NIH Policy Manual

2300-630-5 - Family Leave Policies And Programs

Issuing Office: OD/OM/OHR/WRD **Phone:** (301) 402-9203

Release Date: 4/04/2016 ?

Transmittal Notice

1. **Explanation of Material Transmitted:** This chapter provides guidelines and requirements for handling all requests for leave for family responsibilities.

   Note: This revision includes changes in sections D. Definitions, F. Family Leave Policies and Programs, and G. Policy for Other Alternatives in order to: update definitions of advanced leave, update guidance on approval of advanced leave, incorporate repayment options and considerations for advanced leave, add Appendix 2, and reorganize existing information.
2. **Filing Instructions:**

   Remove: NIH Manual 2300-630-5, dated 07/16/2014
   Insert: NIH Manual 2300-630-5, dated 04/04/2016

PLEASE NOTE: For information on:

- Content of this chapter, contact the issuing office listed above.
- NIH Manual System, contact the Division of Management Support, OMA on 301-496-2832, or enter this URL: https://oma.od.nih.gov/DMS/Pages/Manual-Chapters.aspx

A. Purpose

This chapter addresses NIH policy as it relates to Title II of the Family and Medical Leave Act of 1993 (FMLA), Sick Leave Used for Family Care or Bereavement [formerly known as the Federal Employees Family Friendly Leave Act (FEFFLA)], and leave sharing programs such as the Voluntary Leave Bank Program and Voluntary Leave Transfer Program. It also addresses other leave provisions and programs which support NIH employees in their efforts to balance their jobs and family responsibilities. This policy supplements and should be used in conjunction with regulations and policy provided in Title 5, Code of Federal Regulations (CFR), Part 630 (5 CFR 630) and the Department of Health and Human Services (HHS) Personnel Instruction 630-1.

B. Coverage

1. **FMLA:** All full-time and part-time NIH employees[1] with at least twelve (12) months of civilian service and who are covered by the Federal leave system [see 5 U.S.C., 6301(2)] are covered by this chapter, under Title II of the FMLA. The following employees are not covered:

    a. Public Health Service (PHS) Commissioned Corps Officers;
    b. Employees with intermittent appointments;
    c. Employees with temporary appointments of less than 13 months;
    d. Individuals not appointed by the Government, e.g.:

        1. Intramural Research Training Award Fellows;
        2. Guest Researchers;
        3. Visiting Fellows; and
        4. Special Volunteers.

    Intermittent employees and temporary employees with appointments of less than 13 months are covered under the Department of Labor (DOL) regulations described in Title I of the FMLA. These employees' requests for leave will be administered by the NIH in accordance with DOL regulations and are not addressed in this Chapter.
    In cases where there is exclusive recognition of an employee organization with a negotiated agreement which provides greater entitlements, the articles of the agreement relating to the FMLA apply.

2. **Use of Sick leave for Family Care or Bereavement (formerly known as FEFFLA):** All full and part-time NIH employees who are covered by the Federal leave system (see 5 U.S.C. 6301(2)) are covered by this chapter, regardless of length of service.
    In cases where there is exclusive recognition of an employee organization with a negotiated agreement which provides greater entitlements, the articles of the agreement relating to the FEFFLA apply.

The NIH will continue to honor all current Collective Bargaining Agreements and will implement this policy consistent with the Agreements and its obligations under law, rule or regulation.

C. References

1. Title 5 United States Code (U.S.C.), Chapter 63 (5 U.S.C. 63) "Leave"
2. Title 5, Code of Federal Regulations (CFR), Part 630 (5 CFR 630) "Absence and Leave"

3. The White House, Presidential Memorandum on “Expanded Family and Medical Leave Policies” dated April 11, 1997
4. The White House, Presidential Memorandum on “Extension of Benefits to Same-Sex Domestic Partners of Federal Employees” dated June 2, 2010
5. The White House, Presidential Memorandum on “Modernizing Federal Leave Policies for Childbirth, Adoption and Foster Care to Recruit and Retain Talent and Improve Productivity” dated January 15, 2015
6. OPM Handbook on Leave and Workplace Flexibilities for Childbirth, Adoption, and Foster Care
7. HHS Personnel Instruction 630-1, "Leave and Excused Absence"
8. HHS Personnel Instruction 610-2, "Temporary Closing of Work Places and Treatment of Absences"
9. HHS Personnel Instruction 550-1, "Premium Pay"
10. HHS Personnel Instruction 550-11, "Compensatory Time Off For Religious Observances"
11. HHS Personnel Instruction 610-1, "Establishing and Administering Work Hours, Work Weeks, and Work Schedules"
12. NIH Delegations of Authority, Leave Authority # 02, available at the NIH Delegations database at http://www.delegations.nih.gov/DOADetails.aspx?id=1783
13. NIH Manual 2300-610-4, "Alternative Work Schedules," available at
14. NIH Manual 1743, "Keeping and Destroying Records," Appendix 1
15. NIH Voluntary Leave Bank Policies & Procedures, http://hr.od.nih.gov/benefits/leave/vlbp/documents/Leave_Bank_Procedures.pdf

D. Definitions

1. Throughout this chapter, these words have the following meanings:

    a. **must**, **shall** and **will** are used to indicate requirements;
    b. **may** and **should** are *not* requirements but are used to indicate recommendations.

2. **Accrued Leave:** Accrued leave is leave earned by an employee during the current leave year that is unused at any given time in that leave year.
3. **Accumulated Leave:** Accumulated leave is unused leave remaining to the credit of an employee at the end of a leave year which is carried over to the beginning of the next leave year.
4. **Advanced Leave:** Advanced leave is authorized absence from duty which is charged to sick or annual leave before that leave is actually earned. Such leave is granted at agency discretion, and use of advanced leave indebts the employee to the government until the leave is repaid.
5. **Annual Leave:** Annual leave is authorized absence from work to allow employees vacation, or a period of extended absence for rest and relaxation, and to provide periods of time off for personal and emergency situations. Annual leave is earned each pay period. The amount earned is based on number of hours worked and eligibility to earn annual leave is based on length of service.

6. **Compensatory Time:** Compensatory time is time off from work earned in lieu of pay for overtime work performed. It may be substituted only for irregular or occasional overtime. The approval to earn and use compensatory time must be granted in advance and fit into the needs of an organization.

   Employees whose rate of basic pay is greater than the maximum rate for a GS-15-10 are excluded from earning and using compensatory time.
7. **Credit Hours:** Credit hours are hours in excess of the basic work requirement which an employee who is under a flexible work schedule elects to work, with supervisory approval, so as to vary the length of a workday or workweek.
8. **Employee:** An employee is an individual who is appointed in the civil service, engaged in the performance of a Federal function and subject to the supervision of another Federal employee, or an employee paid from non-appropriated funds (see 5 U.S.C. 6301).
9. **Excused Absence:** Time off without charge to leave or loss of pay. This leave is sometimes referred to as administrative leave.
10. **Family Member:** Under the FMLA, family member is defined as:

    a. spouse (a partner in any legally recognized marriage regardless of the employee's state of residence, as well as common law marriage in states where such marriages are recognized),
    b. son or daughter under the age of 18, or over the age of 18 if they are incapable of self-care (including adopted or foster children, stepchildren or a legal ward),
    c. or parent (this term does not include "parents-in-law").

    Note that the term "spouse" does not include unmarried domestic partners, unless they meet the requirements of being spouses in a common-law marriage in states where such marriages are recognized.

    Under other leave programs and policies, including Sick Leave, Funeral Leave, the Voluntary Leave Transfer Program, the Voluntary Leave Bank Program, and Emergency Leave Transfer Programs, family member has a much broader meaning as described in 5 C.F.R. 630.201(b). These definitions can be found on the Office of Personnel Management (OPM) website at: http://www.opm.gov/oca/leave/HTML/FamilyDefs.asp.

11. **Health Care Provider:** For the purpose of this chapter, a health care provider is 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; any provider recognized by the Federal Employees' Health Benefits Program (FEHBP) or who is licensed or certified under Federal or State law to provide the service in question; a Federal or State licensed or certified provider, recognized by the FEHBP, who practices in a foreign country; a Native American traditional healing practitioner; or a Christian Science practitioner listed with the First Church of Christ, Scientist, in Boston, Massachusetts.

12. **Incapacity:** The inability to work, attend school, or perform other regular daily activities because of a serious health condition or treatment for or recovery from a serious health condition.
13. **Leave-Approving Official:** The leave-approving official is the person with the delegated authority to approve leave requests. This individual is generally the employee's immediate supervisor.
14. **Leave Without Pay (LWOP):** LWOP is an authorized absence from duty which results in a non-pay status. An employee must request the use of LWOP. It may be granted when the employee has insufficient annual leave, sick leave, accrued credit hours or compensatory time to cover an approved absence. However, an employee is not required to have a zero leave balance to request LWOP.
15. **Medical Documentation or Certification:** For the general purpose of this chapter, medical documentation or certification is evidence which may be required by the supervisor in support of a request for leave due to an employee's illness or due to the illness of a family member. Medical documentation or certification is defined as a written statement signed by a health care provider (see D.10 above) certifying to the incapacitation, examination, or treatment; and, if appropriate, to the period of disability of the employee or family member. It should be sufficiently specific for the leave-approving official to make a reasonable decision concerning the appropriateness of granting leave. More extensive documentation may be required, as considered appropriate by the leave-approving official.

    For purposes of the FMLA, medical documentation or certification is written information supplied by the health care provider of the employee or the health care provider of the employee's family member which includes: the date the serious health condition commenced; the probable duration of the serious health condition; and medical facts regarding the serious health condition, including a general statement as to the incapacitation, examination or treatment that may be required by a health care provider. OPM provides appropriate forms WH 380-E (http://www.dol.gov/whd/forms/wh-380-e.pdf) and WH 380-F (http://www.dol.gov/whd/forms/wh-380-f.pdf). NIH Form 2940 may be used in conjunction with the Voluntary Leave Bank Program recipient applications (http://hr.od.nih.gov/benefits/leave/vlbp/documents/NIH_2940.pdf). For leave requested due to the serious health condition of the employee, it should include a statement that the employee is unable to perform any one or more of the essential functions of his/her position. In order to facilitate this process, the employee's position description should also be provided.

    In the case of leave requested for care of a family member with a serious health condition, this documentation should include a statement from the health care provider that: the family member requires psychological comfort and/or physical care; needs assistance for basic medical, hygienic, nutritional, safety or transportation needs; and would benefit from the employee's care or presence. In addition, there should also be a statement from the employee on the care he/she will provide and an estimate of the amount of time needed to care for the family member. In the event the employee is

requesting intermittent leave or leave on a reduced leave schedule (a work schedule that is reduced by the number of hours of leave taken as family and medical leave) for planned medical treatment, the dates on which such treatment is expected to be given and the duration of such treatment should be provided.

16. **Serious Health Condition:** Under the FMLA, a serious health condition is an illness, injury, impairment, or physical or mental condition that involves: (a) inpatient care 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 (b) 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. Any period of incapacity of more than three 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 (or under the supervision of) a health care provider; or
        2. treatment by (or under the supervision of) a health care provider on at least one occasion which results in a regimen of continuing treatment.

    b. Any period of incapacity due to childbirth, pregnancy or for prenatal care.
    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;
        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 or epilepsy.

    d. A period of incapacity which is permanent or long-term due to a condition for which treatment may not be effective; 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 either for restorative surgery after an accident or other injury or for a condition that would likely result in a period of incapacity of more than three consecutive calendar days in the absence of medical intervention or treatment; e.g., chemotherapy/radiation for cancer, physical therapy for severe arthritis, or dialysis for kidney disease.

    Other examples of a serious health condition include but are not limited to: heart attacks; heart conditions involving bypass or valve operations; most cancers; back conditions requiring extensive therapy or surgery; severe respiratory conditions; spinal

injuries; appendicitis; pneumonia; emphysema; severe arthritis; severe nervous disorders; injuries caused by serious accidents on or off the job; pregnancy; miscarriages; complications or illnesses related to pregnancy (e.g. severe morning sickness); the need for prenatal care; childbirth; and recovery from childbirth.

Conditions **not** considered a serious health condition include: routine physical, eye or dental examinations; conditions where over-the-counter medicines and/or bed rest are initiated without a visit to a health care provider; voluntary or cosmetic treatments that are not medically necessary; and surgical procedures that typically do not involve hospitalization and require only a brief recovery period.

In addition, the common cold, the flu, earaches, upset stomach, minor ulcers, headaches (other than migraines), allergies, restorative dental or plastic surgery after an injury, or mental illness resulting from stress may be serious health conditions **only** if complications develop or if such conditions require inpatient care or continuing treatment by a health care provider.

Some, but not all, serious health conditions may also be considered a disability under the Rehabilitation Act of 1973 (as amended). Furthermore, an employee who has a serious health condition is not inherently regarded as having an ADA disability by their employer. Please consult ADA guidelines for additional information.

17. **Sick Leave:** Sick leave is authorized absence from work for an employee: who is incapacitated for work because of illness, injury, or pregnancy and confinement; who is undergoing medical, dental or optical examination or treatment; who is caring for a family member as a result of physical or mental illness, injury, pregnancy and childbirth, medical, dental or optical examination or treatment; who is making arrangements necessitated by the death of a family member, including attendance at the funeral; who must be absent from duty for purposes relating to the adoption of a child; or who has been exposed to a contagious disease. Sick leave is also appropriate when, through exposure to a communicable disease, the presence of the employee at his/her duty station would jeopardize the health of others. Sick leave is earned in fixed increments each pay period based on number of hours worked.

    NOTE: The terms **"maternity leave"** and **"paternity leave"** are deliberately not used in this chapter because they imply separate leave categories which do not exist in the Federal system.

E. Responsibilities

1. **Institute and Center (IC) Directors:** IC Directors (or their designees) are responsible for administering the NIH policies and procedures on family leave. They are also responsible for assuring that appropriate staffs are in compliance with record keeping and reporting requirements.
2. **Workforce Relations Division (WRD):** WRD is responsible for providing information, guidance, and training regarding family leave policies and procedures to

IC staff. They are also responsible for providing information on the use of family leave to the Office of Human Resources upon request.

3. **Office of Human Resources (OHR):** The OHR is responsible for providing technical guidance to the ICs and for developing written policy concerning family leave laws and regulations.
4. **Leave-Approving Officials:** Leave-approving officials are responsible for approving or disapproving leave requests, the earning and use of credit hours and/or compensatory time, and requests for advance leave. They are responsible for administering leave policies equitably and reasonably. They must ensure that all employees under their supervision are informed of the procedural requirements that must be followed in requesting and using leave. They must ensure that absences from duty are appropriately charged according to laws and regulations.

   They may also ask for medical certification for any requested hours of sick leave. Leave-approving officials are also responsible for confirming that an employee is invoking his/her entitlement to FMLA leave before subtracting any hours of leave from the employee's entitlement. This confirmation should be ascertained in advance.
5. **Employees:** Employees are expected to provide notice of and request and obtain advance approval for all anticipated absences. They are responsible for providing adequate and acceptable medical documentation, when applicable. They are responsible for notifying their supervisors and requesting approval for any unexpected need for absence within a reasonable period of time appropriate to the circumstances involved. Employees are also required to authenticate the accuracy of their time and attendance in ITAS (or equivalent system of record).

   Under the FMLA, when the need for leave is foreseeable, an employee must provide notice of intent to use and a request for the leave not less than 30 days before the leave is to be taken. If the need for leave is not foreseeable, the employee shall notify his/her leave-approving official of their intent to take leave within a reasonable period of time appropriate to the circumstances involved or as soon as is practicable.
6. The **NIH** will be responsible for reporting employees' use of leave under the FMLA and sick leave for family care and bereavement (formerly known as FEFFLA) as requested by the Office of Personnel Management.

   Therefore, individual ICs will maintain information on each employee using leave under the FMLA and sick leave for family care and bereavement (formerly known as FEFFLA), which will include: (1) The employee's grade, step and rate of basic pay; (2) the occupational series of the employee's position; (3) the employee's gender; (4) the number of hours and type of leave taken; and (5) the purpose of the leave, e.g., leave under FMLA (for a birth, adoption or foster care or the care of a family member or medical leave for the employee's serious health condition); sick leave for the care of a family member or sick leave due to the death of a family member; sick leave for adoption; or excused absence for bone marrow or organ donation.

   This information will be provided to the OHR upon request.

F. Family Leave Policies and Programs

1. **Family and Medical Leave Act (FMLA):** In conjunction with the FMLA, employees are entitled to and leave-approving officials must grant up to 12 weeks of **unpaid leave** within any 12-month period to attend to the serious health conditions of themselves or their family members (see D.9. above). An employee **may elect** to substitute paid leave (sick and/or annual leave - including approved advanced leave of either type, donated leave under the Voluntary Leave Transfer Program or Leave Bank, but **not** compensatory time or credit hours) in lieu of unpaid leave under the FMLA, consistent with applicable laws and regulations (see 5 CFR 630.1206). This election may not be denied. However, an employee may not retroactively substitute paid time off for LWOP previously taken under the FMLA.

    a. *Allowable Uses:*

        1. Leave taken under the FMLA may be requested for one or more of the following reasons:

            - The birth of a son or daughter of the employee and the care of a newborn child (within one year after birth);
            - The placement of a son or daughter with the employee for adoption or foster care (within one year after placement);
            - The care of a family member of the employee with a serious health condition;
            - A serious health condition of the employee making the employee unable to perform any one or more of the functions of his/her position; or
            - Any qualifying exigency arising out of the fact that the employee's spouse, son, daughter, or parent is a covered military member on covered active duty (or has been notified of an impending call or order to covered active duty) in the Armed Forces. Qualifying exigencies are situations in which an employee needs to take leave to prepare for deployment, including attending to financial and legal obligations, making arrangements for childcare, rest and recuperation, etc. A complete list of qualifying exigencies can be found in 5 C.F.R. 630.1204

            This policy applies to both male and female employees. Both a mother and a father are each entitled to the 12 weeks of unpaid leave for a birth, placement of a child with them for adoption or foster care, or for the care of an eligible family member with a serious health condition.

        2. Care for Injured Members of the Armed Forces

            In addition to the above uses, FMLA leave can be taken to Care for Injured

Members of the Armed Forces. This provision provides covered family members with up to 26 weeks of FMLA leave during a single 12-month period to care for the servicemember (hereafter referred to as "military family leave"). In addition to the definition of a family member under FMLA provided in this document, a family member for the purposes of the care for injured members of the Armed Forces includes next of kin as defined by 5 U.S.C. 6381(10).

During the single 12-month period, the employee is entitled to a combined total of 26 weeks of regular FMLA leave and military family leave. For example, if during the single 12-month period an employee wants to take 6 weeks of regular FMLA leave for the birth of a child, as well as military family leave for care of a servicemember, the 6 weeks of regular FMLA leave would be subtracted from the combined entitlement of 26 weeks, leaving the employee with 20 weeks of military family leave for care of the servicemember. The use of this military family leave in a single 12-month period does not limit the use of regular FMLA leave during any other 12-month period. For example, if an employee uses 26 weeks of military family leave during a single 12-month period but has not used any regular FMLA leave during that period, the employee would be entitled to use up to 12 weeks of regular FMLA leave immediately following the single 12-month period. Similar to regular FMLA leave, military family leave is unpaid leave for which an employee may substitute any accumulated annual or sick leave. The normal leave year limitations on the use of sick leave to care for a family member do not apply.

b. *Procedures:*

An employee must provide notice of his or her intent to take FMLA leave not less than 30 days before leave is to begin or, in emergencies, as soon as is practicable. This should not extend more than 30 days after the date of the requested leave except in extreme cases.

When notice of intent to use leave under FMLA is provided, the employee will (1) indicate the type of leave desired (annual, sick, or LWOP) and (2) identify the leave as "FMLA leave" for either family leave (for a birth, adoption or foster care or to care for a family member) or medical leave (for the employee's serious health condition). The employee and their supervisor will then identify the beginning and ending dates of the 12-month period of FMLA leave entitlement based on the first date the employee takes leave for the qualifying family or medical need as specified in section a. above.

A leave-approving official may require that a request for leave under the FMLA be supported by written medical certification (see 5 CFR 630.1208).

c. *Types of Leave:*

Leave taken under the FMLA may be taken under a reduced leave schedule (see D.14 above) or on an intermittent basis. However, this schedule must be medically necessary. The employee must consult with the leave-approving official so they can agree on a schedule, approved by the health care provider, which will not disrupt the operations of the organization. Employees and leave-approving officials are encouraged to work together in developing a schedule that meets both the employee's family or medical needs and the organization's need to manage work.

The 12 weeks of unpaid leave is **in addition to other paid time off** (sick and/or annual leave-including approved advanced leave of either type), compensatory time and/or accrued credit hours) available to an employee that may be granted by the leave approving official. However, an employee must obtain approval and/or meet statutory requirements to take additional leave or other periods of paid time off.

Unpaid leave requested by an employee who meets the criteria for leave and has complied with the FMLA requirements **must not**be denied.

An employee may take only the amount of family and medical leave that is necessary to manage the circumstances that prompted the initial need for the leave.

d. *Return to Work:*

NIH employees who take leave under the FMLA must be returned to their same position upon return from the leave or to an equivalent position with equivalent benefits, pay, status, and other terms and conditions of employment. This does not apply to an employee who was hired for a specific project or only for a defined period, if the period of employment has expired and the employment would not have otherwise been extended. Employees in positions that have specific medical standards, physical requirements, or are covered by a medical evaluation program must provide medical certification of their ability to return to work after taking medical leave for their own serious health condition.

See Appendix for a summary of information on FMLA.

2. **Expanded Family and Medical Leave Policies:** In conjunction with a 1997 Presidential directive expanding the protections provided by the FMLA, employees may schedule and should be granted up to 24 hours of leave without pay each year (during any 12-month period) for the following purposes:

   a. To allow employees to participate in school activities directly related to the educational advancement of a child. This would include parent-teacher conferences or meetings with child-care providers, interviewing for a new school, or participating in volunteer activities supporting the child's educational advancement. For the purpose of this directive, school refers to an elementary school, secondary school, Head Start program, or a child-care facility.

b. To allow parents to accompany children to routine medical or dental appointments, such as annual checkups or vaccinations. Although these activities are not currently covered by the FMLA, the Sick Leave for Family Care and Bereavement permits employees to use up to 13 days of sick leave each year for such purposes. Employees may also use up **to 24 hours of leave without pay each year** for these purposes in cases when no additional leave is available to them.
c. To allow employees to accompany an elderly relative (per definition of family member under the Sick Leave for Family Care and Bereavement provisions) to routine medical or dental appointments or other professional services related to the care of the elderly relative, such as making arrangements for housing, meals, phones, banking services, and other similar activities. Although employees can use unpaid leave or sick leave for certain types of activities under the FMLA, such as caring for a parent with a serious health condition, employees may use up to 24 hours of unpaid time off each year for this broader range of activities related to elderly relatives health or care needs.

Leave-approving officials may require evidence that is administratively acceptable, including medical certification as appropriate, from an employee who requests leave under this policy.

Additionally, leave-approving officials shall grant employees' requests to substitute paid time off (annual leave, compensatory time off, and credit hours under flexible work schedules), for these family activities when such leave is available to these employees.

Leave for the above purposes shall be scheduled in advance whenever possible. However, employees should be accommodated even when it is not possible to anticipate the need for this leave.

3. **Sick Leave for Family Care and Bereavement [formerly known as FEFFLA]:** All employees are entitled to and leave-approving officials must grant up to 104 hours of accrued (or advanced at the discretion of the leave-approving official) sick leave in any leave year, to provide care for a family member as a result of physical or mental illness, injury, pregnancy and childbirth, or medical, dental, or optical examination or treatment or to make arrangements necessitated by the death of a family member or attend the funeral of a family member. This may include making funeral arrangements, attendance at the funeral, the reading of a will, and estate settlement. (The amount of sick leave for these purposes to which a part-time employee is entitled shall be pro-rated in accordance with 5 CFR 630.401.) Medical certification may be requested for sick leave in excess of three consecutive workdays or for shorter periods when the employee has been advised of the requirement.

   See Appendix 1 for a summary of information on Sick Leave for Family Care and Bereavement.
4. **Pregnancy and Childbirth:** Leave-approving officials will be responsive in granting leave for working parents. Requests for sick leave for reasons related to periods of

incapacitation resulting from pregnancy, childbirth, and confinement must be granted. Additional annual leave, advanced sick and/or annual leave, compensatory time, credit hours or LWOP may be granted, depending on the circumstances and availability of each type of leave and management's needs. The employee is responsible for providing notice substantially in advance (generally at least 30 days) of the anticipated leave dates.

Medical documentation may be requested for sick leave requests related to pregnancy and childbirth. Each situation will determine the duration of the incapacitation. However, the woman's health care provider will be the person to determine the length of time she will be under his/her care and incapacitated for work.

Up to 240 hours of advanced sick leave can be requested by the employee in connection with the pregnancy and childbirth. This is offered irrespective of any existing leave balances available to the employee. Such leave is granted at agency discretion, but should be granted to the maximum extent practicable in accordance with sick leave laws and regulations and consistent with mission needs. Use of advanced leave indebts the employee to the government until the leave is repaid.

A spouse or domestic partner may request sick leave under the Sick Leave for Family Care and Bereavement provisions (up to 104 hours per leave year) to care for their spouse or domestic partner during pregnancy or childbirth, including accompanying the mother to medical examinations or treatments. Sick leave must not be granted based solely on an employee's (mother or father) responsibility to care for or desire to bond with the infant, after the period of incapacitation. However, the mother or father may request sick leave under the Sick Leave for Family Care and Bereavement provisions (up to 104 hours per leave year) to care for the infant in cases of physical or mental illness, injury, or to accompany the infant to medical examinations or treatments.

Additional absence requested by the mother or father to care for the newborn that is not supported by medical documentation may be approved and charged to annual leave, advanced annual leave, compensatory time, accrued credit hours or LWOP. If the mother or father invokes FMLA within one year of the birth, LWOP (up to the maximum allowable, as described in F. 1. above) or an election to substitute available paid leave, it must be granted.

Advanced annual leave, not to exceed the amount the employee would accrue within the leave year, shall be offered for the purposes of bonding with a healthy child. This is offered irrespective of any existing leave balances available to the employee. Such leave is granted at agency discretion, and use of advanced leave indebts the employee to the government until the leave is repaid.

5. **Leave for Adoption, Foster Care, and Surrogacy:**

    a. *Adoption:*

        Employees are entitled to and leave-approving officials shall grant accrued or

accumulated sick leave for purposes of adoption. This entitlement to use sick leave is in addition to an employee's entitlement under FMLA. There is no limit to the amount of sick leave an employee may use in a given year for adoption related purposes.

Purposes for which an adoptive parent may request sick leave include appointments with adoption agencies, social workers, and attorneys; court proceedings; required travel; and any other activities necessary to allow the adoption to proceed, including any periods during which an adoptive parent is ordered or required by the adoption agency, by a physician or by a court to be absent from work to care for the adopted child. Sick leave may also be used consistent with the Agency's policy on use of sick leave for the care of family members.

Up to 240 hours of advanced sick leave can be requested by the employee in connection with the adoption of a child. This is offered irrespective of any existing leave balances available to the employee. Such leave is granted at agency discretion, and use of advanced leave indebts the employee to the government until the leave is repaid.

Additional time requested by the employee not related to purposes of adoption and not covered by the Agency's sick leave policies may be granted and charged to annual leave, advanced annual leave, compensatory time, credit hours or LWOP. If the mother or father invokes FMLA, LWOP (up to the maximum allowable, as described in F. 1. above) or an election to substitute available paid leave, it must be granted.

Advanced annual leave, not to exceed the amount the employee would accrue within the leave year, shall be offered for the purposes related to adoption, including bonding with a newly adopted child. This is offered irrespective of any existing leave balances available to the employee. Such leave is granted at agency discretion, and use of advanced leave indebts the employee to the government until the leave is repaid.

b. *Foster Care:*

An employee who is fostering a child is not entitled to sick leave for adoption-related purposes, unless the employee is adopting the foster child. If the employee is in the process of adopting the foster child, the policies contained in 5(a) above apply.

Foster children are treated as sons and daughters of an employee for sick leave and advanced sick leave purposes. Annual leave, advanced annual leave, compensatory time, credit hours or LWOP may be authorized for purposes of providing foster care. If the foster parent invokes FMLA, within one year of the placement, LWOP (up to the maximum allowable, as described in F. 1. above) or

an election to substitute available paid annual leave, it must be granted.

Advanced annual leave, not to exceed the amount the employee would accrue within the leave year, shall be offered for the purposes of foster care placement in the home. This is offered irrespective of any existing leave balances available to the employee. Such leave is granted at agency discretion, and use of advanced leave indebts the employee to the government until the leave is repaid.

c. *Surrogacy:*

Employees are entitled to and leave-approving officials shall grant accrued or accumulated sick leave for surrogate parent arrangements. The prospective parent using surrogacy may use leave for the same purposes as those available to an adoptive parent. In addition, the prospective parent may use sick leave to accompany the surrogate to medical examinations or treatments, based on the definition of a family member under 5 C.F.R. 630.201(b).

Additional time requested by the employee not related to purposes of surrogacy but to care for the surrogate child and not covered by the Agency's sick leave policies may be granted and charged to annual leave, advanced annual leave, compensatory time, credit hours or LWOP.

Advanced annual leave, not to exceed the amount the employee would accrue within the leave year, shall be offered for the purposes of bonding with a surrogate child. This is offered irrespective of any existing leave balances available to the employee. Such leave is granted at agency discretion, and use of advanced leave indebts the employee to the government until the leave is repaid.

6. **Voluntary Leave Transfer Program:** The Voluntary Leave Transfer Program (VLTP) allows, with the concurrence of the appropriate NIH officials, unused accrued annual leave of one Federal employee to be transferred to another Federal employee who needs it because of a medical or family medical emergency. Pregnancy or caring for a family member with a life-threatening illness are examples of family medical emergencies. For further information regarding this program, see HHS Personnel Instruction 630-1. See Appendix 1 for a summary of information on the VLTP
7. **Voluntary Leave Bank Program:** The Voluntary Leave Bank Program (Leave Bank or LB) enables employees to contribute accrued or accumulated annual leave or restored annual leave to a bank. The leave from this bank is made available to LB Members who are projected to be in non-pay status for at least 24 hours because of a personal or family medical emergency.

   To become a recipient, a member must be affected by a personal or family medical (1) emergency, be projected to result in a non-pay status for at least 24 hours, and submit a complete application package within 30 calendar days of the termination of the medical emergency.

   For further information regarding this program, see HHS Instruction 630-1, Leave and

Excused Absence and the NIH Voluntary Leave Bank Program Policies and Procedures at http://hr.od.nih.gov/benefits/leave/vlbp/documents/Leave_Bank_Procedures.pdf.

See Appendix 1 for a summary of information on the LB.

8. **Miscellaneous Absence for Family Care:** Employees may request and leave-approving officials should approve whenever possible, annual leave, LWOP, and the use of compensatory time and credit hours for some additional absences for family care. Examples of these circumstances include but are not limited to the following:

    a. when an employee wishes to accompany a family member to personal business appointments;
    b. when an employee wishes to bond with a healthy child (after the first year), for a healthy child whose school is temporarily closed, or for a family member whose day care provider is temporarily unable to provide care; or
    c. when an employee is obligated to attend events such as teacher conferences or other school activities

In addition to approving requests for leave whenever possible, supervisors are encouraged to consider compressed and flexible work schedules and telework to accommodate employees' short and long term medical disability situations and/or accommodate employees' day-to-day family related needs.

G. Policy for Other Alternatives

1. **Credit Hours:** At the discretion of the IC, flexible work schedules may include a provision for the earning and use of credit hours. Both the earning and use of credit hours are subject to advance supervisory approval.
2. **Compensatory Time:** An employee will be permitted to earn, and the supervisor will grant, compensatory time (see D.6. above) for purposes outlined in this chapter; i.e., for family or parental reasons. The compensatory time must be earned before the anticipated absence, if work that cannot be completed during normal working hours is available, and it does not interfere with the efficient accomplishment of the organization's mission.
3. **Excused Absence for Bone-Marrow or Organ Donation:** An employee is entitled to use up to seven days of excused absence each calendar year to serve as a bone-marrow donor and up to thirty days of excused absence each calendar year to serve as an organ donor. This is separate from any annual or sick leave available to them.
4. **Excused Absence for Preventive Health Screenings:** An employee with fewer than 80 hours (2 weeks) of accrued sick leave may use up to four hours of excused absence each year for participation in preventive health screenings. Examples of "preventive health screenings" include, but are not limited to, screening for prostate, cervical, colorectal and breast cancer, and screening for sickle cell anemia, blood lead level and blood cholesterol level. An employee may not be granted excused absence to accompany a family member receiving preventative health screenings. The four hours of excused absence may be used all at once or a portion at a time over more than one day during the leave year. The employee’s supervisor may request medical

documentation for an excused absence for preventive health screenings. Use of this policy should be balanced with the use of other work life and schedule flexibilities.

5. **Advanced Leave:** An advance of sick leave may be made at any time to an employee irrespective of existing leave balances for any of the reasons that would allow the employee to request sick leave to his/her credit. However, at no time may the total sick leave advanced exceed 240 hours or 30 days. The employee must request advanced sick leave in writing and provide supporting medical documentation. If an employee is granted advanced sick leave and has not earned it back at the time of separation, it must be paid back. Repayment is always required, unless the employee dies, retires for disability, or is separated/resigns because of disability. The agency makes the determination as to whether an employee has separated or resigned because of disability.

   An advance of annual leave may be made to an employee irrespective of existing leave balances not to exceed the amount the employee would accrue within the leave year. NOTE: Advanced annual leave may not be used by an employee accepted under the VLTP, Leave Bank, or an Emergency Leave Transfer Program.
   An employee does not have a right or entitlement to advanced leave, regardless of the circumstances. However, Leave Approving Officials are encouraged to grant advanced leave requests related to childbirth, adoption, foster care, and surrogacy to the extent permitted by law. In addition, if leave is advanced, there must be a reasonable expectation that the employee will return to duty. If an employee is granted advanced annual leave and has not earned it back at the time of separation, it must be paid back. Repayment is always required, unless the employee dies, retires for disability, or is separated/resigns because of disability. The agency makes the determination as to whether an employee has separated or resigned because of disability.

   The employee has the following options for the repayment of advanced sick leave:

   - Subsequently earned sick leave
   - A charge against annual leave
   - Upon separation, deduction from pay due
   - Substituting donated leave if the employee is a member of VLTP or the Leave Bank

   The employee has the following options for the repayment of advanced annual leave:

   - Subsequently earned annual leave
   - Upon separation, deduction from pay due
   - Substituting donated leave if the employee is a member of VLTP or the Leave Bank

   The employee should balance the benefit of access to advanced leave with the risk of becoming indebted to the government. Reference Appendix 2 for examples of the debt that is created by using advanced leave. This debt will transfer with the employee if he or she moves between federal agencies. The debt will become due in full if the

employee leaves federal service.

H. Policy for Health Benefits Coverage

An employee enrolled in a health benefits plan under the Federal Employees' Health Benefits Program (FEHBP) who is placed in a LWOP status as a result of entitlement to leave under the FMLA may continue his or her enrollment while in the LWOP status and arrange to pay his/her share of the premiums on a current basis or when he/she returns to a pay and duty status. In addition, if LWOP granted under the FMLA, when combined with LWOP not granted under the FMLA, causes the employee to exceed 365 days in a non-pay status, coverage will continue if the employee has paid their share of the premiums on a current basis. After 365 days, if premiums have not been paid, the health benefits enrollment will be terminated. If enrollment is terminated, employees may re-enroll in the FEHBP upon their return from leave under the FMLA to a pay and duty status.

I. Record Retention and Disposal

All records pertaining to this chapter must be retained and disposed of under the authority of NIH Manual 1743,"Keeping and Destroying Records," Appendix 1, "NIH Records Control Schedules" (as amended). These records must be maintained in accordance with current NIH Records Management and Federal guidelines. Contact your IC Records Liaison or the NIH Records Officer for additional information

J. Internal Controls

The purpose of this manual issuance is to provide consistent guidelines and requirements that apply to leave for family responsibilities for employees at the NIH.

1. **Office Responsible for Reviewing Internal Controls Relative to this Chapter:** Workforce Relations Division (WRD), Office of Human Resources (OHR), Office of Management (OM), Office of the Director (OD), NIH.
2. **Frequency of review:** Reviews will be conducted once every five years or when a policy change is implemented at the government-wide or HHS level that necessitates an update.
3. **Method of Review:** An overall NIH-wide evaluation of current use of and compliance with the policies and programs contained herein.
4. **Review Reports:** Director of the Office of Human Resources and Deputy Director for Management, NIH.

Appendix 1 - Leave Programs

LEAVE PROGRAMS

	VOLUNTARY LEAVE TRANSFER PROGRAM (VLTP)	FAMILY MEDICAL LEAVE ACT (FMLA)	SICK LEAVE FOR FAMILY CARE AND BEREAVEMENT	VOLUNTARY LEAVE BANK PROGRAM (LB)
GOVERNING REGULATIONS /POLICIES	Public Law 103-103, 10/8/93. Permanent program effective 1/31/94 5 U.S.C. §§ 6331-6340 5 C.F.R. §§ 630.901-630.913.	Public Law 103-3, 2/5/93, effective 8/5/93 5 U.S.C. §§ 6381-6387 5 C.F.R. §§ 630.1201-630.1213.	5 U.S.C. 6307 5 CFR part 630, subparts B and D	5 U.S.C. 6361-6373 5 CFR 630, Subpart J
ELIGIBILITY	All Civil Service employees	All permanent Civil Service employees with at least 12 months service and temporary employees with appointment of 13 months or more.	All Civil Service employees	Donors - All Civil Service employees Members – All NIH Civil Service employees
CONDITIONS	Must have a medical emergency and must have exhausted all AL and SL for personal medical emergency and family member (1) medical emergency. Must have anticipated	Entitled to total of 12 admin workweeks of unpaid leave in addition to other available paid leave during any 12-month period for: a) birth of child & care of newborn, concluding 1 year after birth; b) placement of child for	All employees may use up to 104 hours of SL to care for family members (1). Care includes provide care for a family member (1) who is incapacitated as a result of physical or mental illness, injury,	To become a Leave Bank member, an employee must request membership in the payroll system within the individual enrollment period and submit one pay period's

	loss of income (LWOP) of at least 24 hours.	adoption or foster care, concluding 1 year after placement; c) care of family member (2) with serious health condition; d) serious health condition of employee; (e) any qualifying exigency arising out of the fact that the employee's spouse, son, daughter, or parent is a covered military member on covered active duty (or has been notified of an impending call or order to covered active duty) in the Armed Forces.	pregnancy, or childbirth; attend to a family member (1) receiving medical, dental, or optical examination or treatment; provide care for a family member (1) with a communicable disease; or make arrangements necessitated by the death of a family member (1) or attend the funeral of a family member (1).	annual leave accrual, unless the membership contribution is waived. To become a recipient, a member must be affected by a personal or family medical (1) emergency, be projected to result in a non-pay status for at least 24 hours, and submit a complete application package within 30 calendar days of the termination of the medical emergency.
LIMITATIONS	None	None; employee who meets criteria may not be denied leave. Employer may require medical certification.	Supervisor may ask employee to document need to care for family member (1). Total cannot exceed 104 hours SL each year.	Members can receive up to the caps and leave amounts designated by the Leave Bank Board.
APPLICATION PROCEDURES	Apply in writing to immediate supervisor:	Apply to supervisor not less than 30 days before	Approved leave-requesting vehicle. Apply	Apply for membership and to receive

	name, title, grade; nature of medical emergency, severity & anticipated duration; statement from physician.	leave is to begin or as soon as practicable, if leave is unforeseeable.	to immediate supervisor.	leave online through the time and attendance system. Employees must re-apply for membership annually. Membership expires at the end of the leave year.
REQUIRED APPROVALS	Delegated official varies by IC, but may be immediate supervisor, LAO or Executive Officer.	Delegated official varies by IC, but may be immediate supervisor, LAO or Executive Officer.	Delegated official varies by IC, but may be immediate supervisor, LAO or Executive Officer.	Delegated official varies by IC, but may be immediate supervisor, LAO or Executive Officer. Leave Bank Board also involved.
RECORD KEEPING REQUIREMENTS	Approved leave-requesting vehicle; current NIH timekeeping system; manual log, simple & developed locally, to record receipt and amount of donated leave used each pay period, record additions of	Timekeeper makes normal leave and LWOP entries in current NIH timekeeping system.	Timekeeper keeps track of number of hours so amount used does not exceed limit 104 hours SL. Makes normal sick leave entries via current NIH timekeeping system.	The number of Leave Bank Members for each leave year; the number of applications approved for medical emergencies affecting employees and the number of applications approved

	donated leave received, provide information on recipients leave balance to be restored to donors if not needed.			for medical emergencies affecting employee family members (1); the grade or pay level of each Leave Contributor and the total amount of leave he/she contributed to the Leave Bank; the grade or pay level and gender of each Leave Recipient; the total amount of leave requested, supported by the medical emergency, approved, and used by each applicant; and any additional information requested by OPM or the Benefits and Payroll Liaison Branch, Workforce Relations Division, Office of Human Resources at

				the NIH.
TIMEKEEPER REFERENCE	HHS Timekeeping Manual, Chapter 16, Voluntary Leave Transfer Program, updated April 2013	HHS Timekeeping Manual, Chapter 4, Paid Leave and Holidays, updated April 2013	HHS Timekeeping Manual, Chapter 4, Paid Leave and Holidays, updated April 2013	ITAS User Manual and HHS Timekeeping Manual, Chapter 17, Voluntary Leave Bank Program, updated April 2013
COMMENTS	More information in HHS Instruction 630-1, Leave and Excused Absence. Issue date 7/26/96, updated 12/17/10	Upon return, employee must be restored to same position or equivalent. Entitled to maintain health benefits coverage.	Part-time employees may use a pro-rated amount of SL.	More information in HHS Instruction 630-1, Leave and Excused Absence., Issue date 7/26/96, updated 12/17/10.

1. Family member is defined as; spouse, and parents thereof; sons and daughters, and spouses or domestic partners thereof; parents, and spouses or domestic partners thereof; brothers and sisters, and spouses or domestic partners thereof; grandparents and grandchildren, and spouses or domestic partners thereof; domestic partner and parents thereof; and "any individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship." Son or Daughter is defined as: a biological, adopted, step, or foster son or daughter of the employee; a person who is a legal ward or was a legal ward of the employee when that individual was a minor or required a legal guardian; a person for whom the employee stands in *loco parentis* or stood in *loco parentis* when that individual was a minor or required someone to stand in *loco parentis*; or, a son or daughter as described in any of the above of an employee's spouse or domestic partner. See OPM for further definitions: http://www.opm.gov/oca/leave/HTML/FamilyDefs.asp

2. Family member is defined as spouse; son or daughter; or parent of employee. The term spouse applies to a partner in any legally recognized marriage regardless of the employee's state of residence, as well as common law marriage in states where such marriages are recognized. The term son or daughter 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:

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

Appendix 2 - Advanced Leave Examples

An employee planning to request advanced leave should consider the debt that is created when using this leave. Careful consideration of this fact may make other leave options a more attractive alternative. Employees are encouraged to review the scenarios below, which are meant as examples to illustrate some implications of requesting advanced leave.

Scenario 1

Full-Time Employee, Requests full 240 hours of Advanced Sick Leave
Repayment by subsequently earned sick leave

Assume for this example that the employee has decided to repay the advanced sick leave with subsequently earned sick leave. All full-time employees earn 4 hours of sick leave every pay period. The repayment time listed below assumes the employee does not need to use further sick leave during the repayment period. Additional sick leave usage would extend the repayment period.

Scenario 1

Advanced Sick Leave Used	Sick Leave Accrual Rate	Repayment Time (pay periods)	Repayment Time (years)
240 hrs	4 hrs/pay period	60 pay periods	~2.3 years

Scenario 2

Full-Time Employee, Requests full 240 hours of Advanced Sick Leave
Repayment by a charge against existing and/or subsequently accrued annual leave

Assume for this example that the employee has decided to repay the advanced sick leave with a charge against annual leave. Full-time employees earn 4, 6, or 8 hours of annual leave each pay period, depending on tenure. In this example, repayment time is replaced with accrual time, indicating how long it took the employee to earn the annual leave used to liquidate the debt of advanced sick leave.

Scenario 2

Employee Tenure	Sick Leave Used	Annual Leave Accrual Rate	Accrual Time (pay periods)	Accrual Time (years)
1-3 years	240 hrs	4 hrs/pay period	60 pay periods	~2.3 years
3-15 years	240 hrs	6 hrs/pay period	40 pay periods	~1.5 years
= 15 years	240 hrs	8 hrs/pay period	30 pay periods	~1.15 years

Scenario 3

Full-Time Employee, Requests full Advancement of Annual Leave as of January 1
Repayment by subsequently earned annual leave

An employee can be advanced annual leave up to the amount to be earned by the end of the current leave year. Assume for this example that the employee has decided to repay the advanced annual leave with subsequently earned annual leave. Full-time employees earn 4, 6, or 8 hours of annual leave each pay period, depending on tenure. The repayment time listed below assumes the employee does not need to use further annual leave during the repayment period. Additional annual leave usage would extend the repayment period.

Scenario 3

Employee Tenure	Advanced Annual Leave Used (max advanced)	Annual Leave Accrual Rate	Repayment Time (pay periods)	Repayment Time (years)
1-3 years	104 hrs	4 hrs/pay period	26 pay periods	1 year
3-15 years	160 hrs	6 hrs/pay period	26 pay periods	1 year
≥ 15 years	208 hrs	8 hrs/pay period	26 pay periods	1 year

Scenario 4

Full-Time Employee, Requests 120 hours of Advanced Sick Leave
Repayment by donated leave

Assume for this example that the employee has decided to repay the advanced sick leave with donated leave. The employee is a current member of the Leave Bank. They have submitted an application to receive donated leave due to a qualifying medical condition, but have not received a response and have already exhausted their annual and sick leave balances. They request 120 hours of Advanced Sick Leave to cover the period of time between when they went out and when their Leave Bank recipient application was approved.

Scenario 4

Advanced Sick Leave Used	Donated Leave Received	Donated Leave Used to Repay Debt	Remaining Donated Leave Supported by Medical Documentation
120 hrs	240 hours	120 hrs	120 hrs