

# NIH Policy Manual

## 2300-630-5 - Family Leave Policies And Programs

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### Transmittal Notice

1. **Explanation of Material Transmitted:** This chapter provides guidelines and requirements for handling all requests for leave for family responsibilities. This transmittal provides updates to formatting, hyperlinks, and references. A Scope section has replaced the former Coverage section. Within the Scope and Policy sections, updates have been made to include Paid Parental Leave and Parental Bereavement leave policy guidelines. The Records Retention and Disposal section and the Internal Controls section have been removed as they are no longer required.
2. **Filing Instructions:**

**Remove:** NIH Manual 2300-630-5, dated 04/04/2016

**Insert:** NIH Manual 2300-630-5, dated 09/18/2024

**PLEASE NOTE:** For information on:

- Content of this chapter, contact the issuing office listed above.
- NIH Policy Manual, contact the Division of Compliance Management, OMA on 301-496-4606 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 the following leave programs:

- Title II of the Family and Medical Leave Act of 1993 (FMLA)
- The Federal Employee Paid Leave Act (FEPLA), which provides 12 weeks of Paid Parental Leave (PPL) to certain Federal employees covered by the Family and Medical Leave Act (FMLA) in connection with the birth or placement (for adoption or foster care) of a child occurring on or after October 1, 2020.
- Parental Bereavement Leave established by the National Defense Authorization Act (NDAA) for Fiscal Year 2022, effective December 27, 2021.

- 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. Scope**

**1. The Family and Medical Leave Act (FMLA):** All full-time and part-time NIH employees 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 12 months;
- d. Individuals not appointed by the Government, e.g.:
  - i. Intramural Research Training Award Fellows;
  - ii. Guest Researchers;
  - iii. Visiting Fellows; and
  - iv. Special Volunteers.

Intermittent employees and temporary employees with appointments of less than 12 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. The Federal Employee Paid Leave Act (FEPLA) Paid Parental Leave (PPL):** Title 5 of the United States Code was modified to include changes to the provisions of the Family Medical Leave Act. These changes now grant covered federal employees up to 12 weeks of Paid Parental Leave if they experience the birth or adoption of child on or after October 1, 2020. This chapter covers all NIH employees, both full-time and part-time, who have completed at least twelve (12) months of civilian service and meet the eligibility requirements outlined in Title II of the FMLA. These employees are eligible under 5 U.S.C. 6382(a)(1)(A) or (B) if the leave is granted due to the birth of a child or the placement of a child for adoption or foster care.

3. **Parental Bereavement Leave:** In connection with the death of an employee's qualifying child, covered federal employees are granted up to 2 weeks of paid leave under 5 U.S.C. 6329d. This chapter applies to NIH employees, whether full-time or part-time, who have completed at least twelve (12) months of civilian service and are covered by the Federal leave system [see 5 U.S.C. 6301(2)]. To be eligible for Parental Bereavement Leave under 5 U.S.C. 6329d, an NIH employee must meet the definition of "employee" as outlined in 5 U.S.C. 6381 (1) at the time of the child's death. For purposes of Parental Bereavement Leave, a qualifying child, as defined, in 5 CFR 630.1202 is presented below: 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— (1) Under 18 years of age; or (2) 18 years of age or older and incapable of self-care because of a mental or physical disability.
4. **Coverage under Sick Leave:** Use of Sick leave for Family Care or Bereavement (formerly known as FEFFLA) and Leave Sharing Programs: Sick Leave for Family Care or Bereavement applies to all NIH employees, both full and part-time, who are covered by the Federal leave system as defined in 5 U.S.C. 6301(2). The length of service is not a determining factor for coverage under this chapter.

If there is an exclusive bargaining unit recognition with a negotiated agreement that offers greater entitlements, the provisions within the agreement pertaining to Sick Leave for Family Care or Bereavement and leave sharing programs will take priority.

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. Background

Employees have a wide variety of leave-related benefits available to them to help balance their work and family obligations. The NIH understands that providing employees with the support they need to balance their professional and personal responsibilities is not only good for employees and their families, but also for the integrity of the Federal workforce. As a result, the NIH is committed to encouraging full utilization of leave flexibilities to the maximum extent practicable and establishing guidelines and requirements for their use.

## D. Policy

1. **Family and Medical Leave Act (FMLA):** According to the FMLA, employees have the right to take up to 12 weeks of unpaid leave within a 12-month period to address serious health conditions affecting either themselves or their family members (see Definitions and Appendix 1). Leave Approving Officials are obligated to grant this leave. 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 leave without pay (LWOP) previously taken under the FMLA.

a. *Allowable Uses:*

- i. 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 essential functions of their 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.

Each parent (i.e. mother and father) has a separate entitlement to 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.

- ii. 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 (see H.9), 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 during that same 12-month period. 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, for example January 2024, 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 in January 2025, immediately following the single 12-month period where they used the 26 weeks of military family leave. The same as to regular FMLA leave, military family leave is unpaid leave for which an employee may substitute accumulated annual or sick leave. The normal leave year limitations on the use of sick leave to care for a family member does not apply, an employee may substitute annual or sick leave for any part of the 26-week period of unpaid FMLA leave to care for a covered servicemember.

*b. Procedures:*

When notice of intent to use leave under FMLA is provided, the employee will (1) indicate the type of leave desired (e.g., paid parental leave, annual leave, sick leave, 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), medical leave (for the employee's serious health condition), or military family leave (to care for Injured Members of the Armed Forces) which provides up to 26 weeks of FMLA leave for this purpose. 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) from a licensed medical practitioner or physician.

*c. Types of Leave:*

Leave taken under the FMLA may be taken under a reduced leave schedule or on an intermittent basis. However, with the exception of FMLA paid parental leave, 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** (e.g., 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 proper medical certification of their ability to return to work after taking medical leave for their own serious health condition.

See **Appendix 1** 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 scheduling 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 the Expanded Medical Leave Policies.

Additionally, leave-approving officials shall grant employees' requests to substitute unpaid leave with paid time off (e.g., 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. Paid Parental Leave Policy:**

The Federal Employee Paid Leave Act of 2019 (FEPLA) made paid parental leave available to certain categories of Federal civilian employees. The law (Public Law (Pub. L.) 116-92) amended the Family and Medical Leave Act (FMLA) provisions in Title 5, United States Code (U.S.C.) to provide up to 12 weeks of paid parental leave to covered Federal employees in connection with the birth or placement (for adoption or foster care) of a child occurring on or after October 1, 2020. Paid parental leave granted in connection with a qualifying birth or placement under FEPLA is substituted for unpaid FMLA leave and is available during the 12-month period following the birth or placement. The availability of paid parental leave at any given time to qualifying employees may be impacted by the employee's usage of FMLA leave during the previous year.

a. *Procedure:* An employee who invokes entitlement to paid parental leave, in substitution of unpaid FMLA leave, must provide 30 days' notice of intent, or as soon as practicable given the circumstances, to their supervisor. An employee who wishes to invoke entitlement to paid parental leave by invoking FMLA (and therefore using paid parental leave under FEPLA instead of unpaid leave under FMLA), must:

- i. complete a Paid Parental Leave Request Form;
- ii. sign the Agreement to Complete 12-Week Work Obligation;
- iii. include any appropriate supporting documentation for the use of paid parental leave.

b. *Eligibility* To be eligible for paid parental leave, an employee must have a qualifying birth or placement (for adoption or foster care) event that occurs on or after October 1, 2020.

Additionally, in order to be eligible for paid parental leave under FEPLA, a federal employee must be eligible for FMLA leave under 5 U.S.C. 6382(a)(1)(A) or (B), and must meet FMLA eligibility requirements, including:

- Complete at least 12 months of Federal service of a type covered under the Title 5 FMLA provisions;
  - Employees under the Title 5 FMLA provisions are not required to be employed by a specific **employer** for at least 12 months; instead, they need only 12 months of qualifying Federal service (as described in 5 U.S.C. 6381(1)(B)) performed at any time in the past.
- Has a part-time or full-time work schedule (i.e., individuals on a temporary or intermittent basis are ineligible); and
- Has an appointment of more than 1 year in duration (i.e., employees with temporary appointments not to exceed 1 year are ineligible).

An employee who is ineligible for FMLA leave at the time of a qualifying birth or placement may establish FMLA leave eligibility during the 12-month period following the qualifying birth or placement and may use paid parental leave under FEPLA during that period. For example, an employee may become eligible for entitlement to FMLA by completing the required 12 months of service or by changing to a qualifying work schedule or appointment. Once FMLA eligibility is established and FMLA entitlement leave is invoked, an employee may be able to substitute paid parental leave in connection with a qualifying birth or placement.

*Entitlement:* To receive paid parental leave, an employee must invoke FMLA leave in connection with the birth or placement (for adoption or foster care) of a child. If this FMLA leave is granted, then an employee may substitute up to 12 weeks of paid parental leave under FEPLA. Paid parental leave under FEPLA is limited to 12 work weeks and may be used only during the 12-month period beginning on the date of the birth or placement involved.

*Work Obligation:* An employee may not use any paid parental leave unless the employee agrees in writing, before commencement of the leave, to subsequently work for NIH for at least 12 weeks. This 12-week work obligation begins on the employee's first scheduled workday after such paid parental leave concludes. If the employee uses less than 12 workweeks of paid parental leave during the 12-month period following the birth or placement, the 12-week work obligation begins on the last workday on which the employee used paid parental leave in connection with the given birth or placement. The work obligation refers to a period during which the employee is in a duty status. Any periods of paid or unpaid leave or time off, or other periods of nonduty status (e.g., furlough or AWOL) following paid parental leave will not count toward the 12-week work obligation. The work obligation is statutorily fixed at 12 weeks, regardless of the amount of paid parental leave used by an employee.

*Reimbursement of Agency Costs for Health Insurance:* The reimbursement requirement must be waived if an employee is unable to return to work for the required 12 weeks due to the “continuation, recurrence, or onset of a serious health condition (including mental health) of the employee or the child whose birth or placement was the basis for the paid parental leave, but, in the case of the employee’s serious health condition, only if the condition is related to the applicable birth or placement; or any other circumstance beyond the employee’s control.” 5 C.F.R. 630.1705(f)(2).: The total amount of any Government contribution the NIH paid to maintain the employee’s health insurance coverage under the Federal Employees Health Benefits Program during the period that paid parental leave was used. Certain reimbursement requirements may apply under 5 C.F.R. 630.1705(f)(2).

4. **Sick Leave for Family Care and Bereavement [formerly known as FEFFLA or Family Friendly Leave (FFL)]:** All employees are entitled to and leave-approving officials must grant up to 104 hours of accrued sick leave (or advanced sick leave at the discretion of the leave-approving official) 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 § (b), (c), (e).

Medical certification may be requested for sick leave in excess of three consecutive workdays or for shorter periods when the agency determines it is necessary.

See **Appendix 1** for a summary of information on Sick Leave for Family Care and Bereavement.

5. **Sick Leave for Pregnancy and Childbirth:** Leave-approving officials will be responsive in reviewing and approving leave requests under this category. Requests for sick leave for reasons related to periods of incapacitation resulting from pregnancy, childbirth, and confinement must be granted. This entitlement to use sick leave is in addition to an employee's entitlement under FMLA/PPL. Additional annual leave, advanced sick and/or annual leave, compensatory time, donated leave under the NIH Leave Bank Program or Voluntary Leave Transfer Program (VLTP), credit hours or LWOP may be granted, depending on the circumstances, 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 birthing parent’s health care provider will be the person to determine the length of time they will be incapacitated for work.

Up to 240 hours of advanced sick leave can be requested by the employee in connection with pregnancy and childbirth. This is offered irrespective of any existing leave balances available to the employee. Such leave is granted at supervisory 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 non-birthing 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 birthing spouse or domestic partner during pregnancy or childbirth, including accompanying the birthing spouse to medical examinations or treatments. Sick leave must not be granted based solely on an employee's responsibility to care for or desire to bond with the infant, after the period of incapacitation. However, the employee 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 employee 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 employee invokes FMLA within one year of the birth, LWOP (up to the maximum allowable, as described in D. 1. above) or an election to substitute available paid leave, 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 supervisory discretion, and use of advanced leave indebts the employee to the government until the leave is repaid.

#### **6. 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/PPL. 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 supervisory 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 parent invokes FMLA for a qualifying reason, LWOP (up to the maximum allowable, as described in D. 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 only entitled to sick leave for purposes related to 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 D. 1. above) or an election to substitute available paid leave, including paid parental 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 supervisory 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. This entitlement to use sick leave is in addition to an employee's entitlement under FMLA/PPL. 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). However,

employees in the surrogate role who yield custody of a child for adoption or under a surrogacy arrangement at the time of birth are only entitled to FMLA for childbirth and recovery purposes and not the PPL benefit. Employees in a surrogate role may utilize sick leave, the Voluntary Leave Transfer Program, or Leave Bank leave as applicable for childbirth and recovery.

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 supervisory discretion, and use of advanced leave indebts the employee to the government until the leave is repaid.

#### **7. Parental Bereavement Leave Policy:**

Effective with the signing of the 2022 NDAA on Dec. 27, 2021, eligible employees are entitled to 80 hours of paid leave without charge to their personal leave accounts following the death of a child. For the purposes of this benefit, "employee" and "child" have the same definitions used in Paid Parental Leave (PPL) and the Family Medical Leave Act (FMLA).

##### *a. Eligibility:*

- i. An employee must serve on a permanent full time or part time position, or a temporary full time or part time appointment that is longer than one year.
- ii. Employees on intermittent appointments and appointments with a time limitation of one year or less do not qualify.
- iii. An employee must have completed at least 12 months of qualifying federal service (as described in 5 U.S.C. 6381(1)(B)) in any combination of Federal positions described in item (a)(1) above but excluding any service as an employee identified in item (a)(2).
- iv. A covered son or daughter is a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing *in loco parentis*, who was under 18 years of age at the time of death or 18 years of age or older and incapable of self-care because of a mental or physical disability.

##### *b. Limitations of use:*

Like PPL and FMLA, the employee must use the leave within 12 months of the date of death, provide management with as much advanced notice as is reasonably possible prior to using the leave, and provide acceptable evidence of both the death and the employee's relationship to the deceased. Additionally, employees may not use this leave intermittently unless management agrees.

8. **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 630-1-60. See **Appendix 1** for a summary of information on the VLTP.
9. **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 630-1-70, Leave and Excused Absence and the NIH Voluntary Leave Bank Program Policies and Procedures at <https://hr.nih.gov/benefits/leave/leave-bank>.

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

10. **Other Leave Categories 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 alternative work schedules and telework to accommodate employees' short- and long-term medical disability situations and/or accommodate employees' day-to-day family related needs.

## **E. Policy for Other Leave Categories**

1. **Credit Hours:** At the discretion of the Institute, Center, or Office (ICO), 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 Off:** An employee will be permitted to earn, and the supervisor will grant, compensatory time off 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 less 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 their 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. Such leave is granted at supervisory discretion, and use of advanced leave indebts the employee to the government until the leave is repaid. 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, and in an amount 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:

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

The employee should balance the benefit of access to advanced leave with the risk of becoming indebted to the government prior to utilizing the advanced leave. Any balance that is not covered by the above repayment methods, will result in a debt 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 they move between federal agencies. The debt will become due in full if the employee leaves federal service.

6.

○

- Subsequently earned sick leave;
- A charge against annual leave;
- Upon separation, deduction from pay due;
- Substituting donated leave if the employee is an approved recipient of VLTP or the Leave Bank.

7.

○

- Subsequently earned annual leave;
- Upon separation, deduction from pay due;
- Substituting donated leave if the employee is an approved recipient of VLTP or the Leave Bank.

## **F. Roles and Responsibilities**

1. **Institute, Center, and Office (ICO) Directors:** ICO Directors (or their designees) are responsible for administering the NIH policies and procedures on family leave. They are also responsible for ensuring that appropriate staff 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 ICO 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 ICO's 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 advanced 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 ask for medical certification for any requested hours of sick leave when such certification is determined to be necessary. Leave-approving officials are also responsible for confirming that an employee is invoking their entitlement to FMLA leave before subtracting any hours of leave from the employee's FMLA entitlement. This confirmation should be ascertained in advance of processing requests for FMLA leave.

5. **Employees:** Employees are expected to provide notice of and request and obtain advance approval for all anticipated absences, absent emergencies. 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 the Integrated Time and Attendance System (ITAS) (or equivalent system of record). Under the FMLA, (including PPL) 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 their 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, FEPLA/PPL and sick leave for family care and bereavement (formerly known as FEFFLA) as requested by the Office of Personnel Management and/or HHS. Therefore, individual ICOs will maintain information on each employee using leave under the FMLA (including PPL) 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 sex; (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.

## **G. Policy for Health Benefits Coverage During LWOP**

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 their enrollment while in the LWOP status and arrange to pay their share of the premiums on a current basis or when they return 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.

## **H. 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 Family and Medical Leave Act of 1993 \(Public Law 103-3\)](#)
4. [The White House, Presidential Memorandum on "Expanded Family and Medical Leave Policies" dated April 11, 1997](#)
5. [The White House, Presidential Memorandum on "Extension of Benefits to Same-Sex Domestic Partners of Federal Employees" dated June 2, 2010](#)
6. [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](#)
7. [OPM Handbook on Leave and Workplace Flexibilities for Childbirth, Adoption, and Foster Care](#)
8. [HHS Personnel Instruction 630-1, "Leave and Excused Absence"](#)
9. [HHS Personnel Instruction 610-1, "Establishing and Administering Hours of Duty"](#)
10. [NIH Delegations of Authority, Leave Authority # 02](#)
11. [NIH Manual 2300-610-4, "Alternative Work Schedules."](#)
12. [NIH Voluntary Leave Bank Policies & Procedures](#)
13. [NIH Voluntary Leave Transfer Program Policies & Procedures](#)
14. [OPM Parental Bereavement Leave Memorandum](#)
15. [Paid Parental Leave for Federal Employees Interim Regulations](#)
16. [NIH Manual Chapter 1730 – Forms Management](#)

## **I. Definitions**

Throughout this chapter, these words have the following meaning:

- a. **must, shall** and **will** are used to indicate requirements;
- b. **may** and **should** are *not* requirements but are used to indicate recommendations. Continuing treatment by a health care provider may include one or more of the following:

1. **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.
2. **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.
3. **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 supervisory discretion, and use of advanced leave indebts the employee to the government until the leave is repaid.
4. **Annual Leave:** Annual leave is authorized paid absence from work. Employees may use annual leave for vacations, rest, and relaxation, or to provide periods of time off for personal business or emergencies. Employees may request annual leave for any reason. 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.
5. **Compensatory Time:** Compensatory time is time off from work with pay in lieu of pay for overtime for irregular or occasional overtime. Under Flexible Work Schedules, compensatory time off may also be earned for regularly scheduled overtime or irregular or occasional overtime work. The approval to earn and use compensatory time must be granted in advance of performing the overtime work and fit into the needs of an organization. Employees may earn compensatory time only to the extent that it does not result in the employee's total pay (including the value of the compensatory time) exceeding the maximum biweekly rate of basic pay payable for GS-15.
6. **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.
7. **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).
8. **Excused Absence:** Time off without charge to leave or loss of pay. This leave is sometimes referred to as administrative leave.
9. **Family Member:** Under the FMLA, family member is defined as:
  - a. spouse (a partner in any legally recognized marriage in the State where the marriage was entered into 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 because of a mental or physical disability (including biological, adopted, or foster children, stepchildren, a legal ward, or a child of a person standing in loco parentis), or
- c. parent (referring to the biological, adoptive, step, or foster parent of an employee or an individual who stood in loco parentis to an employee when the employee was a son or daughter. 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, Sick Leave for Family Care or Bereavement, the Voluntary Leave Transfer Program, the Voluntary Leave Bank Program, and Emergency Leave Transfer Programs, the term “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> and are noted in Appendix 1, footnote (1) of this chapter.

10. **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 (as described in 5 C.F.R. 630.1202); or a Christian Science practitioner listed with the First Church of Christ, Scientist, in Boston, Massachusetts.
11. **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.
12. **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.
13. **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.
14. **Medical Documentation or Certification:** For the general purpose of this chapter, medical documentation or certification is evidence which may be required by the supervisor or other agency authority 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 Section H.10 above) certifying to the incapacitation, examination, or treatment; and, if appropriate, to the period of disability or illness 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 or other agency official.

15. **Serious Health Condition:** For the purposes of this policy, the FMLA definition will be used. 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:
  - i. treatment two or more times by (or under the supervision of) a health care provider; or
  - ii. 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:
  - i. requires periodic visits for treatment by a health care provider;
  - ii. continues over an extended period of time (including recurring episodes of a single underlying condition); and
  - iii. 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. NIH Guidance regarding Reasonable Accommodations can be found at <https://policymanual.nih.gov/2204>.

16. **Sick Leave:** Sick leave is authorized paid 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 their duty station would jeopardize the health of others. Sick leave is earned in fixed increments each pay

period based on number of hours worked.

## Appendix 1 – Leave Programs

### Appendix 1a.

|                                | <b>Family and Medical Leave Act (FMLA)</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | <b>Federal Employee Paid Leave Act (FEPLA) Paid Parental Leave (PPL)</b>                                                                                                                                                                                                                                                                                   |
|--------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Governing Regulations/Policies | Public Law 103-3, 2/5/93, effective 8/5/93<br>5 U.S.C. § 6381-6387 5 C.F.R. §§ 630.1201-630.1213.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | Public Law 116-92, effective 12/20/19<br>5 U.S.C. § 6382 (d)(2).                                                                                                                                                                                                                                                                                           |
| Eligibility                    | All permanent Civil Service employees with at least 12 months of qualifying federal service as described in 5 U.S.C. 6381(1)(B) and temporary employees with appointments of more than 12 months.                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | All permanent Civil Service employees with at least 12 months of qualifying federal service as described in 5 U.S.C. 6381(1)(B) and temporary employees with appointments of more than 12 months.                                                                                                                                                          |
| Conditions                     | Entitled to a 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 adoption or foster care, concluding 1 year after placement; c) care of family member (2) with a 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. | Entitled to substitute up to a total of 12 admin workweeks of paid leave in place of available unpaid FMLA leave in addition to other available paid leave during any 12 month period for: a) birth of a child & care of a newborn, concluding 1 year after birth; b) placement of a child for adoption or foster care, concluding 1 year after placement. |
| Limitations                    | None; employee who meets criteria may not be denied leave. Employer may require medical certification.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | None; employee who meets criteria may not be denied leave. Employer may require medical certification.                                                                                                                                                                                                                                                     |
| Application Procedures         | Apply to supervisor not less than 30 days before leave is expected to begin or as soon as practicable, if leave is unforeseeable.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | Apply to supervisor not less than 30 days before leave is expected to begin or as soon as practicable, if leave is unforeseeable.                                                                                                                                                                                                                          |

|                             |                                                                                                                       |                                                                                                                       |
|-----------------------------|-----------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------|
| Required Approvals          | Delegated official varies by ICO, but may be immediate supervisor, LAO, or Executive Officer.                         | Delegated official varies by ICO, but may be immediate supervisor, LAO, or Executive Officer.                         |
| Record-Keeping Requirements | Employee or timekeepers submit appropriate FMLA leave and LWOP entries in current NIH timekeeping system.             | Employee or timekeeper submit requests for PPL within PPL account in current NIH timekeeping system.                  |
| Timekeeper Reference        | HHS Timekeeping Manual, Chapter 4, Paid Leave and Holidays, updated April 2013.                                       | N/A                                                                                                                   |
| Comments                    | Upon return, employee must be restored to same position or equivalent. Entitled to maintain health benefits coverage. | Upon return, employee must be restored to same position or equivalent. Entitled to maintain health benefits coverage. |

## Appendix 1b.

|                                | <b>Sick Leave for Family Care and Bereavement</b>                                                                                                                                                                                                                                                                                                                                                                                                   | <b>Parental Bereavement Leave</b>                                                                                                                                                                                                                                                                                                                 |
|--------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Governing Regulations/Policies | 5 U.S.C. 6307<br>5 CFR part 630, subparts B and D                                                                                                                                                                                                                                                                                                                                                                                                   | 5 U.S.C. 6329d<br>Section 1111 of Public Law 117-81, December 27, 2021                                                                                                                                                                                                                                                                            |
| Eligibility                    | All Civil Service employees                                                                                                                                                                                                                                                                                                                                                                                                                         | All permanent Civil Service employees with at least 12 months of qualifying federal service (as described in 5 U.S.C. 6381) and temporary employees with appointments of more than 12 months.                                                                                                                                                     |
| Conditions                     | All employees may use up to 104 hours of sick leave (SL) per leave year to care for family members <a href="#">(1)</a> . Care includes providing care for a family member <a href="#">(1)</a> who is incapacitated as a result of physical or mental illness, injury, pregnancy, or childbirth; attending to a family member <a href="#">(1)</a> receiving medical, dental, or optical examination or treatment; providing care for a family member | Employees are entitled to a total of 2 workweeks of bereavement leave because of the death of a qualifying son or daughter of the employee. The death of an employee's child triggers the law's one-time entitlement to 2 workweeks of bereavement leave in connection with that death, which must be used within a 12-month period of the death. |

|                             |                                                                                                                                                                                                                     |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
|-----------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                             | <p>(1) with a communicable disease; or making arrangements necessitated by the death of a family member</p> <p>(1) or attending the funeral of a family member (1).</p>                                             |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| Limitations                 | <p>Supervisor may ask employee to document need to care for family member (1). Total cannot exceed 104 hours SL each year.</p>                                                                                      | <p>An employee may not receive more than 2 workweeks of bereavement leave in any 12- month period. The 12-month period used for this purpose commences on the date of the death of a child (or on the date of death for multiple children on the same day) of the employee and continues for 12 months. After that 12-month period expires, another 12-month period will not commence unless there is another later use of bereavement leave based on another child's death. Leave may not be taken intermittently or on a reduced leave schedule unless the employee and the supervisor agree otherwise. An employee who suffers a miscarriage or stillbirth is ineligible for bereavement leave and may consider other available leave options including FMLA for the recovery/care of the mother.</p> |
| Application Procedures      | <p>Request leave via the NIH timekeeping system in advance or as soon as practicable, if leave is unforeseeable.</p>                                                                                                | <p>Request leave via the NIH timekeeping system.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| Required Approvals          | <p>Delegated official varies by ICO, but may be immediate supervisor, LAO, or Executive Officer.</p>                                                                                                                | <p>Delegated official varies by ICO, but may be immediate supervisor, LAO, or Executive Officer.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| Record-Keeping Requirements | <p>Timekeeper keeps track of number of hours, so amount used does not exceed limit 104 hours SL. Enters requests under "Family Friendly Leave" via current NIH timekeeping system, which pulls from SL balance.</p> | <p>Employee or timekeeper makes entry in current NIH timekeeping system.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| Timekeeper Reference        | <p>HHS Timekeeping Manual, Chapter 4, Paid Leave and Holidays, updated April</p>                                                                                                                                    | <p>N/A</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |

|          |                                                       |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
|----------|-------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|          | 2013.                                                 |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| Comments | Part-time employees may use a pro-rated amount of SL. | Leave may be applied retroactively to December 27, 2021, at the employee's request, if the employee is eligible and used leave without pay during a qualifying period. Moreover, if an agency determines that an employee used paid leave to cover a period of time for which bereavement leave could have been used, the agency may allow the employee to retroactively substitute bereavement leave for such paid leave if it is determined the employee lacked information or was not allowed to use bereavement leave at that time. |

## Appendix 1c.

|                                |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |                                                                                                                                                                                                                                                                    |
|--------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                                | <b>NIH Voluntary Leave Bank Program (LB)</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | <b>Voluntary Leave Transfer Program (VLTP)</b>                                                                                                                                                                                                                     |
| Governing Regulations/Policies | 5 U.S.C. § 6361-6373<br>5 CFR 630, Subpart J                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | Public Law 103-103, 10/8/93. Permanent program effective 1/31/94<br>5 U.S.C. § 6331-6340<br>5 C.F.R. § 630.901-630.913.                                                                                                                                            |
| Eligibility                    | Donors - All NIH Civil Service employees<br>Members – All NIH Civil Service employees                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | All Civil Service employees                                                                                                                                                                                                                                        |
| Conditions                     | To become an NIH Leave Bank member, an employee must request membership in the payroll system within the individual or NIH-wide open enrollment period and submit one pay period's annual leave accrual, unless the membership contribution is waived.<br>To become a recipient, a member must be affected by a personal or family medical ( <a href="#">1</a> ) emergency, be projected to result in absence from duty for at least 24 hours without available paid leave due to the medical emergency, and submit a complete application package within 30 calendar days of the termination of the | Must have a medical emergency and must have exhausted all annual leave and sick leave. Must have anticipated absence from duty for at least 24 hours without available paid leave due to the personal medical emergency, or the family member's medical emergency. |

|                             |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |                                                                                                                                                                                                                                                                                  |
|-----------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                             | medical emergency.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |                                                                                                                                                                                                                                                                                  |
| Limitations                 | Members can receive up to the caps and leave amounts designated by the Leave Bank Board.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | None                                                                                                                                                                                                                                                                             |
| Application Procedures      | Apply for membership through the time and attendance system. Membership automatically renews for the new leave year unless the employee opts-out in the time and attendance system during open enrollment. Complete the NIH Leave Bank Recipient Application Package when requesting leave.                                                                                                                                                                                                                                                                                                                                                                                                                                      | Submit the OPM 630 Form to immediate supervisor and submit the following information: name, title, grade; nature of medical emergency, severity & anticipated duration; statement from physician.                                                                                |
| Required Approvals          | Delegated to LAO. Leave Bank Board and Leave Bank Office also involved.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | Delegated official varies by ICO, but may be immediate supervisor, LAO, or Executive Officer.                                                                                                                                                                                    |
| Record-Keeping Requirements | 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 for medical emergencies affecting employee family members <a href="#">(1)</a> ; the grade or pay level of each Leave Contributor and the total amount of leave they contributed to the Leave Bank; the grade or pay level and sex 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 Leave, Payroll, and Workforce Support Branch, Workforce Relations Division, Office of Human Resources at the NIH. | Current NIH timekeeping system; manual log, simple & developed locally, to record receipt and amount of donated leave used each pay period, record additions of donated leave received, provide information on recipients' leave balance to be restored to donors if not needed. |
| Timekeeper Reference        | ITAS User Manual and HHS Timekeeping Manual, Chapter 17, Voluntary Leave Bank Program, updated April 2013.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | HHS Timekeeping Manual, Chapter 16, Voluntary Leave Transfer 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.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | More information in HHS Instruction 630-1, Leave and Excused Absence. Issue date 7/26/96, updated 12/17/10.                                                                                                                                                                      |

1. Family member under leave programs and policies including Sick Leave, Sick Leave for Family Care or Bereavement, the Voluntary Leave Transfer Program, and the Voluntary Leave Bank Program 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 for the purposes of FMLA 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 stepchild; 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

| <b>Advanced Sick<br/>Leave Used</b> | <b>Donated<br/>Leave<br/>Received</b> | <b>Donated Leave<br/>Used to Repay<br/>Debt</b> | <b>Remaining Donated<br/>Leave<br/>Supported by Medical<br/>Documentation</b> |
|-------------------------------------|---------------------------------------|-------------------------------------------------|-------------------------------------------------------------------------------|
| 120 hrs                             | 240 hours                             | 120 hrs                                         | 120 hrs                                                                       |