a prorated balance. Employees automatically lose any excess hours.

#### DEFINING FLEXIBILITY, WHEN USING FLEXIBLE WORK SCHEDULES

Having options for various work schedules provides the Service with flexibilities to address many challenges to work life balance, recruitment, retention, and operational efficiencies. To work well, supervisors must define the flexibilities and ensure employees understand them. Flexible work schedules are still schedules that must provide the agency with the time we expect an employee to be on the job and working.

Supervisors should establish a scheduled tour of duty, which is the regular work hours during which we charge an employee leave or time off when absent, to include early dismissals and absence without leave. An employee may not ask for, and a supervisor may not charge an employee for, more sick or annual leave than they are scheduled to work on that day.

Supervisors should set up work scheduling expectations that include procedures for informing the supervisor of schedule changes. All employees should know flexibilities and constraints under a flexible work schedule will vary throughout the Service and depend on mission objectives and organizational norms.

Flexible work schedules must have at least two core hours on each of two workdays within a biweekly pay period. (See 5 [U.S.C. 6122\(a\)\(1\)](#).) Supervisors may allow employees to be absent during core hours and to make up those hours during the flexible hours on the same workday as the approved absence from core hours.

The Service has not set up standard flexible or core time bands. Directorate members must establish, or delegate authority to establish, standard flexible or core time bands.

Supervisors must inform employees of all the flexibilities and constraints, including:

- The minimum number of hours that must be worked in a day.
- The maximum number of hours that must be worked in a day.
- The minimum number of hours that must be worked in a week.
- The maximum number of hours that must be worked in a week.
- The flexible and core time bands.
- Guidelines for the use of split schedules.
- Eligibility to earn and use credit hours.
- Request and approval procedures to earn and use credit hours.

Human Capital recommends that Directorate members and supervisors put in place proper limits to ensure employee wellbeing and productivity. We recommend that management evaluate occupational health best practices when considering designing an AWS program that allows employees to exceed 10 hours of work per day.

## DOCUMENTING TOURS OF DUTY

The Service supports a broad and flexible framework for designing work arrangements. When implementing employee work schedules, management officials should evaluate customer needs, workload requirements, and specific duty requirements. It is unnecessary for everyone in a work unit to be under the same work schedule, and not all employees may be eligible for an AWS (e.g., not proper for certain positions or prior leave abuse).

Deciding officials must design work arrangements that ensure the continued efficiency of the Service. Implementation of any AWS program within a part of the Service is optional and should only be undertaken after careful planning and consideration of whether it will have an adverse impact on mission accomplishment.

Deciding officials must adhere to requirements of collective bargaining agreements, when applicable. We also recommend that deciding officials make good faith efforts to find work schedules that are mutually agreeable with employees. Management may vary tours of duty and change an employee's scheduled hours of duty to carry out its mission. Employees may also file grievances. (See [370 DM 771 Administrative Grievance Procedures.](#))

The Department's [PB 09-14, Alternative Work Schedules](#), and the U.S. Office of Personnel Management's (OPM) [Handbook on Alternative Work Schedules](#) supply examples of work scheduling arrangements. Wide latitude is available to tailor work scheduling arrangements, especially flexible work schedules, to work unit requirements.

We use the following codes to document AWSs in the Federal Personnel Payroll System (FPPS):

### Compressed Work Schedules

- A - 5-4/9 WORKWEEK
- C - 4-10 HOUR DAY(S) - WEEKLY – Full-time (FT) OR Part-time (PT)
- T - 3-DAY WORKWEEK

### Flexible Work Schedules

- M - MAXIFLEX

*Note:* All flexible work schedules are called maxiflex in FPPS. There are, however, various names given to flexible work scheduling models.

### Traditional Basic 40-hour Workweek

- N - NOT APPLICABLE

### Uncommon Tours of Duty or Nonstandard Work Schedules

- F - FIRST 40 / (SEC) FLEXITOUR
- R - ROTATING SHIFT
- H - 10 HOUR DAY(S) - BIWEEKLY - FT OR PT

*Note:* Uncommon and Nonstandard work schedules are rare, and supervisors should consult with a member of the Joint Administrative Operations, Branch of Compensation (JAO

Compensation team) before using them. When administratively setting a schedule other than the basic workweek, you must demonstrate that not using the basic workweek schedule would seriously handicap the organization or substantially increase operating costs.

Supervisors should assign tours of duty with as much advance notice to employees as possible, but at least give 1 week of advance notice.

Management officials must document and communicate all requirements and expectations to employees. You may use the Unusual Tour of Duty form ([FWS Form 3-261](#)) that is maintained by JAO Compensation. Once documented and approved, timekeepers should follow established procedures for processing the information in QuickTime and FPPS.

#### SCHEDULING MEAL PERIODS

Neither the law nor regulation prescribes a break for any purpose, including meals. See [5 U.S.C. 6101](#) and [5 CFR 610.121](#). However, in accordance with sound business practices and [PB 09-14, Alternative Work Schedules](#), all employees should observe a 30-minute, 45-minute, or 60-minute lunch, unless doing so would create some issue for the Service. Scheduled lunch (or other meal) periods are not considered duty time and are not paid. 5 U.S.C. 6101(a)(3)(F), prohibits the agency from scheduling breaks for longer than 1 hour.

Under flexible scheduling agreements, employees may choose to take meal periods that are longer than 1 hour, depending on the established flexible and core time bands. For example, employees and supervisors may set up more than one core time band in a day, such as from 9 a.m. to 11 a.m. and 1:30 p.m. to 3:00 p.m. Such an arrangement would allow the employee to split their tour of duty into two sections, which could mean they can take a lunch period that is longer than 1 hour.

Supervisors should ensure employees have an uninterrupted meal period; however, employees who are non-exempt from FLSA (see [PB 92-05, Fair Labor Standards Act Overtime Pay Entitlement](#)) must be allowed an uninterrupted meal period. For such employees, if they must work during the period, they must be compensated under FLSA premium pay provisions.

When an employee is covered by collective bargaining agreements, the requirements in those agreements must be followed.

Lunch periods should not be scheduled to delay the start of the workday or shorten the workday. Generally, the lunch period may begin no earlier than 2 hours after the start of the shift and no later than 6 hours after the start of the shift. When supervisors are unable to schedule meal periods following this guidance, they should schedule their employee's meal period when practical, considering mission demands, employee needs, and, if applicable, local negotiated agreements.

#### SCHEDULING OF BREAK PERIODS

There are no Departmental or Service policies addressing or mandating periods of rest; however, supervisors are responsible for deciding what types of breaks may be necessary to ensure a safe work environment. This decision may lead to scheduled short, compensated break periods.

## BREAK TIME FOR NURSING MOTHERS

Section 7(r) of the FLSA requires that employers provide a reasonable break time for nursing mothers to express breast milk for up to 1 year after the child's birth.

The frequency and duration of breaks will vary according to the needs of the individual employee.

[PB 11 -11, Providing Nursing Mothers Reasonable Break Time for Lactation](#), suggests using current “[w]orkforce flexibilities [which] include adjustments to the employee's work schedule and use of accumulated credit hours, if available, under flexible work schedules. In addition, an employee may also be granted annual leave, leave without pay (LWOP), compensatory time off or other appropriate leave for lactation.”

Break times are not to be interrupted.

For more information, see OPM's guide, [“Guidance for Establishing a Federal Nursing Mother's Program.”](#)

## KEY REMINDERS

- To the maximum extent possible, agencies should schedule travel within an employee's regularly scheduled workweek.
- Management must set up an employee's work schedule to carry out the agency's mission and must reschedule an employee's administrative workweek to correspond with an employee's actual work requirements.
- Flexible and compressed work schedules should not be used if they increase an agency's costs.
- On-the-clock breaks must not be combined with off-the-clock lunch breaks.

## ADDITIONAL RESOURCES

- OPM's [Handbook on Alternative Work Schedules](#), which includes information regarding:
  - Flexible vs. compressed work schedules
  - Models of flexible work schedules
  - Models of compressed work schedules
  - Procedures for establishing AWSs in unorganized units and organized units
  - Information related to [5 U.S.C. 6132](#), Appeals to the Office of Special Counsel
  - Procedures for termination of AWSs
- OPM's [Fact Sheet](#): The Use of Flexible Work Schedules in Response to Coronavirus Disease 2019 (COVID-19).

## GENERAL PAY INFORMATION RELATED TO TOURS OF DUTY

Other agency directives cover premium pay, which is compensation for overtime, night, Sunday, and holiday work; however, premium pay entitlements stem from agency employee scheduling decisions, which are covered by this handbook. This handbook simply recaps applicable premium pay rules.

An AWS can change ordinary overtime and premium pay obligations and, as such, supervisors must follow the requirement to document and give prior approval for AWSs.

For example, generally employees on a flexible work schedule do not earn night pay for any hours worked after 6:00 p.m. because there are 8 hours available within the agency's established flexible time bands and no core hours are set up during the night.

Supervisors must determine the applicable pay system, the AWS/tour of duty, and the FLSA status prior to computing premium pay entitlements. FLSA established, among other things, a right to overtime pay for those individuals covered by its overtime provisions; thus, an employee's FLSA status matters because it affects whether or not an employee earns certain types of premium pay.

Find yours, or your employee's, FLSA status by reviewing either the SF-50-B, Notification of Personnel Action (block 35), or the applicable position description.

- The term "nonexempt" describes employees who are covered by the overtime provisions of FLSA. These employees are also entitled to other premium pay under Title 5 of the United States Code.
- The term "exempt" describes employees who are not covered by the overtime provisions of FLSA, even though they are still covered by other provisions of FLSA. Title 5 governs all premium pay entitlements, including overtime, for exempt employees.

Determine yours, or your employee's, applicable pay system by reviewing either the SF-50-B, Notification of Personnel Action (block 8 or 16) or the applicable position description.

- GS, GENERAL SCHEDULE
- WG, NONSUPERVISORY PAY SCHEDULES-FEDERAL WAGE SYS
- GL, LAW ENFORCEMENT GRADES 03-10
- ES, SENIOR EXECUTIVE SERVICE (SES)
- WL, LEADER PAY SCHEDULES-FEDERAL WAGE SYSTEM
- WS, SUPERVISORY PAY SCHEDULES-FEDERAL WAGE SYSTEM
- WB, WAGE POSITIONS NOT OTHERWISE DESIGNATED

For pay and leave purposes, the administrative workweek for the Service is 7 consecutive calendar days, Sunday through Saturday. While, in limited circumstances, management officials may change the administrative workweek, they should do so only after consulting with the JAO Compensation team.

For your convenience, listed below are the pertinent OPM fact sheets:

- [Fact Sheet: Premium Pay \(Title 5\)](#)
- [Fact Sheet: Sunday Premium Pay](#)
- [Fact Sheet: Compensatory Time Off for Travel - Examples](#)
- [Fact Sheet: Night Pay for General Schedule Employees](#)
- [Fact Sheet: Night Shift Differential for Federal Wage System Employees](#)
- [Fact Sheet: Overtime Pay, Title 5](#)
- [Fact Sheet: Federal Holidays](#)
- [Fact Sheet: Federal Holidays - "In Lieu Of" Determination](#)
- [Fact Sheet: Federal Holidays - Work Schedules and Pay](#)

Specific guidance on premium pay entitlements may also be found in the [T&A Guide](#), developed by the Interior Business Center (IBC).

#### KEY REMINDERS:

- Compensatory time off is time off with pay in lieu of overtime pay for irregular or occasional overtime work.
- Compensatory time off under a flexible work schedule may include time off with pay in lieu of overtime pay for regularly scheduled overtime work.
- Irregular or occasional overtime means overtime work that is not part of the regularly scheduled administrative workweek.
- A supervisor may not change the administrative workweek of an employee to compensate the employee for travel on a day that would otherwise be a non-workday.
- Supervisors should, to the maximum extent possible, avoid requiring employees to travel during non-duty hours. When a supervisor decides that there is no choice but to require travel outside the regularly scheduled workweek, and the result is that the employee will not receive overtime, the supervisor must record their reasons for ordering travel at those hours and must, upon request, give a copy of the statement to the employee concerned.
- When an employee is taking part in an AWS program and must travel, attend a training course, or serve at a location where the hours of work differ from the employee's approved schedule, it may be necessary to change the employee's work schedule to the standard workweek. Any adjustment must account for the required 80 hours of work during each pay period.
- The amount of holiday pay is based on the employee's applicable tour of duty. For full-time employees working a traditional or flexible work schedule, it would be based on 8 hours. For full-time employees working a compressed schedule, it would be based on the number of hours scheduled to work on that day.
- Part-time employees are not entitled to holidays designated by law or executive order or days observed as holidays when the actual holiday falls on one of their non-workdays. They are not entitled to an in lieu of holiday. However, the employee may be granted excused absence.
- Employees in a non-pay status immediately before and after a holiday are not entitled to pay for the holiday. We must charge them absence without leave or leave without pay for the holiday.

#### LEAVE ADMINISTRATION

Leave administration covers the regulations and procedures that govern the request, approval, or denial of employee leave, e.g., annual leave, sick leave, the FMLA, the voluntary leave transfer program.

We use the term supervisor throughout this handbook to show the individual in the chain of command with the authority to approve leave. However, organizations can appoint a leave approving official who is not a supervisor, such as designating a team leader or an acting manager, and the authorities delegated to first-line supervisors may vary within the Service.

#### LEAVE PROCEDURES

Service policy does not require the use of the OPM-71, Request for Leave or Approved Absence, or the electronic version of the OPM-71 found in QuickTime, to document an employee's request for leave and a supervisor's approval. Supervisors must prescribe the procedures for requesting leave and communicate to employees that failure to follow established leave procedures may result in disciplinary actions up to and including removal. Leave procedures should explain how to request leave, including unplanned, emergency, or unexpected leave, and what to do if the supervisor is unavailable.

The approval of leave, regardless of type, rests with management. Human Resources educates and advises all employees on leave programs. The JAO Compensation team approves program participation in leave transfer programs; however, participation in these programs is based on approved leave.

There are no limits to the amount of leave an employee can request at one time. Employees are under no requirement or expectation to curtail their own leave requests. Establishing any limitations to taking leave is the responsibility of the supervisor, and supervisors may get advice from HR, as needed, to exercise this authority. While there is no limit on leave requests, there are limits for specific leave programs as explained in this handbook.

An employee does not gain leave until they meet their basic work requirement, so you earn leave at the end of the pay period.

Supervisors must be able to differentiate between leave entitlements and discretionary leave programs.

When exercising administrative discretion, supervisors should grant or deny requests based on the needs of the agency and not the circumstances of the request. If someone alleges disparate treatment, evaluating management's application of discretion will include evaluating the consistency in which the supervisor exercises that discretion in similar situations. Supervisors may request advice from the JAO Branch of Employee - Management Relations (JAO Employee - Management Relations) if they have concerns regarding approving or denying leave requests.

Detailed instructions on timekeeping requirements and coding are available in the [T&A Guide](#) published by the IBC. Supervisors and timekeepers should review this manual for answers to specific timekeeping problems.

Supervisors must keep time and attendance records under applicable retention guidance. Supervisors must also ensure confidentiality of medical information, including all medical records submitted in connection with leave requests.

The standard minimum charge for leave is 15 minutes; however, some codes may allow charges in less than 15-minute increments. Pay-code 102, Absence Without Leave (AWOL), for example, is recorded in exact minute increments. You can find specifics for each leave code in the [T&A Guide](#).

#### CHARGING LEAVE

We charge leave for the number of hours of absence during the employee's regularly scheduled tour of duty. For example:

- If an employee whose regularly scheduled tour of duty is 10 hours a day is absent for 8 hours and works 2 hours, we charge the employee 8 hours of leave.
- If an employee whose regularly scheduled tour of duty is 44 hours a week is absent for a full week, we charge the employee 44 hours of leave.

#### LEAVE WITHOUT PAY (LWOP)

Leave without pay is an approved temporary absence from duty in a non-pay status that an employee must request, and the supervisor approves. A supervisor cannot place an employee in leave without pay status without the employee requesting the leave. Extended leave without pay is a period exceeding 30 calendar days and must be documented with an SF-50, Notification of Personnel Action.



The authority to grant leave without pay to an employee is a matter of administrative discretion, except for the following situations:

- Federal employees' compensation regulations entitle employees to leave without pay when receiving worker's compensation payments from the Department of Labor.
- Executive Order (EO) 5396, July 17, 1930, entitles a disabled veteran to leave without pay, if necessary, for medical treatment.
- The Uniformed Services Employment and Reemployment Rights Act of 1994 entitles members of the Armed Forces Reserves and National Guard to leave without pay to fulfill military orders, if requested, when their absences are not covered by military leave.
  - To request leave without pay in this situation, you must supply a copy of your military orders to your supervisor and ask that they give the SF-52, Request for Personnel Action (Absent for Uniformed Services) and orders to JAO Compensation.
- The FMLA entitles employees up to 12 administrative workweeks of leave without pay for qualifying purposes.

Purposes for granting leave without pay may include, but are not limited to:

- Time off for employee(s) on appointments of 90 days or less who are not entitled to annual leave.
- A career or career conditional employee transferring with a dual career spouse or committed partner.
- Time off for employee(s) facing a medical emergency who do not have available paid leave.

Supervisors must not to approve leave without pay requests when absence without leave should be used (e.g., in cases of incarceration) (contact JAO Employee - Management Relations).

When a supervisor approves a request for leave without pay that is for more than 30 consecutive days, or for an extension of leave without pay that will lead to a total period of more than 30 consecutive days, they must submit an SF-52, Request for Personnel Action, to the JAO Compensation team.

When a request for discretionary leave without pay is for more than 1 year or for an extension of leave without pay that will lead to a total period of more than 1 year, the Chief, Division of Human Capital in Headquarters must approve it. Supervisors and other managers have the authority to deny all discretionary leave without pay, regardless of duration.

We do not document nonconsecutive periods of leave without pay, regardless of duration, on an SF-50, Notification of Personnel Action.

#### ABSENCE WITHOUT LEAVE (AWOL)

Absence without leave is a non-pay status. Supervisors charge an employee absence without leave when the employee is absent from their specified work location without permission or has not notified their supervisor or supplied a satisfactory explanation or documentation for the absence. Supervisors may consider an employee absent without leave when they report to a location other than their specified work location.

Coding an employee to absence without leave is not a disciplinary action but may be the basis for disciplinary action. Supervisors can convert absence without leave to other forms of leave when the employee justifies the absence in a way that is acceptable to the supervisor.

#### EXTENDED ABSENCES

The Service encourages employees to take time away from their work responsibilities to seek medical attention that they need. We also support employees with family members who are facing serious medical issues.

During our careers, each employee may face a time when we are too sick to come into work, and our absences are for reasons beyond our control. Human Resources is available to advise employees during these times.

Human Resources will explain employee benefits, such as the use of accrued leave, the FMLA, the voluntary leave transfer program, and rights under the Rehabilitation Act.

Human Resources will also advise management officials on ways to help meet the needs of employees while ensuring Service needs are met, such as by exploring temporary staffing arrangements, pursuing action under 5 U.S.C. 75-Adverse Actions, exploring light duty, and engaging in the interactive process, each of which is described below.

#### TEMPORARY STAFFING ARRANGEMENTS

Supervisors may consider contacting the JAO Branch of Staffing for information on temporary staffing arrangements.

#### LIGHT DUTY

A supervisor can continue the workforce participation of an employee by assigning different duties or temporarily changing existing duties. For example, a supervisor might assign non-patrol duties to a Law Enforcement officer who suffered an off-duty sprained ankle.

With a non-compensable injury, light duty assignments are at the manager's discretion, unless such modification is a reasonable accommodation that would allow a qualified individual with a disability to perform the essential functions of their position. Contact the JAO Employee - Management Relations team for more advice.

#### REASONABLE ACCOMMODATION

All employees may request reasonable accommodation. Reasonable accommodation is a change in the work environment, or the way things are customarily done that will allow a qualified individual with a disability to perform the essential duties of their position.

Contact JAO Employee - Management Relations for advice.

#### 5 U.S.C. 75

Approval of sick leave does not prevent management from pursuing removal actions under 5 U.S.C 75 for situations that affect the efficiency of the Service, such as excessive absenteeism, inability to maintain a regular work schedule, or medical inability to perform.

Contact JAO Employee - Management Relations for advice.

## MEDICAL STANDARDS

This handbook does not address medical standards established as part of the Department's Medical Standards programs, as found in 485 DM 18, [Occupational Medicine Program Handbook](#).

If you are under medical standards, you should understand that determinations are based on your ability to perform the essential functions of your job. Getting treatment for a stress injury or getting treatment for a musculoskeletal injury are equitable in that they both may or may not affect your ability to perform the essential functions of your job.

## COMPENSATORY TIME

Compensatory time off is treated as leave, once earned, and is subject to leave approval procedures.

Employees have 26 pay periods to use compensatory time.

- Unused compensatory time earned while in a non-exempt status is paid as FLSA overtime.
- Unused compensatory time earned while in an exempt status is lost.
- Employees may request payment of the unused compensatory time if forfeiture was due to an exigency of the Service. Use Form POD-02, Authorization for Expired Compensatory Time to Be Paid As Overtime for the Exempt Employee.

Also see OPM's [Fact Sheet: Compensatory Time Off](#).

## HUMAN RESOURCES INFORMATION SYSTEMS

The Service uses two information systems for processing time and attendance. QuickTime is a web-based time and attendance input and approval system that feeds data into the Federal Personnel and Payroll System (FPPS). FPPS is used for processing personnel actions and calculating payroll. Leave balances and accrual rates are sent from FPPS into QuickTime.

- New employees may experience a delay in accurate data reporting due to the timing of data feeds. Typically, this is two pay periods.
- Employees transferring from another agency may experience a longer delay if their prior agency does not certify their leave balances promptly.

Supervisors and timekeepers must coordinate with JAO Compensation to ensure that FPPS is correct. Circumstances requiring coordination include, but are not limited to:

- Changes to an employee's AWS code.
- Changes to an employee's assigned work schedule code, as shown on block 32 of the employee's SF-50-B, Notification of Personnel Action.
- Changes to the number of hours per week that an employee is scheduled to work, as shown on block 33 of an employee's SF-50-B, Notification of Personnel Action.
- Changes in an employee's eligibility for disabled veterans leave.

## CHAPTER 3, ANNUAL LEAVE

Annual leave is a period of approved absence with pay from official duties that you may use for vacations, rest and relaxation, in lieu of sick leave, personal business, and emergencies. Employees request annual leave by following established office leave procedures. Leave procedures may require employees to request leave several days to several months before the time they want to take off so that work can be scheduled, and the leave plans of other employees coordinated.

Supervisors may ask, for business-related purposes, the employee to give them a reason for requesting annual leave. For example, a supervisor may ask this when they need to decide between multiple employees' leave requests during the same time period. An employee is under no obligation or expectation to supply an answer. A supervisor may take the lack of a reply into consideration.

Employees have a right to request leave, subject to the right of the supervisor to approve the time at which the leave may be taken. Supervisors may, consistent with operational demands, prescribe when employees may take annual leave, refuse to grant annual leave, or revoke annual leave that has been granted and recall an employee to duty based on the needs of the Service. When making leave approval decisions, the supervisor should weigh the needs of the workplace with the desires of the employee. Supervisors must not deny or cancel annual leave as a disciplinary or punitive action.

### ANNUAL LEAVE ACCRUAL

An employee whose appointment is for 90 calendar days or longer earns and may be granted annual leave beginning with the first day of the first full pay period following appointment.

Annual leave is an employee benefit and accrues automatically. Employees earn annual leave each pay period based on years of creditable service. Senior Executive Service (SES) members, employees in Senior Level and Scientific and professional (SL/ST) positions, and certain employees in "SES equivalent" positions earn 8 hours of annual leave each pay period regardless of creditable service. Other full-time employees earn leave:

- 4 hours per pay period for less than 3 years of service
- 6 hours per pay period for 3, but less than 15, years of service
- 8 hours per pay period for 15 or more years of service

### CREDITABLE SERVICE

The biweekly annual leave accrual rate is determined by an employee's service computation date. An employee's service computation date is shown on block #31 of an employee's SF-50-B, Notification of Personnel Action. An employee's service computation date includes their prior Federal civilian service and certain types of active-duty uniformed service. Human Resources establishes your service computation date based on a review of your Official Personnel Folder (eOPF) and any verified Federal service you claimed. You may find the rules for computing the date in OPM's [Guide to Processing Personnel Actions, Chapter 6](#). If you have questions, please contact JAO Compensation.

The Federal Workforce Flexibility Act of 2004 allows newly appointed employees to receive service credit for non-Federal or active-duty uniformed service experience. Potential non-Federal or active-duty uniformed service experience must be considered and approved as creditable service prior to an employee's entrance on duty. Selecting officials interested in this authority should contact their assigned HR Specialist after a candidate has been tentatively selected. The assigned HR Specialist will

explain requirements as outlined in PB 05-05, [Departmental Policy on Absence and Leave; Creditable Service](#).

### ANNUAL LEAVE CEILINGS

Non-SES, non-SL, and non-ST employees working in the United States can carry over a maximum of 240 hours of annual leave into the next leave year.

Non-SES, non-SL, and non-ST employees working outside of the United States may carry over 360 hours. When an employee leaves an overseas post, their carryover balance remains 360 hours as the employee's personal leave ceiling for succeeding years until the employee carries a smaller accumulation of annual leave from one year to another, at which point the smaller accumulation becomes the employee's new annual leave ceiling. The standard 240 hour carryover balance becomes the employee's leave ceiling when and if the smaller accumulation is less than or equal to 240 hours.

Employees in SES, SL, and ST positions may carry over 90 days (or 720 hours) of annual leave at the start of each new leave year.

Employees must use leave that is more than their annual leave ceiling by the end of a leave year or they will lose (forfeit) it. This leave is commonly called 'use or lose.' In rare circumstances, we may restore the leave to the employee (see the section on restoration of annual leave below).

### ANNUAL LEAVE RESTORATION

The Service will consider restoring annual leave that was lost because of:

1. Administrative error – [5 CFR 630.306\(a\)\(1\)](#)
2. Exigency of the public business – 5 CFR 630.306(a)(2)
3. Sickness of the employee – 5 CFR 630.306(a)(3)

Only leave that was requested and approved before the start of the third biweekly pay period prior to the end of the leave year is eligible for restoration.

Supervisors canceling approved leave must ensure that canceling the leave does not cause an employee to permanently lose annual leave. Supervisors must ensure that the leave can be rescheduled or that the supervising Directorate member has approved the exigency of the public business.

If an employee would lose annual leave because of jury duty, the agency cannot remove or reduce the annual leave because the situation is the result of the employee fulfilling their civic duty. See [5 U.S.C. 6322](#).

Each year JAO Compensation issues leave restoration instructions to all employees.

### ADVANCED ANNUAL LEAVE

Typically, supervisors only grant annual leave to an employee after the employee has accrued the leave. However, they may consider granting requests for advanced annual leave when:

- The employee is eligible to earn annual leave;
- The request does not exceed the amount of annual leave the employee would earn during the rest of the leave year or the rest of their appointment, whichever is shorter; and

- There is reasonable assurance that the employee will return to duty and is not contemplating a resignation or retirement.

Advanced annual leave is not an employee entitlement. If an employee is indebted for advanced annual leave and separates, for a reason other than death or the result of a disability, they must repay the agency.

New employees transferring from another Federal agency may experience a long delay in receiving credit for their leave. This is because their prior agency has not certified their leave balances in a prompt manner. In such situations, supervisors can consider advancing leave to the employee.

#### **PROHIBITION ON TERMINAL LEAVE (LUMP SUM PAYMENT)**

In most circumstances, a supervisor must not approve annual leave on a separating employee's last day of employment. (See Comptroller General of the United States [decision B-46683](#), "...terminal annual or vacation leave may not be granted immediately prior to separation from the service in any case where it is known in advance that the employee is to be separated from the service.")

An employee will receive a lump sum payment for any unused annual leave when they separate from Federal service or when they enter on active duty in the Armed Forces if they choose to do so.

Direct questions on lump sum payments or terminal leave to the JAO Compensation team.

## CHAPTER 4, SICK LEAVE

Sick leave is a period of approved absence with pay from official duties. Employees earn and use sick leave based on the leave year, as defined in [5 CFR 630.201](#). Most employees earn 4 hours of sick leave each pay period, regardless of years of service. Part-time employees earn 1 hour for each 20 hours in a pay status. For employees on an uncommon tour of duty, the accrual will be prorated based on the number of hours in the employee's biweekly tour of duty.

Employees may only use sick leave for those circumstances specified in law and regulation. Those circumstances are:

**PERSONAL MEDICAL NEEDS:** An employee is entitled to use sick leave when the employee:

- Is incapacitated for the performance of duties by physical or mental illness, injury, pregnancy, or childbirth;
- Receives a medical, dental, or optical examination or treatment; or
- Would, as determined by the health authorities or a healthcare provider, jeopardize the health of others by their presence on the job because of exposure to a communicable disease.

**ADOPTION-RELATED PURPOSES:** An employee may use sick leave for any activity necessary for an adoption to proceed:

- Sick leave may not be used to bond with or care for a healthy adopted child.
- Sick leave may be used if a court or the adoption agency requires the parent to bond with a healthy child.

**FAMILY CARE OR BEREAVEMENT:** An employees may use up to 13 days of sick leave each leave year to:

- Provide care for a family member incapacitated as a result of physical or mental illness, injury, pregnancy, or childbirth (see definition of "[family member](#)" below);
- Provide care for a family member receiving a medical, dental, or optical examination or treatment;
- Make arrangements for or attend the funeral of a family member; or
- Provide care for a family member who would, as determined by the health authorities or by a health care provider, jeopardize the health of others because of exposure to a communicable disease.

*Note:* 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 prorated in proportion to the average number of hours of work in the employee's scheduled tour of duty each week. (See [5 CFR 630.401](#).)

*Note:* [Also see the section on Parental Bereavement Leave.](#)

**CARE OF A FAMILY MEMBER WITH A SERIOUS HEALTH CONDITION:** An employee may use up to 12 administrative workweeks (480 hours) per leave year to care for such a family member, but they must subtract any days they already used for general family care and bereavement.

*Note: Serious health condition has the same meaning as used in the FMLA. (see: Chapter 5 [DEFINITIONS RELATED TO MEDICAL PROVIDERS AND SERIOUS HEALTH CONDITION](#))*

Inappropriate use of sick leave may result in disciplinary actions up to and including removal.

## GENERAL SICK LEAVE INFORMATION

Employees request sick leave under established office leave procedures. In most circumstances, Service managers must grant an employee's request for sick leave when the employee has followed proper procedures and supplies acceptable evidence. In situations when it is not medically necessary to take leave at the day and time of the employee's choosing, the supervisor may, in consideration of the organization's staffing needs, deny the request for sick leave and offer an alternative. (Contact JAO Employee - Management Relations).

## SICK LEAVE DEFINITION OF FAMILY MEMBER ([5 CFR 630.201](#))

The sick leave regulations have specified what we consider a family member, and this definition differs from the definition of "family member" in the FMLA, as explained in a later chapter.

For using your accrued sick leave, a family member means an individual with any of the following relationships to the employee:

- Spouse/domestic partner, and parents thereof
- Sons and daughters, and spouse/domestic partners thereof
- Parents, and spouse/domestic partners thereof
- Brothers and sisters, and spouse/domestic partners thereof
- Grandparents and grandchildren, and spouse/domestic partners thereof
- Any individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship

In most circumstances if a supervisor receives a statement asserting the requisite family relationship on a leave request form or through any other acceptable means, the supervisor should consider the statement sufficient documentation.

## ACCEPTABLE MEDICAL EVIDENCE ([5 CFR 630.405](#))

Employees must supply evidence as required by their supervisor to support approvals of sick leave. The type of evidence may vary depending on the circumstances.

Supervisors may accept an employee's self-certification, which is simply that the employee completed a leave request for an absence, regardless of duration.

Supervisors may consider requiring a medical certificate or other administratively acceptable evidence as to the reason for an absence for periods shorter than 3 workdays.

Human Capital recommends that supervisors request medical certificate or other administratively acceptable evidence for an absence in excess of 3 workdays.

We define sufficient medical documentation as that which is signed by the employee's health care provider and is sufficiently specific for the supervisor to make a reasonable decision that the employee



was incapacitated in performing the duties of their position. The medical documentation should have the following information:

- Your name as the individual seeking medical care.
- The specific medical condition(s) and the predicted duration of those conditions and how they affect your performance of duties.

The medical documentation should be on letterhead stationery and include the medical practitioner's typed printed name, title, signature, address, telephone number, date(s) of office visit(s), and date of certificate.

Evaluating employee medical documentation is different depending on the facts specific to the situation. An evaluation may find conclusory statements, such as "Jon cannot work for the next week," insufficient because it doesn't include enough evidentiary support to make that determination.

Possible, more helpful statements include:

- Jon is bedridden because of a high fever and cannot work for the next week.
- Jon has a sprained ankle and because of a restriction on weight bearing activities, he cannot perform backcountry patrols for the next week.

A supervisor may also request a statement from a health care provider to support an employee's use of sick leave to care for a family member and that certifies that:

- The family member requires psychological comfort and/or physical care,
- The family member would benefit from the employee's care or presence, and
- The employee is needed to care for the family member for a specified period of time.

#### DEADLINES TO PROVIDE MEDICAL DOCUMENTATION

When a supervisor makes a request for evidence, an employee must supply required evidence within 15 days of the request. If it is not practical to supply the requested information within 15 calendar days, despite the employee's diligent, good faith efforts, the employee must supply the information within a reasonable period of time under the circumstances, but no later than 30 calendar days after the request. An employee who does not supply the required evidence within the specified timeframe is not entitled to sick leave. (See [5 CFR 630.405\(b\)](#).)

#### ADVANCED SICK LEAVE

A supervisor may advance sick leave to an employee. The amount of sick leave that may be advanced depends on the circumstances.

A supervisor may advance up to 240 hours (30 days) of sick leave to a full-time employee:

- Who is incapacitated in performing their duties by physical or mental illness, injury, pregnancy, or childbirth;
- For a serious health condition of the employee or a family member;
- When the employee would, as determined by the health authorities having jurisdiction or by a health care provider, jeopardize the health of others by their presence on the job because of exposure to a communicable disease;
- For purposes relating to the adoption of a child; or

- For the care of a covered member of the armed services with a serious injury or illness, provided the employee is exercising their entitlement to FMLA leave to care for a covered service member.

A supervisor may advance up to 104 hours (13 days) of sick leave to a full-time employee:

- When an employee receives a medical, dental, or optical examination or treatment;
- To provide care for a family member who is incapacitated by a medical or mental condition or to attend to a family member receiving a medical, dental, or optical examination or treatment;
- To provide care for a family member who would, as determined by the health authorities having jurisdiction or by a health care provider, jeopardize the health of others by that family member's presence in the community because of exposure to a communicable disease; or
- To make necessary arrangements after the death of a family member or to attend the funeral of a family member.

For a part-time employee or an employee on an uncommon tour of duty, we must prorate the maximum amount of advanced sick leave according to the number of hours in the employee's regularly scheduled administrative workweek (see [5 CFR 630.401](#)). Before granting advanced sick leave, we recommend that the supervisor contact JAO Compensation.

## CHAPTER 5, FAMILY AND MEDICAL LEAVE ACT

### GENERAL INFORMATION

The Family and Medical Leave Act (FMLA) of 1993 provides eligible employees with job protection as unpaid leave for qualified medical and family reasons.

It is important for you to know that FMLA rules applicable to private sector employees may not apply to you. The law is codified in two separate titles of the U.S. Code and two very similar, but different, regulations.

Employees are eligible under Title II of FMLA if they have completed at least 12 months of service, have a full- or a part-time work schedule, and have an appointment for a year or longer. Employees may meet the 12 months of service at any time in their past service history and with virtually any type of Federal service. OPM has issued implementing regulations for Title II at [5 CFR 630.1201](#).

Temporary employees, with appointments for 1 year or less, or employees who have not completed 12 months of Federal Government service may be eligible under Title I. The Department of Labor has issued implementing regulations for Title I at [29 CFR 825](#).

One key difference is that under Title II you must invoke FMLA, and we do not designate time as FMLA leave. Thus, unlike many employees of private sector companies, you may be eligible for or entitled to other types of leave to cover an absence.

An employee may take only the amount of FMLA leave required by the circumstances. We may not place employees on FMLA leave if they do not request it.

### ENTITLEMENTS

An eligible employee is entitled to a total of 12 administrative workweeks of unpaid leave during any 12-month period for one or more of the following reasons:

- 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, if such spouse, son, daughter, or parent has a serious health condition; or
- A serious health condition of the employee that makes the employee unable to perform any one or more of the essential functions of their position.

An employee may choose to substitute paid leave for all or part of the FMLA LWOP consistent with current laws and OPM regulations. If an employee invokes FMLA and uses sick leave to care for a family member, the employee must follow sick leave regulations.

### DEFINITION OF KEY TERMS AFFECTING ELIGIBILITY

The FMLA specifies the individuals for whom an employee can provide care, and the FMLA has specific definitions. The following definitions are found in Federal regulations, and citations for those regulations are included for each term. We also recognize that some of these terms are antiquated; however, we wanted you to see the regulatory text. We offer a word of advice: a thorough understanding of these terms may require a broad understanding of the regulations. For example, reading the definition of 'son' or 'daughter' without reading the definition of 'parent,' may lead to confusion as to how a

circumstance can exist that allows a grandparent, a sibling, or an individual with no legal or blood relationship to invoke the FMLA rights of a parent.

#### DEFINITIONS RELATED TO FAMILY MEMBERS

**Parent\*** ([5 CFR 630.1202](#)) “means a biological, adoptive, step, or foster father or mother, or any individual who stands or stood in loco parentis to an employee meeting the definition of son or daughter below. This term does not include parents “in law.””

**In loco parentis\*** ([5 CFR 630.1202](#)) “refers to the situation of an individual who has day-to-day responsibility for the care and financial support of a child or, in the case of an employee, who had such responsibility for the employee when the employee was a child. A biological or legal relationship is not necessary.”

*\*Note:* the FMLA rights of a parent are based on the definition of parent and not the definition of spouse. [OPM Memorandum CPM 2010-15](#), dated August 31, 2010, adopted the Department of Labor (DOL) interpretation of an in loco parentis relationship:

“It should be noted that the fact that a child has a biological parent in the home, or has both a mother and a father, does not prevent a finding that the child is the “son or daughter” of an employee who lacks a biological or legal relationship with the child for purposes of taking FMLA leave.” ([DOL Administrator's Interpretation No. 2010-3](#))

**Son or daughter** ([5 CFR 630.1202](#)) “means a biological, adopted, or foster child; a step child; a legal ward; or a child of a person standing in loco parentis who is -

(1) Under 18 years of age; or

(2) 18 years of age or older and incapable of self-care because of a mental or physical disability. A son or daughter incapable of self-care requires active assistance or supervision to provide daily self-care in three or more of the “activities of daily living” (ADL's) or “instrumental activities of daily living” (IADL's). Activities of daily living include adaptive activities such as caring appropriately for one's grooming and hygiene, bathing, dressing, and eating. Instrumental activities of daily living include cooking, cleaning, shopping, taking public transportation, paying bills, maintaining a residence, using the telephones and directories, using a post office, etc. A “physical or mental disability” refers to a physical or mental impairment that substantially limits one or more of the major life activities of an individual as defined in 29 CFR 1630.2([h](#)), ([i](#)) and ([j](#)).”

**Son or daughter on covered active duty or called to covered active-duty status** ([5 CFR 630.1202](#)) “means the employee's biological, adopted, or foster child, stepchild, legal ward, or a child for whom the employee stood in loco parentis, who is on covered active duty or call to covered active duty status, and who is of any age.”

**Spouse\*** ([5 CFR 630.1201](#)), [*Under FMLA, a “spouse” means a husband or wife, including those in same-sex marriages, which were made legal in all 50 United States as of June 26, 2015, Obergefell v. Hodges. With respect to FMLA rights of spouses, those rights are not afforded to individuals who are not married (e.g., civil union, domestic partners, living together)*]. The term “as defined in the statute, means a husband or wife. For purposes of this definition, husband or

wife refers to the other person with whom an individual entered into marriage as defined or recognized under State law for purposes of marriage in the State where the marriage was entered into or, in the case of a marriage entered into outside of any State, if the marriage is valid in the place where entered into and could have been entered into in at least one State. This definition includes an individual in a same-sex or common law marriage that either:

- (1) Was entered into in a State that recognizes such marriages, or
- (2) If entered into outside of any State, is valid in the place where entered into and could have been entered into in at least one State.”

Human Capital advises supervisors that in most circumstances asserting the requisite family relationship on a leave request form or through any other acceptable means is adequate documentation.

#### DEFINITIONS RELATED TO BIRTH OR PLACEMENT

**Adoption\*** ([5 CFR 630.1202](#)) “refers to a legal process in which an individual becomes the legal parent of another's child. The source of an adopted child—e.g., whether from a licensed placement agency or otherwise—is not a factor in determining eligibility for leave [*under FMLA*].”

**Birth** ([5 CFR 630.1202](#)) “means the delivery of a living child. When the term “birth” is used in connection with the use of leave [*under FMLA*], it refers to an anticipated birth.”

**Foster care\*** ([5 CFR 630.1202](#)) “means 24-hour care for children in substitution for, and away from, their parents or guardian. Such placement is made by or with the agreement of the State as a result of a voluntary agreement by the parent or guardian that the child be removed from the home, or pursuant to a judicial determination foster care is necessary, and that involves agreement between the State and foster family to take the child. Although foster care may be with relatives of the child, State action is involved in the removal of the child from parental custody.”

**\*Note:** You may take FMLA leave before the actual placement or adoption of a child if an absence from work is required for the placement for adoption or foster care to proceed.

#### DEFINITIONS RELATED TO MILITARY SERVICE

Employees may invoke FMLA to take care of a member of the Armed Forces (including a member of the National Guard or Reserves) who has sustained a serious injury or illness that was incurred by the member in the line of duty while on active duty and that may render the member medically unfit to perform the duties of their office, grade, rank, or rating. This rule also applies for injuries or illnesses that existed before the beginning of the member’s active duty, but that were aggravated by service in the line of duty while on active duty in the Armed Forces.

Employees may also invoke FMLA to take care of a veteran who was a member of the Armed Forces (including a member of the National Guard or Reserves) at any time during the period 5 years preceding the date on which the veteran undergoes medical treatment, recuperation, or therapy for a serious injury or illness as we describe in the paragraph above. This rule also applies for injuries or illnesses that

existed before the beginning of the member's active duty, but that were aggravated by service in line of duty while on active duty.

An employee who is the spouse, son, daughter, parent, or next of kin of a member of the Armed Forces may receive FMLA entitlements. Employees taking care of a service member or a veteran who incurred a serious illness or injury in the line of duty while on active duty in the Armed Forces may receive up to 26 weeks of FMLA during a single 12-month period to care for the service member.

If the employee invokes regular FMLA, the regular FMLA will be subtracted from the Military Family Leave Entitlements.

Employees who have a spouse, son, daughter, or parent on covered active duty (or have been notified of an impending call or order to covered active duty) may receive up to 12 administrative workweeks of unpaid FMLA leave during any 12-month period for any of the exigencies outlined in [5 CFR 630.1204](#), qualifying exigency leave.

**Covered active duty or call to covered active-duty status** ([5 CFR 630.1202](#)) "means:

- (1) In the case of a member of a regular component of the Armed Forces, duty during the deployment of the member with the Armed Forces to a foreign country under a call or order to active duty (or notification of an impending call or order to active duty); and
- (2) In the case of a member of a reserve component of the Armed Forces, duty during the deployment of the member with the Armed Forces to a foreign country under a call or order to active duty (or notification of an impending call or order to active duty) in support of a contingency operation under any of the following sections of Title 10, United States Code, or any other provision of law during a war or during a national emergency declared by the President or Congress:
  - (i) Section 688, which authorizes ordering to active duty retired members of the regular Armed Forces and members of the retired reserve retired after 20 years, and members of the Fleet Reserve or Fleet Marine Corps Reserve;
  - (ii) Section 12301(a), which authorizes ordering all reserve component members to active duty in the case of war or national emergency declared by Congress, or when otherwise authorized by law;
  - (iii) Section 12302, which authorizes ordering any unit or unassigned member of the Ready Reserve to active duty in time of national emergency declared by the President after January 1, 1953, or when otherwise authorized by law;
  - (iv) Section 12304, which authorizes ordering any unit or unassigned member of the Selected Reserve and certain members of the Individual Ready Reserve to active duty;
  - (v) Section 12305, which authorizes the suspension of promotion, retirement, or separation rules for certain reserve components;
  - (vi) Section 12406, which authorizes calling the National Guard into Federal service in certain circumstances; or

(vii) Chapter 15, which authorizes calling the National Guard and State militia into Federal service in the case of insurrections and national emergencies.”

**Covered military member** ([5 CFR 630.1202](#)) “means the employee's spouse, son, daughter, or parent on covered active duty or call to covered active-duty status.”

#### DEFINITIONS RELATED TO MEDICAL PROVIDERS AND SERIOUS HEALTH CONDITION

**Health care provider** ([5 CFR 630.1202](#)). The verbatim definition can be found below. For simplicity, a health care provider can be a variety of individuals—a licensed or certified health care provider, a traditional Native healing practitioner, a Doctor of Medicine, or a Christian Science practitioner.

“(1) A licensed Doctor of Medicine or Doctor of Osteopathy or a physician who is serving on active duty in the uniformed services and is designated by the uniformed service to conduct examinations under [the FMLA];

(2) Any health care provider recognized by the Federal Employees Health Benefits Program or who is licensed or certified under Federal or State law to provide the service in question;

(3) A health care provider as defined in paragraph (2) of this definition who practices in a country other than the United States, who is authorized to practice in accordance with the laws of that country, and who is performing within the scope of his or her practice as defined under such law;

(4) A Christian Science practitioner listed with the First Church of Christ, Scientist, in Boston, Massachusetts; or

(5) A Native American, including an Eskimo, Aleut, and Native Hawaiian, who is recognized as a traditional healing practitioner by native traditional religious leaders who practices traditional healing methods as believed, expressed, and exercised in Indian religions of the American Indian, Eskimo, Aleut, and Native Hawaiians, consistent with Public Law 95-314, August 11, 1978 (92 Stat. 469), as amended by Public Law 103-344, October 6, 1994 (108 Stat. 3125).”

**Serious health condition** ([5 CFR 630.1202](#)). The verbatim definition can be found below. For simplicity, a serious health condition is a condition that makes the employee unable to perform one or more of the essential functions of their position. That definition includes such conditions as cancer, heart attacks, strokes, severe injuries, Alzheimer's disease, pregnancy, and childbirth. However, the term serious health condition is not intended to cover short-term conditions for which treatment and recovery are very brief. This definition of a serious health condition applies to both the use of accrued sick leave (see [Chapter 4, Sick Leave](#)) and FMLA.

“(1) Serious health condition means an illness, injury, impairment, or physical or mental condition that involves -

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

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

(A) A period of incapacity of more than 3 consecutive calendar days, including any subsequent treatment or period of incapacity relating to the same condition, that also involves -

(1) Treatment two or more times by a health care provider, by a health care provider under the direct supervision of the affected individual's health care provider, or by a provider of health care services under orders of, or on referral by, a health care provider; or

(2) Treatment by a health care provider on at least one occasion which results in a regimen of continuing treatment under the supervision of the health care provider (e.g., a course of prescription medication or therapy requiring special equipment to resolve or alleviate the health condition).

(B) Any period of incapacity due to pregnancy or childbirth, or for prenatal care, even if the affected individual does not receive active treatment from a health care provider during the period of incapacity or the period of incapacity does not last more than 3 consecutive calendar days.

(C) Any period of incapacity or treatment for such incapacity due to a chronic serious health condition that -

(1) Requires periodic visits for treatment by a health care provider or by a health care provider under the direct supervision of the affected individual's health care provider,

(2) Continues over an extended period of time (including recurring episodes of a single underlying condition), and

(3) May cause episodic rather than a continuing period of incapacity (e.g., asthma, diabetes, epilepsy, etc.). The condition is covered even if the affected individual does not receive active treatment from a health care provider during the period of incapacity or the period of incapacity does not last more than 3 consecutive calendar days.

(D) A period of incapacity which is permanent or long-term due to a condition for which treatment may not be effective. The affected individual must be under the continuing



supervision of, but need not be receiving active treatment by, a health care provider (e.g., Alzheimer's, severe stroke, or terminal stages of a disease).

(E) Any period of absence to receive multiple treatments (including any period of recovery) by a health care provider or by a provider of health care services under orders of, or on referral by, a health care provider, either for restorative surgery after an accident or other injury or for a condition that would likely result in a period of incapacity or more than 3 consecutive calendar days in the absence of medical intervention or treatment (e.g., chemotherapy/radiation for cancer, physical therapy for severe arthritis, dialysis for kidney disease).

(2) (Serious health condition does not include routine physical, eye, or dental examinations; a regimen of continuing treatment that includes the taking of over-the-counter medications, bed-rest, exercise, and other similar activities that can be initiated without a visit to the health care provider; a condition for which cosmetic treatments are administered, unless inpatient hospital care is required or unless complications develop; or an absence because of an employee's use of an illegal substance, unless the employee is receiving treatment for substance abuse by a health care provider or by a provider of health care services on referral by a health care provider. Ordinarily, unless complications arise, the common cold, the flu, earaches, upset stomach, minor ulcers, headaches (other than migraines), routine dental or orthodontia problems, and periodontal disease are not serious health conditions. Allergies, restorative dental or plastic surgery after an injury, removal of cancerous growth, or mental illness resulting from stress may be serious health conditions only if such conditions require inpatient care or continuing treatment by a health care provider.)"

## MEDICAL CERTIFICATION

Under [5 CFR 630.1208\(a\)](#), a supervisor may require that a request for leave under the FMLA be supported by written medical certification issued by the health care provider. [5 CFR 630.1208\(b\)](#) lays out the required contents of that medical certification, and while FMLA does not require any form or format, the optional use forms developed by the Department of Labor may make it easier for you and your health care provider to conform with the requirements of the FMLA. Following are links to the optional use forms:

- [FMLA Certification of Health Care Provider for Employee's Serious Health Condition \(WH-380-E\)](#)
- [FMLA Certification of Health Care Provider for Family Member's Serious Health Condition \(Form Number \(WH-380-F\)](#)

### Certification of Military Family Leave

- [FMLA Certification for Military Family Leave for Qualifying Exigency \(Form Number –\(WH-384\)](#)
- [FMLA Certification for Serious Injury or Illness of Current Servicemember for Military Family Leave \(WH-385\)](#)
- [FMLA Certification for Serious Injury or Illness of a Veteran for Military Caregiver Leave \(WH-385V\)](#)

Under [5 CFR 630.1207](#), employees must provide notice of an intention to use FMLA leave that is appropriate to the situation.

- If the need is foreseeable, the notice of leave must be at least 30 calendar days.
- If the need is unforeseeable, the notice of leave should be made within a reasonable period of time appropriate to the circumstances.
- If necessary, notice may be given by an employee's personal representative.

The supervisor, in consultation with the JAO Compensation team, may waive the requirement to provide notice of an intention to use FMLA, and instead impose the usual and customary policies or procedures for providing notification of leave.

Generally, an employee may not retroactively invoke their entitlement to FMLA leave for an earlier absence from work. However, under [5 CFR 630.1207\(d\)](#), if the need for leave is not foreseeable and the employee is unable, due to circumstances beyond their control, to supply notice of their need for leave, the employee may retroactively invoke their entitlement to FMLA leave.

For birth or adoption/foster care, both the agency and the employee must agree before employees may use FMLA leave on an intermittent or reduced schedule basis. When medically necessary, employees may use FMLA leave on an intermittent or reduced schedule basis.

## SUBSTITUTION OF UNPAID LEAVE

FMLA is an unpaid leave category that defaults as leave without pay. There is no requirement to exhaust other types of paid leave. An employee may choose to substitute paid leave for unpaid leave, for example, they may use:

- Paid parental leave
- Sick leave
- Annual leave
- Voluntary leave transfer program
- Advanced leave

## Key Reminders:

- It is critical that supervisors ensure the correct accounting of hours. Starting the counting for the 12-month eligibility period and determining when a new period begins is based on the coding on the timecard, not dates on documents submitted in connection with an FMLA request or medical certification.
- FMLA is a type of leave, and, like all leave, we must correctly enter corresponding pay codes on a timecard. There is a wide assortment of leave codes that correspond to the various FMLA substitution scenarios and circumstances.
- When an employee uses FMLA intermittently or related to a chronic condition, the employee may need to take leave for situations unrelated to the condition(s) for which they invoked FMLA. We may not code this time as FMLA leave.

## PAID PARENTAL LEAVE

The Federal Employees Paid Leave Act supplies qualifying Federal employees with up to 12 weeks of paid parental leave that they may use to substitute for the unpaid leave provided for under FMLA following the qualifying birth or placement of a child.

To be eligible for paid parental leave, a Federal employee must be eligible for FMLA leave and meet FMLA eligibility requirements.

FMLA eligibility requirements:

Employees are eligible under Title II of FMLA if they have completed at least 12 months of service, have a full- or part-time work schedule, and have an appointment of a year or longer. Employees may meet the 12 months of service at any time in their past service history and with virtually any type of Federal service.

Eligible for FMLA leave:

- FMLA leave is statutorily limited to a maximum of 12 weeks. If you previously invoked FMLA within the preceding 12 months, then you may not be immediately eligible to take FMLA leave.

Paid parental leave is limited to a maximum of 12 workweeks during a 12-month period (as is FMLA leave). Paid parental leave is available for substitution of FMLA unpaid leave during the 12-month period beginning on the date of the birth or placement involved.

*Note:* An employee may be ineligible for FMLA leave at the time of a qualifying birth or placement but establish FMLA leave eligibility during the 12-month period.

Within these 12 workweeks, paid parental leave is available as long as an employee has a continuing parental role with the child whose birth or placement was the basis for the leave entitlement. However, the use of paid parental leave is reserved for periods when an employee is acting in a parental role and engaged in activities directly related to the care of the child whose birth or placement triggered the leave entitlement.

For example, if an employee leaves town for a week to visit an amusement park without the child whose birth or placement was the basis of paid parental leave, they are ineligible to use paid parental leave that week because they are not engaged in activities directly related to the care of the child. The employee can use annual leave. The employee can bring the child with them to the amusement park and use paid parental leave.

An employee may not use any paid parental leave unless the employee agrees in writing, before the leave begins, to subsequently work for the Federal Government for at least 12 weeks. This 12-week work obligation begins on the employee's first scheduled workday after such paid parental leave concludes. Failure to complete the 12-week work obligation may result in an employee being required to reimburse the Government an amount equal to the total amount the agency paid to keep the employee's health insurance coverage under the Federal Employees Health Benefits program during the period that paid parental leave was used.

To use paid parental leave, an employee notifies their supervisor of the intent to invoke FMLA, completes a work obligation agreement (12 weeks), and completes the paid parental leave form.

Paid parental leave may be taken after the birth or placement, at which time proper documentation should be provided to the supervisor. Documentation must show that the employee's use of paid parental leave is directly connected to a birth or placement that has occurred.

Examples of documentation are supplied below.

For paid parental leave due to childbirth, employees may provide one of the following documents	For paid parental leave due to adoption, employees may provide one of the following documents:	For paid parental leave due to foster care, employees may provide one of the following documents:
<ul style="list-style-type: none"> <li>• Birth certificate</li> <li>• Document naming employee as second parent, such as declaration of paternity or court order of filiation</li> <li>• Appropriate court documents</li> <li>• Consular report of birth abroad</li> <li>• Documentation provided by the child's healthcare provider</li> <li>• Hospital admission form associated with the delivery</li> </ul>	<ul style="list-style-type: none"> <li>• Documentation provided by the adoption agency confirming the placement and date of placement</li> <li>• Letter signed by the parent's/parents' attorney confirming the placement and date of placement</li> <li>• Immigrant visa for the child issued by U.S. Citizenship and Immigration Services</li> <li>• Adoptive placement agreement</li> <li>• Independent adoption placement agreement</li> </ul>	<ul style="list-style-type: none"> <li>• Foster care placement record</li> <li>• Other documentation from the foster care agency confirming the placement and date of placement</li> <li>• Foster care placement letter issued by the relevant local Department of Social Services or authorized voluntary foster care agency</li> </ul>

Supervisors may grant provisional FMLA leave pending receipt of the requested documentation. If a request is made for documentation, the employee has 15 days to provide the documentation, but if it is not practicable for an employee to respond within the 15-day time frame, despite their diligent, good faith efforts, the employee must provide the documentation no later than 30 calendar days after the date of the supervisor's original request.

Per [PB 20-13, Paid Parental Leave](#), Human Resources must receive a copy of the employment agreement, so supervisors or employees should send such agreements to the JAO using [mySupport](#).

For more information see the Departmental policy in the PB above.

## CHAPTER 6, LEAVE TRANSFER PROGRAMS

### VOLUNTARY LEAVE TRANSFER PROGRAM

Under the Voluntary Leave Transfer Program (VLTP), employees may transfer accrued annual leave to employees who are facing a personal or family medical emergency and who need leave. The transferred annual leave is substituted for the leave share recipient's approved leave (e.g., LWOP under FMLA or LWOP in lieu of sick leave).

A medical emergency means a medical condition of an employee or a family member that is likely to require an employee's absence from duty for a prolonged period (24 hours for full-time employees) and is likely to result in a substantial loss of income to the employee because of the unavailability of paid leave. (Absence from duty caused by pregnancy and childbirth is an acceptable reason for requesting use of the VLTP.)

To be eligible, the recipient must not have any annual leave, restored annual leave, or sick leave. An employee may only use 480 hours in a leave year to care for a family member with a serious health condition; an employee will no longer have available leave once they met the applicable limits found in [5 CFR 630.401](#).

An employee does not have to invoke FMLA to sign up for the leave share program, and the programs can also be used together.

The underlining leave for all leave VLTP program participants is approved by the supervisor. Supervisors are also responsible for requesting updated medical information, as necessary.

JAO Compensation administers the program, approves applications, and provides oversight and donor case management.

A list of all current VLTP program participants is located on the JAO SharePoint site at <https://doimspp.sharepoint.com/sites/fws-FF10G224CB/SitePages/Voluntary-Leave-Transfer-Program-Donate.aspx>

### BECOMING A RECIPIENT

An employee affected by a medical or family medical emergency must apply in writing to become a leave recipient. If an employee cannot apply on their own behalf, an employee's representative or a family member may apply on their behalf. The request must have a statement of the reasons the employee cannot make the request themselves.

Thus, each application for VLTP is initially given to the immediate supervisor of the potential leave recipient for consideration, which includes approval of employee leave.

The application includes:

- A complete [application form \(OPM-630\)](#).
- Copies of approved request for leave or approved absence or other written approval of absence by the supervisor or other official who has authority to approve leave for the applicant.
- Administratively acceptable medical documentation from a physician or other appropriate expert (e.g., Christian Science Practitioner, chiropractor, psychologist, etc.) and any additional information, as appropriate, that shows the nature, severity, and duration of the medical or family medical emergency.

*Note:* If the employee is invoking or has invoked their entitlement to FMLA, the WH-380-E and WH-380-F forms may be accepted as the medical documentation.

If the supervisor approves the application, the application must then be sent through [mySupport](#) to the JAO Compensation team. The JAO Compensation team must notify the leave recipient or whoever applied on behalf of the potential leave recipient within 10 workdays after the date they received the application to let them know if the application was approved. If they do not approve the application, the JAO Compensation team will provide the reasons it wasn't approved.

The availability of paid leave depends on leave donations. Leave donations are not guaranteed.

To correctly track employee entitlements to various programs, proper time and attendance coding is critical. VLTP may only be used for the absences associated with the approved medical emergency.

#### VETERAN PARTICIPATION

Veterans who sustained a combat-related disability while serving in the Armed Forces (including the reserves or National Guard) may participate in the VLTP without exhausting their available paid leave. The employee must be going through medical treatment for the combat-related disability to be eligible.

#### APPLICATION TO BECOME A LEAVE DONOR

A prospective leave donor must send a completed VLTP Leave Donor Application, OPM 630A if the leave donor is a Departmental employee, and OPM 630B if the donor is outside the Department, to the applicant's leave coordinator. The appropriate link is found in the memorandum advertising the need for leave donations.

JAO Compensation reviews the application and ensures that the employee has sufficient leave to make the donation; that all limitations have been observed; and that the application has been completed, signed, and dated.

Donated leave that is unused will be returned to the leave donor.

#### ADDITIONAL INFORMATION

See Chapter 10 of the [Departmental Absence and Leave Handbook, 2012](#), for more information, including applicant and supervisor responsibilities, the limitations on donations of annual leave, and the procedures for termination of enrollment.

#### EMERGENCY LEAVE TRANSFER PROGRAM

The Emergency Leave Transfer Program (ELTP) helps employees affected by natural disasters who need more time off from work without having to use their own paid leave.

In case of a major disaster or emergency as declared by the President that results in severe adverse effects for a substantial number of employees, the President may direct OPM to set up an emergency leave transfer program. When such a program is established, the Department or the Service will send out an all-employee email with specific information.

#### LEAVE BANK PROGRAM

A voluntary leave bank is a program under which an employee may contribute unused accrued annual leave for use by a leave bank member who is experiencing a personal or family medical emergency and has exhausted their available paid leave.

Please contact the JAO Compensation team for more information.

## **CHAPTER 7, OTHER PAID LEAVE (5 U.S.C CHAPTER 63 SUBCHAPTER II)**

The Federal Government provides various independent leave entitlements and programs.

### **HOME LEAVE ([5 U.S.C. 6305](#))**

This is an independent leave entitlement that is separate from any accrued leave. Home leave is a period of approved absence with pay authorized by 5 U.S.C. 6305 for employees stationed abroad. Home leave is for use in the United States, or if the employee's place of residence is outside the area of employment, in the Commonwealth of Puerto Rico or the territories or possessions of the United States. (See 5 U.S.C. 6305 and the [T&A Guide](#).)

### **SHORE LEAVE ([5 U.S.C. 6305](#))**

This is an independent leave entitlement that is separate from any accrued leave. Shore leave is a period of approved absence with pay authorized for employees who must regularly serve aboard an oceangoing vessel on an extended voyage. An employee is regularly assigned when their continuing duties are such that all or a significant part of them require that they serve aboard an oceangoing vessel. Temporary assignments of a shore-based employee do not constitute a regular assignment. (See 5 U.S.C. 6305 and the [T&A Guide](#).)

### **LEAVE RELATED TO EMPLOYEES' MILITARY SERVICE ([5 U.S.C. 6323](#))**

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. Any full-time Federal civilian employee whose appointment we do not limit to 1 year is entitled to military leave. Military leave under 5 U.S.C. 6323(a) is prorated for part-time career employees.

The four independent leave entitlements are:

- 5 U.S.C. 6323(a) provides 15 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.
- 5 U.S.C. 6323(b) provides 22 workdays per calendar year for emergency duty as ordered by the President, the Secretary of Defense, 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 or who perform full-time military service as a result of a call or order to active duty in support of a contingency operation as defined in section 101(a)(13) of Title 10, United States Code.
- 5 U.S.C. 6323(c) provides unlimited military leave to any civilian employee or individual employed by the government of the District of Columbia, who is a member of the National Guard of the District of Columbia. Such employees are entitled to leave without loss in pay or time for each day of a parade or encampment ordered or authorized under title 39, 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.

To support the use of these leave entitlements, employees must give to their supervisor a copy of their military orders or a statement from their commanding officer. We recommend that supervisors contact the JAO Compensation team whenever an employee requests leave related to their military service and inquire if a reservist differential is applicable in the situation.



### **MILITARY FUNERAL LEAVE ([5 U.S.C. 6321](#))**

An employee may receive up to 3 days of leave to attend the military funeral or memorial service of an immediate relative who died as a result of wounds, disease, or injury incurred while serving as a member of the Armed Forces in a combat zone. The 3 days need not be consecutive, but if they are not, the employee must give their supervisor a satisfactory reason justifying a grant of military funeral leave for nonconsecutive days.

Immediate relative means the following relatives of the deceased member of the Armed Forces:

- Spouse, and parents thereof;
- Children, including adopted children, and spouses thereof;
- Parents;
- Siblings, and spouses thereof; and
- Any individual related by blood or affinity whose close association with the deceased was such as to have been the equivalent of a family relationship.

### **COURT LEAVE ([5 U.S.C. 6322](#))**

This is an independent leave entitlement that is separate from any accrued leave. When an employee is under a proper summons in connection with a judicial proceeding to serve as a juror or as a witness on behalf of the Federal, a State, or a local government, the employee is entitled to paid time off without charge to leave. An employee's entitlement is for the entire period they are under a proper summons. During that time their primary responsibility is to the court.

Employees inform their supervisor if the court excuses them from jury or witness service for 1 day or more or for a substantial part of a day. When released by the court, the agency will decide if returning the employee to work would present an employee hardship. If it does not, supervisors may instruct employees to return to work or take leave. An employee should expect to return to duty if dismissed early enough to return with 2 hours or more left of their scheduled workday.

In the case of a hardship, the supervisor may allow the employee to continue the court leave.

An employee who is serving as a witness in an official capacity on behalf of the Federal Government is on official duty, not court leave.

Employees must reimburse to their agency fees paid for service as a juror or witness. However, if the juror or witness receives money for expenses (e.g., transportation), they do not have to reimburse the Service.

Court leave is not the proper leave to use for an employee to use to go with a child to a judicial proceeding. An employee may use annual leave in this situation.

### **ORGAN/BONE MARROW DONATION LEAVE ([5 U.S.C. 6327](#))**

This is an independent leave entitlement that is separate from any accrued leave. An employee is entitled up to 7 days of paid leave each calendar year to serve as a bone marrow donor.

An employee is entitled up to 30 days of paid leave each calendar year to serve as an organ donor. (See 5 U.S.C. 6327 and the [T&A Guide](#).)

### DISABLED VETERAN LEAVE ([5 U.S.C. 6329](#))

This is a onetime independent leave entitlement that is separate from any accrued leave, which provides eligible 30% or more disabled veterans hired on or after November 5, 2016, with 104 hours of leave for undergoing medical treatment for the disability. Eligible employees will obtain this leave on their “first day of employment” and they must use the leave within 12 months.

If an employee becomes an eligible 30% or more disabled veteran, because of the Veteran’s Benefits Administration (VBA) changing their disability rating, the employee should contact JAO Compensation and inquire about their eligibility for disabled veteran leave. This is because the “first day of employment” is the first day of service that qualifies as employment that occurs on or after the later of:

- The earliest date an employee is hired (after the effective date of the employee’s qualifying service-connected disability as determined by the Veterans Benefit Administration (VBA)); or
- The effective date of the employee’s qualifying service-connected disability, as determined by VBA.

For more information, please see OPM’s [Fact Sheet: Disabled Veteran Leave](#) and the [T&A Guide](#).

### ADMINISTRATIVE LEAVE ([5 U.S.C. 6329a](#))

The Administrative Leave Act of 2016 defined administrative leave, established requirements for its use, and established statutory limitations and reporting requirements. Administrative leave means leave that is without loss of or reduction in pay, leave to which an employee is otherwise entitled under law, or credit for time or service, and that is not authorized under any other provision of law.

We approve these absences for reasons determined to be in the Government’s interests. Administrative leave is discretionary, and employees do not have a right to administrative leave.

Decisions to grant administrative leave must be done under established Departmental or Service procedures and within delegations of authority set forth in pertinent agency, Service, and Regional directives.

Authorized decision makers may grant excused absence with pay to employees covered by an AWS program under the same circumstances as they would grant excused absence to employees covered by other work schedules.

Administrative leave should only be granted in writing, and the notice or document should outline the reasons for the administrative leave, its length, and any provisions (e.g., workplace restrictions, availability by phone, restrictions on phone numbers an employee may call) in effect during the period of administrative leave or excused absence.

Situations where excused absence may be authorized include, but are not limited to:

- Blood donations
- Holidays for part-time employees
- If an employee suffers a disabling traumatic injury on the job, the employee’s absence on the day of injury may be excused
- Inclement weather, closure of workplace
- Participation in health and fitness activities

- Excused absence for Employee Assistance Program (EAP)
- Excused absence for a first responder to attend the funeral of a fellow first responder (5 U.S.C. 6328)
- Voting and registration (see [Executive Order 14019, Promoting Access to Voting, signed by President Biden on March 7, 2021](#))
- Investigation or notice leave (see section below for more information)

#### WEATHER AND SAFETY LEAVE ([5 U.S.C. 6329c](#))

The Department provides detailed information regarding weather and safety leave in [PB 18-04, Weather and Safety Leave](#).

#### INVESTIGATIVE LEAVE AND NOTICE LEAVE ([5 U.S.C. 6329b](#))

When it's not possible for an employee to continue work throughout an investigation or notice period, the Department has set up approval procedures for granting investigative and notice leave. See [PB 16-01, Modification to Administrative Leave Procedural Guidance](#).

- INVESTIGATION LEAVE

Service officials must consult with JAO Employee - Management Relations to determine if it is necessary to grant an employee excused absence during an investigation, and the amount to be granted. The JAO Employee - Management Relations team will work with the proposing official on obtaining approval.

- NOTICE LEAVE

Service officials proposing disciplinary and/or performance-based actions against employees will decide, in consultation with the JAO Employee - Management Relations team, if it is necessary to grant an employee excused absence during a notice period, and the amount to be granted. The JAO Employee - Management Relations team will work with the proposing official on obtaining approval.

#### PARENTAL BEREAVEMENT LEAVE, ([5 U.S.C. 6329d](#))

Parental bereavement leave is a special leave type established by the National Defense Authorization Act, FY 2022, which is available to most Service employees. Eligible employees (as defined in 5 U.S.C. 6381) receive 2 workweeks (80 hours) of paid parental bereavement leave following the death of a qualifying child (defined in 5 U.S.C. 6381). An employee may not receive more than 2 workweeks of bereavement leave in any 12-month period.

#### ELIGIBILITY

You are eligible for this leave if you earn annual and sick leave, and:

- Serve under a permanent or term appointment. Temporary appointments of 1 year or less are not eligible.
- Have an established part-time or full-time work schedule. Intermittent employees are not eligible.
- Have completed at least 12 months of service.
- Have a qualifying child. Child means a biological, adopted, or foster child, stepchild, legal ward, or a child of a person standing in loco parentis who is:

- Under the age of 18, or
- 18 and older and incapable of self-care because of a mental or physical disability.

#### WHEN TO USE IT

- You must be in pay status and use the leave during your normal tour of duty. Seasonal employees may not use it during the off-season when in non-pay status. It must be used within 12 months of a qualifying child's death. The 12-month period starts on the date of the death of the child and continues for 12 months. If you suffer the death of another child during the same 12-month period, you are entitled to another 12-month period. Any bereavement leave that you take during the overlap of the 12-month periods counts against each period. You lose all unused bereavement leave after the 12-month period expires.

## APPENDIX A: DEFINITIONS

<b>Absence Without Leave (AWOL)</b>	A period of absence for which an employee did not obtain prior approval and the absence is not subsequently approved.
<b>Accrued leave</b>	Accumulated leave or unused leave remaining to the credit of an employee at the end of a biweekly pay period.
<b>Administrative workweek</b>	A period of 7 consecutive calendar days. The administrative workweek for Service employees is normally Sunday through Saturday.
<b>Advanced leave</b>	Annual or sick leave hours granted for use prior to being earned.
<b>Alternative work schedules</b>	Term that refers to both flexible and compressed work schedules.
<b>Approving official</b>	A supervisor or manager who has the delegated authority to establish employee work schedules, approve leave, or take other personnel action.
<b>Basic work requirement</b>	The number of non-overtime hours an employee must work or account for by leave before being eligible for overtime.
<b>Biweekly pay period</b>	The 2-week period for which an employee is scheduled to perform work.
<b>Compressed schedule</b>	A fixed work schedule (no flexible time bands) in which an employee can complete the biweekly work requirement in less than 10 working days.
<b>Core hours</b>	A term used in the context of flexible work schedules. It refers to the scheduled hours of the workday during which an employee must either be present at work, on leave, or using credit hours.
<b>Credit hours</b>	Those hours within a flexible work schedule that an employee elects to work (subject to supervisory approval) in excess of their basic work requirement so as to vary the length of a workweek or workday.
<b>Excused absence</b>	Commonly referred to as administrative leave. An approved absence from duty without loss of pay and without charge to an employee's leave.
<b>Exigency of the public business</b>	A situation that exists when circumstances are beyond the control of the employee(s) affected, and the urgent need could not have been reasonably anticipated. A sudden call to jury duty or military duty or a project's becoming suddenly visible politically or reaching a critical stage at the end of the year are examples of an exigency of the public business. If other employees can be substituted for those who forfeit leave, an exigency does not exist.
<b>Fair Labor Standards Act (FLSA)</b>	The Act that provides for minimum standards for both wages and overtime entitlements and delineates administrative procedures by which covered work time must be compensated. In addition, the Act exempts specified employees or groups of employees from the application of certain of its provisions.
<b>Family member</b>	The definition depends on the leave program. See <a href="#">Chapter 4</a> for the definition of family member under sick leave regulations and <a href="#">Chapter 5</a> for the definition of family member under FMLA.
<b>Family Medical Leave Act (FMLA)</b>	The Act that entitles eligible employees to take unpaid, job-protected leave for the birth and care of a child, placement for adoption or

	foster care of a child with the employee, care of an immediate family member (spouse, child, parent) who has a serious health condition, and/or the employee's own serious health condition.
<b>Flexible time</b>	The portion of the workday during which an employee has the option to select and/or vary starting and quitting times within the limits established by regulation and their supervisor.
<b>Flexible work schedule</b>	One of several types of work schedules, all of which comprise core hours and flexible time bands.
<b>Leave year</b>	The period beginning with the first day of the first complete pay period in a calendar year and ending with the day immediately before the first day of the first complete pay period in the following calendar year.
<b>Regularly scheduled administrative workweek</b>	For a full-time employee, the period within a workweek that the employee is regularly scheduled to work. For a part-time employee, the officially prescribed days and hours within a workweek that the employee is regularly scheduled to work.
<b>Regularly scheduled work</b>	Work that is scheduled before the beginning of an employee's administrative workweek.
<b>Restored leave</b>	Annual leave that was previously forfeited because the employee exceeded the maximum leave accumulation for carryover into a new leave year, but that has been restored to a restored leave account.
<b>Scheduled tour of duty</b>	The regular work hours in an established full-time or part-time work schedule during which an employee is charged leave or time off when absent.
<b>Split schedule</b>	A flexible work schedule that allows an employee to start and stop one's workday within a day. For instance, an employee may work 8 a.m. to noon, then 3 p.m. to 6 p.m., and finally 8 p.m. to 9 p.m.
<b>Tour of duty</b>	Under a flexible work schedule, the limits set by an agency within which an employee must complete their basic work requirement. Under a compressed work schedule or other fixed schedule, tour of duty is synonymous with basic work requirement.
<b>Work unit</b>	An entity located in one place with a specific mission, with homogeneous procedures or technology, and headed by a supervisor or manager authorized to certify time and attendance reports and approve leave.

## APPENDIX B: SUPPLEMENTAL HUMAN CAPITAL ADVISEMENTS

Coordinating leave and hours of work under the various programs can be challenging, so Human Capital issues supplemental advisements to enhance employee understanding and address specific topics. Supplement advisements will be reviewed and incorporated, as necessary, in future revisions of this handbook.

### **Advisement: 2023-1 *Use of Official On-Duty Time for Engagement with Employee Organizations (Clarification on the Use of Administrative Leave)***

#### Background:

Human Capital has received a request for clarification regarding the amount of official on-duty time an employee may be granted to participate in employee organizations. Managers and employees should use this information in addition to the other Departmental and Service guidance.

Departmental Personnel Bulletin (PB) 17-07, Recognition Procedures and Departmental Support for Employee Organizations (Non-Labor) authorizes supervisors to grant employees reasonable time (generally up to 2 hours) of administrative leave a month to attend employee organization meetings. Using administrative leave in this situation should be limited to when meeting attendance is for the employee's personal interest, and it has minimal nexus to the employee's official duties and is not a part of the Service's Diversity, Equity, Inclusion, and Accessibility (DEIA) initiatives.

#### Guidance:

The Service recognizes that our employee organizations are an important part of our DEIA journey. Many employees are participating and engaging in these activities as part of their official on-duty duties, and their participation has a strong nexus to the Service's DEIA initiatives. In these situations, employee participation is part of their official duties; therefore, they are not required to use administrative leave, nor are they limited to 2 hours a month. Decisions about the amount of official on-duty time authorized for these activities should be based on the duties involved. Employees should request duty time from, and provide a justification to, their supervisors. Supervisors and managers should approve requests based on the employee's assignment in the organization and operational needs. There is not an established number of hours. Instead, managers should use their discretion about how much time is in the best interest of the Service in the same way they use their discretion for requests to attend other events with Friends groups, partners, or educational sessions.

#### SCENARIOS:

SCENARIO 1: Larry has a child who is interested in applying for the Peace Corps (PC). Larry would like to learn more and hear about the experiences of former PC volunteers. Larry recently learned about the Department's "DOI Peace Corps Volunteers" employee organization and

would like to attend a few meetings to learn more. Larry's interest in attending is personal and not related to his official duties.

**CONCLUSION 1:** Larry should request administrative leave, up to 2 hours a month, to attend the meetings. Larry's manager should determine if Larry's absence for up to 2 hours a month would have a negative impact on the Service's mission, and approve or deny Larry's request, as appropriate.

**SCENARIO 2:** Lucy is a U.S. Army veteran and would like to engage with other Service vets to learn how to get more vets interested in joining the Fish and Wildlife Service. Lucy's duty station will have a few vacancies in the next 6 months, and she wants to learn more about available resources. Lucy would like to attend weekly meetings of the veteran employee organization to network and establish relationships that will be beneficial in the future when the Service is recruiting.

**CONCLUSION 2:** Lucy should request official on-duty time of 1 hour a week to attend the meetings. Lucy's manager should determine if the request is in alignment with the Service's mission and with operational needs and approve or deny Lucy's request, as appropriate.

**SCENARIO 3:** Luis is a member of the FWS PRIDE Employee Resource Group (ERG). As the ERG is planning for Pride Month in June, Luis volunteered to participate in a community event on behalf of the Service. His attendance at weekly meetings on official on-duty time has been approved, but planning for the event will require up to 5 hours a week during May and additional time in June. After the event, he will return to using 1 hour a week for ERG activities.

**CONCLUSION 3:** Luis should request additional official on-duty time for May and June to plan for the event and attend planning sessions. Luis's manager should determine if the request is in alignment with the Service's mission and with operational needs and approve or deny Luis's request, as appropriate.

**SCENARIO 4:** Lori is a member of the FWS Women+ ERG (W+ ERG). The W+ ERG will hold elections for board members soon, and Lori is interested in playing a leadership role. The W+ ERG has partnered with Service leadership to help the Service achieve a workplace culture that welcomes, supports, empowers, promotes, includes, and increases the visibility of all women in all programs. Lori has been notified that board membership will require a commitment of 3 hours a week.

**CONCLUSION 4:** Lori should communicate her desire to run for office in the W+ ERG with her supervisor and explain the 3 hour per week commitment. Lori's manager should determine if the request is in alignment with the Service's mission and with operational needs and approve or deny Lori's request, as appropriate.