



**ABSENCE AND
LEAVE
HANDBOOK
A GUIDE FOR
CIVILIANS**

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INTRODUCTION

Leave is an important and significant benefit for all employees. Within the Federal sector, a wide variety of leave options are available to civilians to meet their personal and family needs. This handbook is intended to provide employees with an overview of the different types of leave available so that they are aware of their options and entitlements when an absence from duty becomes necessary. Not every absence from duty is covered by the information in this guide. Employees are encouraged to consult with their Human Resources Advisor for more information about leave entitlements.

Please note the information in this handbook is primarily derived from the legal and government-wide regulatory requirements on leave and must be read in conjunction with local orders, directives and negotiated labor agreements.

ANNUAL LEAVE

GENERAL. Annual leave is provided and used for two general purposes: to allow every employee a period of time off, with pay, for rest and recreation; and, to provide periods of time off for personal and emergency purposes.

Employees appointed to positions for more than 90 days earn, and may use, annual leave. If your initial appointment was less than 90 days, you do not earn annual leave. If, however, you work 90 or more days under consecutive appointments without a break in service, you are entitled to be credited for the annual leave earned from the beginning date of your initial appointment.

ANNUAL LEAVE ACCRUAL RATES. The accrual rate of annual leave for employees depends on their length of service and basic workweek.

ANNUAL LEAVE EARNING RATES FOR FULL-TIME EMPLOYMENT		
YEARS OF FEDERAL SERVICE	ANNUAL LEAVE HOURS EARNED EACH PAY PERIOD	TOTAL DAYS EARNED IN THE LEAVE YEAR
Less than 3 years	4 hours	13 days
Between 3 and 15 years	6 hours; 10 hours in last pay period	20 days
15 years or more	8 hours	26 days

ANNUAL LEAVE EARNING RATES FOR PART-TIME EMPLOYMENT WITH ESTABLISHED REGULAR TOUR OF DUTY	
YEARS OF FEDERAL SERVICE	ANNUAL LEAVE HOURS EARNED
Less than 3 years	Earn 1 hour for every 20 hours in a pay status
Between 3 and 15 years	Earn 1 hour for every 13 hours in a pay status
15 years or more	Earn 1 hour for every 10 hours in a pay status

LIMITATION ON CARRYOVER OF ANNUAL LEAVE TO THE NEXT LEAVE YEAR. The leave year begins on the first day of the first full biweekly pay period in a calendar year. The leave year ends on the day immediately before the first day of the first full biweekly pay period in the following calendar year. There are limitations on how much annual leave can be carried from one leave year to the next leave year. The maximum carryover in a year is 30 days/240 hours (outside the U.S.: 45 days/year). Any leave in excess of the amount that may be carried over is commonly called "use or lose" leave. Use or lose leave will be forfeited at the end of the leave year. Under certain conditions, forfeited leave may be restored to the employee's leave account.

RESTORATION OF ANNUAL LEAVE. Annual leave that would otherwise be forfeited may be restored when it is lost because of exigencies of the service or sickness of the employee, if use of the leave was scheduled in advance. Leave may also be restored when an administrative error causes the loss of annual leave otherwise accruable.

Before forfeited annual leave may be considered for restoration, use of the annual leave must have been requested, approved, and scheduled in writing before the start of the third biweekly pay period before the end of the leave year.

USING RESTORED ANNUAL LEAVE. Restored annual leave must be used not later than the end of the leave year ending two years after the termination date of the exigency of the public business that resulted in forfeiture of the annual leave; or the date the employee is determined to be recovered and able to return to duty if the leave was forfeited because of sickness; or the date of restoration of the annual leave forfeited because of administrative error. Activities may develop local guidelines for use of restored leave and may establish a date by which restored leave must be used. Any restored leave unused at the expiration of the time limits is again forfeited with no further right to restoration.

ADVANCING ANNUAL LEAVE. Leave is accrued on a pay period by pay period basis and is available for use, subject to supervisory approval, when it is accrued. However, there may be times when an employee needs to use annual leave that has not yet been earned. In these cases, an employee may seek approval for annual leave to be advanced. An employee may be advanced all annual leave that will be earned during the current leave year. In advancing an employee

annual leave in excess of the amount actually accrued, the supervisor authorized to approve leave must have reasonable assurance that the employee will be in a duty status long enough to earn the leave granted before the end of the leave year. If the employee's employment with the government discontinues prior to earning the advanced leave, the balances of the advanced leave upon separation is considered a debt, unless the employee dies, retires for disability, resigns or is separated as a result of a disability that prevents him or her from returning to work.

LUMP-SUM PAYMENT FOR ANNUAL LEAVE UPON SEPARATION.

An employee is entitled upon separation to all accumulated and accrued annual leave credited to the employee which consists of the following: (1) the regular carry-over balances from the previous year, if any; plus (2) accrued and unused annual leave during the current leave year, if any; plus (3) any unused restored annual leave maintained in a separate leave account.

USE OF ANNUAL LEAVE DURING ACTIVE MILITARY DUTY.

Members of the Reserve or National Guard may use annual leave during active military duty. (See also section on Military Leave).

SICK LEAVE

GENERAL. Sick leave is provided so that an employee may take time off for personal medical needs and for family care and bereavement purposes.

ACCRUAL RATES. All full-time employees, regardless of their length of service, earn four hours of sick leave for each full biweekly pay period. Part-time employees earn one hour of sick leave for each 20 hours in a pay status. Employees on uncommon tours of duty, such as firefighters, earn sick leave at a proportionate rate. Intermittent employees do not earn sick leave since by regulation they do not have a regularly scheduled tour of duty.

USE OF SICK LEAVE FOR PERSONAL NEEDS. An employee is entitled to use sick leave when he or she:

- Is incapacitated for performance of duties by physical or mental illness, injury, pregnancy, childbirth.
- Receives medical, dental, or optical examination or treatment.
- Would, as determined by the health authorities having jurisdiction or by a health provider, jeopardize the health of others by his or her presence on the job because of exposure to a communicable disease.
- Make arrangements for adoption-related activities, including appointments with adoption agencies, social workers and attorneys; court proceedings; required travel; and any other activities necessary to allow the adoption to proceed. This includes periods during which the adoptive parent is home to care for the newly adopted child, as required by the adoption agency or by the court. Sick leave may not be used to cover absences from work to "bond" with an adopted child.

SICK LEAVE FOR GENERAL FAMILY CARE AND BEREAVEMENT.

An employee may use his or her accrued sick leave to:

- Provide care for a family member who is incapacitated as a result of physical or mental illness, injury, pregnancy, childbirth or who receives medical, dental, or optical examination or treatment.

- Make arrangements necessitated by the death of a family member or attend the funeral of a family member.

DEFINITION OF FAMILY MEMBER. Family member is defined as the following relatives of the employee:

- (1) Spouse, and parents thereof;
- (2) Sons and daughters, and spouses thereof;
- (3) Parents, and spouses thereof;
- (4) Brothers and sisters, and spouses thereof;
- (5) Grandparents and grandchildren, and spouses thereof;
- (6) Domestic partner and parents thereof, including domestic partners of any individual in paragraphs (2) through (5) of this definition; and
- (7) Any individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship.

LIMITS OF USE OF SICK LEAVE FOR GENERAL FAMILY CARE AND BEREAVEMENT. A full-time employee may use up to 104 hours (13 days) of his/her sick leave each leave year for general family care and bereavement purposes.

SICK LEAVE TO CARE FOR A FAMILY MEMBER WITH A SERIOUS HEALTH CONDITION. A full time employee may use up to 12 administrative workweeks of accrued sick leave each leave year to care for a family member with a serious health condition. If the employee has previously used a portion of the sick leave allowed for general family care and bereavement purposes, that amount must be subtracted from the 12-week entitlement.

DEFINITION OF FAMILY MEMBER. The definition of family member is the same as the definition given for general family care.

SERIOUS HEALTH CONDITION. The term serious health condition includes such conditions as cancer, heart attacks, strokes, severe injuries, Alzheimer's disease, pregnancy, and childbirth. It does not include short-term conditions for which treatment and recovery are brief. The common cold, the flu, earaches, upset stomach, headaches, routine dental or orthodontia problems and similar short-term medical conditions are not serious health conditions unless complications arise.

DOCUMENTATION REQUIRED. An employee must provide written medical certification to document the use of sick leave to care for a family member with a serious health condition. Requests shall be submitted to the approving official on an OPM 71 or other appropriate form. The employee must provide written certification of a serious health condition, signed by the health care provider that contains a statement on the family member's need for psychological comfort and/or physical care, and the specific length of time that the employee's care or presence is needed.

REQUESTING SICK LEAVE

Sick leave for prearranged medical appointments (including those for family members) must be requested in advance of the absence. Sick leave for absence because of illness, injury, exposure to contagious disease, illness of a family member with a contagious disease or other circumstances of incapacity which are not known in advance must be requested as soon as possible after the beginning of the absence (normally within the first hour or two). Normally, form OPM-71, Request for Leave, is used to request sick leave.

Consult local policies for additional information on procedures for requesting sick leave.

ABSENCES OF 3 DAYS OR LESS

For absences of 3 days or less, sick leave must be requested on the first day and on every additional day of absence, unless the supervisor expressly relieves the employee of this requirement.

ABSENCES OF MORE THAN 3 DAYS

Sick leave of more than 3 consecutive workdays must be supported by medical documentation (or other administratively acceptable documentation for absence) unless the supervisor specifically waives this requirement. In cases of extended illness, medical documentation may be required periodically, if necessary, to establish the employee's continued incapacity to return to duty. Where evidence does not justify the approval of sick leave, the absence may be charged to annual leave or LWOP with the employee's consent, or AWOL.

SUBSTITUTION OF SICK LEAVE FOR ANNUAL LEAVE

If illness occurs during a period of annual leave, sick leave may be substituted contingent upon submission of supporting evidence acceptable to the supervisor, which may include the requirement for medical documentation.

DISABLED VETERANS

A disabled veteran who presents an administratively acceptable statement from a physician or other duly constituted medical authority showing that medical examination, treatment or absence in connection with a service-connected disability is required **must** be granted all sick leave (including advanced sick leave), and all annual leave permitted by law, plus any leave without pay that may be necessary to undergo treatment. Except for emergency treatment, the granting of such leave is contingent upon the veteran's giving prior notice of the periods of required absence.

USE OF ADVANCE SICK LEAVE

An advance of sick leave is a privilege that may be extended to employees. It is not considered a routine or standard procedure and will be granted only after all circumstances have been carefully weighed. Advancing sick leave to an employee so he or she can maintain the 80-hour balance requirement for general family care and bereavement is prohibited. In case of serious disability, illness, incapacitation, or confinement for childbirth, employees may be advanced up to 240 hours of sick leave.

When it is known that the employee is to be retired or otherwise separated, the total advance may not exceed an amount that can be liquidated by accrual before separation.

Advance sick leave should not be granted if it is likely that the employee will not return to duty for a sufficient period of time to repay the advanced leave, or if there are insufficient funds in the retirement account to liquidate the indebtedness.

Advance sick leave is liquidated automatically through accrual of sick leave after the employee returns to work. Repayment is not required when separation is because of death, resignation for disability supported by acceptable medical documentation, or disability retirement.

LEAVE WITHOUT PAY

GENERAL. LWOP is a temporary nonpay status and an authorized absence from duty granted only upon the employee's request, in situations such as when the employee has insufficient paid leave to cover an approved absence. An employee does not have to exhaust annual leave before requesting LWOP. It must not be confused with absence without leave (AWOL), which is charged for unauthorized absence, or absence for which the employee did not request and obtain approval of leave.

Even though the reason for requesting LWOP is known to be legitimate, e.g., illness, injury, or personal emergency, the request may be denied if the employee's services are required or if the employee has not followed prescribed leave procedures. Even though LWOP is a nonpay status, it is still approved leave and must be requested by the employee and approved by the supervisor.

GRANTING LWOP. In most instances, granting LWOP is discretionary and may be limited by agency policy. However, in the following circumstances, employees have an entitlement to LWOP:

- When the employee invokes his/her entitlement to leave under the Family and Medical Leave Act (FMLA) and meets the eligibility for FMLA leave.
- When a disabled veteran needs medical treatment for a service-connected disability.
- When Federal employment is interrupted by a period of service in the uniformed service.
- When an employee is receiving worker's compensation payments from the Department of Labor.

Additionally, the Department of Navy requires that up to 90 days of LWOP will be granted to an employed family member of transferring military and civilian personnel who are required to move on rotational assignments, in a transfer of function or relocation of an activity or who accept another Federal job outside the local commuting area. Additional LWOP may be granted at the discretion of the activity head or designee. The granting of LWOP in these circumstances is subject to a request made prior to the transfer/relocation and when the family

member expresses an intent to seek Federal employment in the new location.

AMOUNT OF LWOP. There is no maximum prescribed by law or regulation on the amount of LWOP that can be granted. Prior to approval of LWOP, consideration will be given to the costs and inconveniences to the Marine Corps. These include encumbrance of a position, loss of services, obligation to provide active employment at the end of the approved leave period, credit of 6 months of each year towards retirement without employee contributions, eligibility for continued coverage under FEGLI (without cost to the employee for up to 1 year of nonpay status), and payment of the employer's share of health insurance premiums for LWOP up to 365 days.

DOCUMENTING USE OF LEAVE WITHOUT PAY. A personnel action (Request for Personnel Action/RPA) must be submitted when leave without pay of 80 hours or more is granted because of an on-the-job illness or injury. Leave without pay in excess of 30 days for any other reason must be documented by a personnel action.

LEAVE WITHOUT PAY-UNIFORMED SERVICES (LWOP-US). LWOP-US is leave of absence to perform duty with the uniformed services. When permanent civilian employees in the Reserve or the National Guard perform military duty, document LWOP-US on the SF-50 including actions of 30 days or less. This will enable personnel/payroll offices to have a record of military service deposits for retirement purposes and will entitle employees to make up contributions to the Thrift Savings Plan (TSP).

**EFFECT OF LEAVE WITHOUT PAY (OR OTHER NONPAY STATUS)
ON FEDERAL BENEFITS AND PROGRAMS**

TYPE OF BENEFIT PROGRAM	EFFECT OF LWOP/NONPAY STATUS ON ELIGIBILITY/ENTITLEMENT TO FEDERAL BENEFITS/PROGRAMS
Career Tenure	Nonpay time in excess of 30 calendar days for each period of absence extends the waiting period for career tenure by the number of excess days.
Completion of Probation	Any nonpay time in excess of 22 workdays extends the probationary period by the number of excess days.
Time-in-Grade	No impact
Service Computation Dates	A total of six months in a nonpay status in any calendar year is creditable service. The SCD will be extended by the amount of time in excess of six months in one calendar year.
Leave Earnings	If an employee is in a nonpay status for an entire pay period, no annual or sick leave is earned for that pay period.
Within Grade Increases (General Schedule)	Nonpay time in excess of the following amounts will be added to the waiting period for within grade increases: Steps 2, 3, 4: 2 workweeks (80 hours for full time employees) Steps 5, 6, 7: 4 workweeks (160 hours for full time employees) Steps 8, 9, 10: 6 workweeks (240 hours for full time employees)
Within Grade Increases (Federal Wage System)	Nonpay time in excess of the following amounts will be added to the waiting period for within grade increases: Steps 2: 1 workweek (40 hours for full time employees) Steps 3: 3 workweeks (120 hours for full time employees) Steps 4, 5: 4 workweeks (160 hours for full time employees)
Federal Employees Group Life Insurance	Coverage continues without cost to the employee for up to 12 months in a nonpay status. Coverage is terminated after an employee has been in a nonpay status for 12 months. Previous time in a nonpay status counts towards the 12 months if the employee did not return to duty for at least four months.
Federal Employees Health Benefits	Coverage continues for up to 365 days in a nonpay status, unless the employee elects to cancel the enrollment. The Government's contributions continue during this period. The employee is responsible for paying his share of the premium.
Military Duty or Absence Due to Compensable Injury (Workers' Compensation)	There is no impact on any benefit or entitlement programs when the absence in a nonpay status is due to military duty or when the employee's absence in a nonpay status is due to a compensable work related injury.

MILITARY LEAVE

GENERAL. Military Leave is absence from duty in the employee's civilian position without loss of pay (including pay for regularly scheduled overtime) for certain types of active or inactive duty in the National Guard or as a reserve of the Armed Forces.

TYPES OF MILITARY LEAVE. There are two main types of military leave:

- Under 5 U.S.C. 6323(a), full time employees whose appointments are not limited to one year receive 15 days of military leave each fiscal year for active duty, active duty for training, and inactive duty training. An employee may carry over a maximum of 15 days into the next fiscal year. An employee is entitled to receive both his full civilian salary and his military pay when using the 15 days of military leave.

- Under 5 U.S.C. 6323 (b) employees also receive an additional 22 workdays of military leave each 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 an order to active duty in support of a contingency operation. Under this provision, an employee is entitled to the greater of his military or civilian pay, but not both.

USE OF ANNUAL LEAVE WHILE ON MILITARY DUTY. Employees may use accrued annual leave for periods of active military duty. Employees using annual leave will receive their full civilian pay as well as compensation for their military duty. Annual leave may be used intermittently with military leave and leave without pay.

USE OF LEAVE WITHOUT PAY WHILE ON MILITARY DUTY. Employees will be granted leave without pay to cover periods of military duty. The LWOP may be used intermittently with military leave or with annual leave.

ELIGIBILITY CRITERIA. Employees entitled to military leave must meet the following criteria:

- Be a member of a Reserve or National Guard component

- Be a full-time, part-time, or indefinite employee who does not have an intermittent work schedule.
- Be serving in an appointment that is not limited to 1 year or less. NOTE: Although an employee may serve longer than 1 year on successive temporary appointments, there is no eligibility until the employee serves under an appointment that is not limited to 1 year or less.

GRANTING LEAVE FOR MILITARY DUTY. When an employee is called to perform military duty, a copy of the orders normally accompanies the request for leave. The employee may be required to submit a certification by the appropriate military official that the military duty was performed. Normally, reserve active and inactive duty is planned and announced in advance. Employees are encouraged to provide, if possible, copies of annual training schedules as well as advance notice of specific training dates.

HOW MILITARY LEAVE IS CHARGED. Military leave is charged on an hourly basis. Employees will not be charged military leave for non-duty days (typically weekends and holidays) that occur within the period of military service. Employees requesting military leave for active duty or inactive duty training (sometimes less than 8 hours) will be charged only the amount of military leave necessary to cover the periods of military duty or period of training and necessary travel. Hours in the civilian workday that are not chargeable to military leave must be worked or charged to another leave category, as appropriate.

COURT LEAVE

GENERAL. An employee is entitled to time off at full pay without a charge to leave for service as a juror or witness. An employee who is summoned to serve as a **juror** in a judicial proceeding is entitled to court leave. An employee who is summoned as a **witness** in a judicial proceeding in which the Federal, State, or local government is a party is entitled to court leave.

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

FEES/EXPENSES. Fees paid for service as a juror or witness must be reimbursed to the employee's agency. However, monies paid to jurors or witnesses that are in the nature of expenses (e.g., transportation) do not have to be reimbursed to the agency. The employee must submit fees received for jury or witness service by money order or personal check to the servicing DFAS office.

RETURN TO DUTY UPON RELEASE BY COURT. Employee is expected to return to duty during periods when the employee is excused from jury duty unless this would be impractical. As a general rule, if there are 4 or more hours remaining in an employee's workday, exclusive of reasonable travel time, the employee must return to duty. If the employee fails to report for duty, annual leave, previously earned compensatory time off, LWOP may be approved if requested, or absence without leave may be charged for the excess time involved.

PROCEDURES FOR REQUESTING COURT LEAVE. When an employee is called for jury or witness duty, the court order, subpoena, summons, or official request is given to the supervisor as soon as possible. The days and hours of court leave are entered on the OPM 71 or other appropriate form. When the employee returns to duty, the employee submits written evidence of attendance in court showing the dates and hours, if possible. If required, the supporting documents are forwarded to the payroll office with the time and attendance report that includes the court leave entry.

The chart below summarizes the duty status of employees called to jury duty or witness service.

NATURE OF SERVICE	TYPE OF ABSENCE	FEES			GOVERNMENT PAYS FOR TRAVEL EXPENSES	
		NO	YES		NO	YES*
			KEEP	TURN IN TO AGENCY		
JURY SERVICE						
U.S. OR DC COURT	COURT LEAVE	X			X	
STATE OR LOCAL COURT	COURT LEAVE			X	X	
WITNESS SERVICE						
ON BEHALF OF U.S. OR D.C. GOVT	OFFICIAL DUTY	X				X
ON BEHALF OF STATE OR LOCAL GOVT IN AN OFFICIAL CAPACITY	OFFICIAL DUTY			X		X
ON BEHALF OF STATE OR LOCAL GOVT IN A NON OFFICIAL CAPACITY	COURT LEAVE			X	X	
ON BEHALF OF A PRIVATE PARTY IN AN OFFICIAL CAPACITY	OFFICIAL DUTY			X		X
ON BEHALF OF A PRIVATE PARTY IN A NON OFFICIAL CAPACITY WHEN PARTY IS U.S., STATE, OR LOCAL GOVT	COURT LEAVE			X	X	
ON BEHALF OF A PRIVATE PARTY IN A NON OFFICIAL CAPACITY WHEN A PARTY IS NOT U.S., D.C., OR STATE OR LOCAL GOVT	ANNUAL LEAVE/LWOP		X		X	

*Offset to the extent paid by the court, authority, or party which caused the employee to be summoned.

EXCUSED ABSENCES

GENERAL. Excused absence is an administratively authorized absence from duty without loss of pay or charge to leave. The activity head is authorized to excuse employees for brief periods for any other reasons that are deemed to be in the best interest of the public or the Marine Corps.

ABSENCE FOR BRIEF PERIODS OR TARDINESS. Unavoidable absences, brief periods of early dismissal, and brief periods of tardiness of less than 1 hour may be excused by the supervisor or he/she may provide the employee opportunity to request approved leave, earned credit hours, or previously-earned compensatory time off.

OTHER COMMON SITUATIONS FOR WHICH EXCUSED ABSENCE MAY BE GRANTED:

■ **ABSENCE FOR VOTING OR REGISTRATION.** As a general rule, employees requesting time off to vote are excused without charge to leave for the amount of time necessary to permit them to report to work 3 hours after the polls open or to leave work 3 hours before the polls close, whichever requires the least amount of time off. Normally, where the polls are open either 3 hours before or 3 hours after the employee's regular duty hours, no time off is granted.

■ **BLOOD DONATIONS.** An employee may be excused from work without charge to leave for the time necessary to donate blood or blood products, such as platelets or plasma, for recuperation following blood donation, and for necessary travel to and from the donation site. The maximum excusable time should not exceed 4 hours, except in unusual circumstances. This does not cover an employee who gives blood for the employee's own use or receives compensation for giving blood.

■ **PERMANENT CHANGE OF DUTY STATION.** Employees authorized PCS within the DoD may be granted excused absence before departing the old duty station and following arrival at the new duty station to accomplish personal tasks resulting from the move (e.g., to close or open bank accounts; obtain drivers' license or tags). In similar situations, employees transferring to the DoD from other Federal agencies may also be granted excused absence after the employee is on the DoD employment rolls.

■ **EMPLOYMENT INTERVIEW.** Employees under notice of separation or change to lower grade for any reason except for personal cause may be granted excused absence for job searches and interviews. Employees competing for positions within the Department of Defense may be granted excused absence for merit placement interviews. This does not cover travel time to job searches and interviews outside the commuting area.

■ **TAKING EXAMINATIONS.** Excusal from duty may be granted for examinations given by or taken at the request of the employer. Employees will be excused, without a charge to leave, for all examinations required for converting to career conditional appointments or for required non-competitive examinations within the same employing activity.

■ **CERTIFICATIONS.** An employee may be granted excused absence to take an examination (e.g., certified public accountant examination) in his/her functional area if securing the certification or license would enhance the employee's professional stature, thereby benefiting the DoD. This does not cover time to prepare for such examinations.

■ **MEDICAL EXAMINATION FOR FEDERAL SERVICE.** An employee required to take a medical examination to determine the employee's fitness for the federal service is considered in duty status during the time necessary to obtain the examination or treatment. When an employee is absent because of administratively required vaccinations or immunizations, the absence is considered an excused absence without charge to leave or loss of pay, provided the medical officer administering the vaccinations or immunizations certifies to the necessity for the absence.

MILITARY FUNERALS

A Marine Corps civilian employee who is a veteran of the armed forces and who participates as a pallbearer, a member of a firing squad, or a member of an honor guard in funerals for members of the armed forces who lost their lives on active duty is excused from duty without charge to leave, but not in excess of 4 hours in 1 day.

An employee is excused for not more than 3 days to make arrangements for or to attend the funeral or memorial service of an

immediate relative who died as the result of wounds, disease, or injury incurred while serving in the armed forces in a combat zone.

EXCUSED ABSENCE FOR RESERVISTS RETURNING FROM MILITARY DUTY. On November 14, 2003, President George W. Bush directed the heads of agencies to grant Federal employees who are returning from active duty 5 days of excused absence from their civilian duties. This covers all employees who were activated for military service in connection with Operation Noble Eagle, Operation Enduring Freedom, Operation Iraqi Freedom, or any other military operations subsequently established under Executive Order 13223.

The 5 days of excused absence must be granted as soon as the employee reports back for Federal civilian duty or notifies the agency of his or her intent to return to civilian duty. The 5 days of excused absence may not be "stockpiled" for use at a later date. Upon receiving notification from an employee of his or her intent to return to civilian duty on a specific date, an agency must grant the employee 5 days of excused absence immediately prior to the employee's actual resumption of his or her duties. The commencement of the 5 days of excused absence represents a return to Federal civilian employment, and the employee is obligated to report for work at the end of the 5-day period. Employees receive a total of five days of excused absence, regardless of the number of activations.

VOLUNTARY LEAVE TRANSFER PROGRAM

GENERAL. Under the voluntary leave transfer program, employees experiencing a medical or family medical emergency, who have exhausted their available leave, can receive donations of annual leave from fellow employees to help offset the hardship resulting from the medical emergency.

ELIGIBILITY TO BECOME A LEAVE RECIPIENT. To qualify as a leave recipient in the Leave Transfer Program, a full time employee must be experiencing a personal or family medical emergency that results, or is expected to result, in the employee's absence from duty without available paid leave for at least 24 hours.

FAMILY MEMBERS. Under the Leave Transfer Program, a family member is defined as the following relatives of the employee:

- Spouse, and parents thereof;
- Children, including adopted children, and spouses thereof;
- Parents;
- Brothers, sisters and spouses thereof; and
- Any individual related by blood or affinity whose close association with the employee is equivalent of a family relationship.

LIMITATIONS ON LEAVE DONATIONS. Employees may donate no more than one half of the annual leave he or she would accrue during the leave year. For employees with "use or lose" leave, the employee may donate the lesser of one half the annual leave he/she would accrue in the leave year or the number of hours remaining in the leave year for which the employee is scheduled to work and receive pay. An employee may not donate leave to his/her supervisor.

FAMILY AND MEDICAL LEAVE ACT

The Family and Medical Leave Act (FMLA) entitles certain Federal employees to a total of 12 administrative workweeks of unpaid leave during any 12-month period for certain family and medical needs. A covered employee is entitled to a total of 12 administrative workweeks of unpaid leave (leave without pay) for:

- The birth of a child and care of the newborn.
- The placement of a child with the employee for adoption or foster care.
- The care of the employee's spouse, son, daughter or parent with a serious health condition.
- A serious health condition of the employee that makes the employee unable to perform the duties of his or her position.

DEFINITION OF SERIOUS HEALTH CONDITION. The law defines a serious health condition as an illness, injury, impairment or physical or mental condition that involves:

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

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 a 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. Ordinarily, unless complications arise, the common cold, the flu, earaches, upset stomach, minor ulcers, headaches (other than migraines), routine

dental or orthodontia and periodontal disease are not serious health conditions for FMLA purposes.

PROTECTION OF EMPLOYMENT AND BENEFITS UPON RETURN TO WORK. Upon return from FLMA leave, the employee must be returned to the same position or to an equivalent position with equivalent benefits, pay, status, and other terms and conditions of employment. An equivalent position must be in the same commuting area and must have the same or substantially similar duties and responsibilities of the position held when the FMLA leave began.

REQUIREMENT TO INVOKE FMLA AND DOCUMENTATION REQUIRED. An employee must invoke his or her entitlement to family or medical leave not less than 30 days before the leave is to begin. In medical emergencies, the employee must provide notice as soon as practicable.

Consult your local activity as to specific documentation requirements needed to support approval of FMLA leave.

EFFECTIVE DATE OF FMLA. The 12-month period begins on the date an employee takes leave for a family or medical need and continues for 12 months. An employee is not entitled to 12 additional workweeks of leave until the previous 12-month period ends and an event occurs that entitles the employee to another period of family or medical leave.

COVERED EMPLOYEES. FMLA is available to full-time and part-time employees who have completed 12 months of service. Temporary employees with an appointment of one year or less and intermittent employees are not entitled to FLMA leave.

SUBSTITUTION OF PAID LEAVE. An employee may choose to substitute annual leave for unpaid leave under the FMLA. An employee may also substitute sick leave in those situations in which the use of sick leave is permitted and made in advance. Advanced annual or sick leave and/or leave made available to an employee under the Voluntary Leave Transfer Program may also be substituted for unpaid leave under FMLA.

The employee must provide notification, in advance, of the intent to substitute paid leave for unpaid leave under FMLA. Substitution of paid leave for leave without pay previously taken under FMLA cannot be done retroactively.

OTHER LEAVE PROVISIONS

COMPENSATORY TIME FOR RELIGIOUS OBSERVANCES.

Compensatory time off for religious observances is provided by law. An employee whose personal religious beliefs require not working during certain periods of time may elect to work compensatory time for the time lost to meet those religious requirements. An employee who works compensatory time for religious reasons will be granted equal time off from the scheduled tour of duty.

LEAVE FOR BONE-MARROW OR ORGAN DONATION

■ ABSENCE TO SERVE AS A BONE-MARROW OR ORGAN DONOR

An employee is entitled to use 7 days of paid bone-marrow donor leave each calendar year (in addition to annual or sick leave) to serve as a bone-marrow donor and an employee may use up to 30 days of paid leave as an organ donor. Bone-marrow or organ donor leave may be used, but is not limited to, such situations as blood testing, tissue testing, counseling, physical examinations, travel time, surgery, and recuperation. Employees who are screened, but not accepted as donors, are entitled to bone-marrow or organ donor leave for their absences in conjunction with their attempt to be donors.

■ ABSENCE OF EMPLOYEE HAVING BONE-MARROW REMOVED

An individual having bone-marrow removed and stored for future use is not a "donor" and the benefits of 7 days of paid time off was not intended for someone who is undergoing such a procedure for his or her own needs. Sick leave, annual leave, and advanced annual and sick leave are available to an employee facing this type of medical procedure. In addition, leave donated under the Voluntary Leave Transfer Program and LWOP under the FMLA may be used if the condition meets the requirements of these programs.

LEGAL HOLIDAYS

Employees are not required to work on a legal holiday unless their services are required to carry out essential operations. Unless otherwise specified, employees who work a compressed work schedule and whose regular day off under the compressed schedule falls on a day designated as a holiday are entitled to an "in lieu of" holiday.

FREQUENTLY ASKED LEAVE QUESTIONS

The questions and answers below are from the Office of Personnel Management Website and from OPM's Leave Handbook and are compiled in this guide for your convenience.

ANNUAL LEAVE

Q1- My agency is undergoing downsizing, and I received a reduction-in-force (RIF) notice and will be terminated on September 15. I would have been eligible for retirement on November 1. Is there any way I can stay on the rolls until November 1 and qualify for retirement?

A1 - Yes. An employee who has received a RIF notice and is being involuntarily separated from an agency due to reduction in force or transfer of function may elect to use annual leave and remain on the agency's rolls after the date the employee otherwise would have been separated in order to establish initial eligibility for immediate retirement, including discontinued service or voluntary early retirement. The same option is also available to acquire eligibility to continue health benefits into retirement.

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

Q2 - Is an employee required to pay back a lump-sum payment for annual leave when he or she is reemployed in the Federal Government?

A2 - Yes. Under 5 U.S.C. 6306, when an individual who received a lump-sum payment for accumulated and accrued annual leave under 5 U.S.C. 5551 is reemployed in the Federal service before the end of the period covered by the lump-sum payment, he or she must refund to the employing agency an amount equal to the pay covering the period between the date of reemployment and the expiration of the lump-sum period. The refund is deposited in the Treasury of the United States to the credit of the employing agency. The refund is based on the rate of pay used to compute the lump-sum payment; e.g., an employee who received a lump-sum payment based on a GS-7 special salary rate must refund the lump-sum payment based on that same pay rate, even if he or she is reemployed at a lower grade level that is not covered by special salary rates. Refunded annual leave will be credited to the employee's account.

Q3 - May I use my annual leave to establish eligibility for retirement?

A3 - An employee may use annual leave to establish initial eligibility for retirement in reduction-in-force and other restructuring situations. An employee who has received a specific notice of termination in a RIF situation may use annual leave past the date the employee would otherwise have been separated in order to establish initial eligibility for immediate retirement, including discontinued service or voluntary early retirement.

SICK LEAVE

Q4 - I have 72 hours of accrued sick leave. I need to take two weeks off to help my wife when she comes home after the birth of our child. May I use my sick leave for this purpose?

A4 - An employee is entitled to use sick leave to care for a family member who is incapacitated. The employee may use sick leave to care for his wife during her period of incapacitation. However, since he only has 72 hours of sick leave, he is limited to using a maximum of 40 hours for family care. To use more than 40 hours, an employee must maintain a balance of 80 hours of sick leave (after subtracting the leave used for family care).

Q5 – How much sick leave can I be advanced?

A5 – A maximum of 240 hours of sick leave may be advanced in cases of serious illness for disability.

Q6 - I left the Federal government in 1991. At the time I left, I had 231 hours of sick leave accrued. I returned to the government in 1996. May I have the 231 hours of sick leave recredited to my account?

A6- Yes. Employees who are re-employed in the Federal Service on or after 2 December 1994 are entitled to have sick leave recredited provided the sick leave was not forfeited prior to 2 December 1994 under prior regulations governing the recrediting of sick leave.

LEAVE FOR BONE MARROW DONATIONS

Q7 - I will be undergoing a procedure that involves the removal of my bone marrow for future use in my own medical treatment. May I use Bone Marrow/Organ Donation leave for those days that I am absent from work for the removal of my bone marrow?

A7 - The legislative history regarding leave for bone marrow/organ transplantation leave makes clear that the intent of legislation was to encourage the registration and donation of bone marrow by individuals who might not otherwise donate. It was hoped that providing such an incentive to Federal workers to be bone marrow donors would increase the size and diversity of the donor registry. It was felt that Federal workers should not be required to use their own leave *to save the life of another person*. There was no intent that this leave be a benefit to the donor.

An individual having bone marrow removed and stored for future use is not a "donor," and the benefit of 7 days of paid time off was not intended for someone who is undergoing such a procedure for his or her own needs. Sick leave, annual leave, and advanced annual and sick leave are available to an employee facing this type of medical procedure. In addition, leave donated under the Federal leave sharing program and leave without pay under the Family and Medical Leave Act may be used if the condition meets the requirements of these programs.

FAMILY AND MEDICAL LEAVE

Q8 - My 24 year old daughter is pregnant. Her husband has been called to active duty and will not be home when the baby is born. I would like to take 6 weeks of FMLA leave to help my daughter when she gives birth. Can I do this?

A8 - No. The FMLA regulations provide entitlement to care for a son or daughter who is 18 years or older and incapable of self-care because of a mental or physical disability. The definition of self-care is restrictive and does not cover a situation where leave is requested to assist a daughter with the birth of a child.

Q9- What are my appeal rights under the Family and Medical Leave Act?

A9- If an employee believes an agency has not fully complied with the rights and requirements provided by Title II of the Family and Medical Leave Act and the Office of Personnel Management's implementing regulations at 5 CFR 630.1201 through 630.1211, the employee may file a grievance under applicable agency administrative procedures or negotiated grievance procedures.

Q10- If an employee has been approved for intermittent leave under the Family and Medical Leave Act of 1993 to care for a child with a chronic condition, may an agency request documentation that the intermittent absences are being used for FMLA purposes?

A10 -Typically, an agency may require recertification of a serious health condition every 30 calendar days. However, if the agency receives information that casts doubt upon the continuing validity of the original medical certification, including the need for care, it may require recertification more frequently. In addition, the agency may also require an employee to state on the medical recertification the care he or she will provide and an estimate of the amount of time needed to provide such care. To assist agencies and employees, OPM's regulations also allow a health care provider representing the agency to contact the health care provider of the employee, with the employee's permission, to clarify medical information pertaining to the serious health condition.

Q11 - May an employee who has requested approval of his or her application for disability retirement use leave under the Family and Medical Leave Act of 1993?

A11 - Yes. Under the Family and Medical Leave Act of 1993 (FMLA), a covered employee is entitled to a total of 12 workweeks of unpaid leave during any 12-month period for certain family and medical needs, including the serious health condition of an employee. An employee may substitute annual leave or sick leave for any or all of the period of unpaid leave, consistent with current law and regulations. An employee awaiting approval of his or her request for disability retirement is entitled to use any or all of the 12 workweeks of leave under the FMLA, if he or she continues to meet the requirements and obligations under the FMLA.

Q12 - I have been told that I must maintain 80 hours of sick leave in my account in order to use leave under the Family and Medical Leave Act. Is that correct?

A12 - There appears to be confusion as to the entitlements and requirements under the Family and Medical Leave Act of 1993 (FMLA) and the leave balance requirements for the use of sick leave for family care and bereavement purposes.

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

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

DONATED LEAVE

Q13 - Can an employee receive donated annual leave under the Federal leave transfer and leave bank programs if he or she has filed a claim for disability retirement?

A13 - Yes. An employee may apply for and receive donated annual leave while their application for disability retirement is being processed. Under the Federal leave transfer and leave bank programs, an employee who is experiencing a personal or family medical emergency and who has exhausted his or her available paid leave may request to become an approved leave recipient and receive donated annual leave. Once the disability retirement application has been approved by the Office of Personnel Management, the leave recipient may no longer receive or use donated annual leave beyond the end of the pay period in which the agency receives the notice of allowance of disability retirement.

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

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

purposes, the annuity will commence on the day after separation. However, if the donated annual leave is substituted for an earlier period of leave without pay (e.g., at the beginning of the medical emergency), the annuity may commence at an earlier time, the day after the last day in a pay status.

SICK LEAVE - FAMILY CARE AND BEREAVEMENT

Q14 - In the use of sick leave for family care and bereavement purposes, what is the meaning of the phrase "to give care or otherwise attend to a family member?"

A14 - The Family Friendly Leave Act authorized the use of sick leave to give care for *or otherwise attend to* a family member having an illness, injury, or other condition which, if an employee had such a condition, would justify the use of sick leave by the employee. In other words, if the family member were an employee, and his or her condition would justify the use of sick leave, the employee's use of sick leave to care for the family member is justified.

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

Q15 - Can sick leave be donated under the Leave Transfer Program?

A15 - No. Only annual leave may be donated.

MILITARY LEAVE

Q16 - Under what conditions is a Federal employee who is called to active duty as a member of the National Guard or Reserves entitled to military leave?

A16- Employees who are called to active duty in support of the ongoing national emergency are entitled to military leave under two separate provisions.

A Federal employee who is a member of the National Guard or Reserves is entitled to 15 days (120 hours) of paid military leave under 5 U.S.C. 6323(a) each fiscal year for active duty, active duty training, or inactive duty training. An employee on military leave under section 6323(a) receives his or her full civilian salary, as well as military pay. This leave accrues at the beginning of each fiscal year, and all Guard or Reserve members, including those on extended active duty, should be credited with 15 days of paid military leave on October 1 of each year.

An agency now may charge military leave under 6323 (a) only for hours the employee otherwise would have worked. An employee no longer "loses leave" on

weekends and other nonworkdays and will be paid his or her full civilian pay for all 120 hours.

In addition, effective November 24, 2003, employees 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 are entitled to 22 days of military leave under 5 U.S.C. 6323(b). Under this provision the employee is entitled to the greater of his military or civilian pay.

Employees also are entitled to use any accrued or accumulated annual leave for periods of active military duty. Employees using annual leave will receive their full civilian pay, as well as compensation for their military service.

Q17 - May an employee on active duty or active/inactive duty training choose to use annual leave or military leave intermittently with leave without pay each pay period to maintain sufficient income?

A17 - Yes. OPM's regulations at 5 CFR 353.208 implementing the Uniformed Service Employment and Reemployment Rights Act (USERRA) state that an employee performing service with the uniformed services must be permitted, upon request, to use any accrued annual or military leave during such service. An employee is entitled to use annual leave or military leave intermittently with leave without pay while on active duty or active/inactive duty training.

Q18 - When are employees eligible for an additional 22 days of military leave?

A18 - There are two conditions under which employees are entitled to an additional 22 days of military leave under the provisions of 5 U.S.C. 6323(b). Reservists or National Guard members who perform military duty in support of civil authorities in the protection of life and property are eligible for an additional 22 workdays of military leave. In addition, effective November 24, 2003, employees 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, are entitled to 22 days of military leave under 5 U.S.C. 6323(b).

Q19 - I have an employee who is a military policeman in the Reserves. He is being activated to perform base security at Andrews AFB. Is he entitled to the additional 22 days of military leave?

A19 - Yes. Effective November 24, 2003, all employees who have been activated in support of the national emergency declared by the President are entitled to the 22 days of military leave under 5 U.S.C. 6323(b).

Q20- I have an employee who is a member of the National Guard. His unit has been activated, at the request of the Governor of his State, to provide additional security at local airports. Is he entitled to the additional 22 days of military leave?

A20- Yes. The President has authorized the Governors of several States and territories to use National Guard forces to provide supplemental security personnel for airport operations. Guard members ordered to such duty under 32 U.S.C. 502(f) are clearly assisting civil authorities in the protection of life and property. Therefore,

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

Q21 - Are employees entitled to both their military and civilian pay during periods of military leave taken under 5 U.S.C. 6323(b) in support of civil authorities or of the national emergency?

A21 - No. An employee is entitled to the greater of his civilian or military pay, not both. Under 5 U.S.C. 5519, the military pay received by an individual who has been activated in support of civil authorities or a contingency operation must be credited (less any travel, transportation, or other per diem allowances) against any Federal civilian pay the employee received during the 22 workdays of military leave. An agency may calculate the amount of military pay (less any travel, transportation, or per diem allowances) an employee will receive for the time period that corresponds to the 22 workdays of military leave and reduce the employee's civilian pay by that amount during the 22 workdays of military leave. In contrast, many agencies choose to continue to pay the employee his or her full civilian pay during the 22 workdays of military leave. At the end of the 22-day period of military leave, the agency requires the employee to refund to the agency an amount equal to the amount of military pay received (less any travel, transportation, or per diem allowances) up to the amount of his or her civilian pay for the time period that corresponds to the 22 workdays of military leave.

Q22 - May a Federal civilian employee who has been called to active duty continue to work as a civilian at his or her Federal agency?

A22 - No. The Comptroller General has ruled that an individual on active duty military service may not be employed in a civilian capacity with the Government. The Comptroller General has held that the rendition of services to the Government in a civilian capacity by a member of the armed services on active duty is incompatible with the member's actual or potential military duties and payment for such services is not authorized in the absence of specific statutory authority. This is the case even though the civilian services are rendered during the military member's hours of relaxation or time provided to attend to personal affairs. (See 64 Comp. Gen. 395, 399-400 (1985), and 47 Comp. Gen. 505-506 (1968).)

Q23 - Is a member of the National Guard of the District of Columbia eligible for additional military leave under 5 U.S.C. 6323(c)?

A23 - Yes. However, military leave under 5 U.S.C. 6323(c) may be used only for limited purposes. A Federal civilian employee who is also a member of the DC National Guard is entitled to additional military leave as provided in 5 U.S.C. 6323(c) to participate in a "parade or encampment." The law provides that this type of duty must be authorized under title 39 of the District of Columbia Code. Generally, this category of military leave is limited to drills and training under the authority of the Commanding General of the DC National Guard and is not appropriate for extended active duty in connection with the current national emergency.

Q24- We have an employee who has been on military leave without pay (LWOP-US) since October 2001. He is requesting to be paid for his 15 days of military leave for the new fiscal year. Is he entitled to this?

A24 - Yes. An employee who is a member of the Reserves or National Guard serving on active military duty which extends into a second or succeeding fiscal year may accrue and use the 15 days of military leave which accrue at the beginning of the second fiscal year and each succeeding fiscal year without return to civilian status. In addition, an employee who has been activated in support of the national emergency whose duty extends into the next calendar year will be entitled to up to an additional 22 days of military leave under 6323(b).

Q25 - What does the term "contingency operation" mean?

A25 - The term "contingency operation" means a military operation that -

(a) is designated by the Secretary of Defense as an operation in which members of the armed forces are or may become involved in military actions, operations, or hostilities against an enemy of the United States or against an opposing military force; or

(b) results in the call or order to, or retention on, active duty of members of the uniformed services under section 688, 12301(a), 12302, 12304, 12305, or 12406 of title 10, United States Code, chapter 15 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.