

Material Transmitted:

HHS Instruction 630-1, Leave and Excused Absence (pages 3, 4, 5, 6, 9 and 10)

Material Superseded:

HHS Instruction 630-1 (pages 3, 4, 5, 6, 9 and 10)

Background:

The transmitted material makes one major change and two minor changes in Instruction 630-1 due to the changes made in the Office of Personnel Management's (OPM) final regulations on family and medical leave consistent with Title II of the Family and Medical Leave Act (FMLA) of 1993. These final regulations were published in the Federal Register on December 5, 1996.

The major change in HHS Instruction 630-1, dated July 26, 1996, is the elimination of HHS's adoption of the broader definition of a family member used in the Voluntary Leave transfer Program for use under FMLA. OPM stated in its final regulations that under 5 U.S. Code 6382 and in legislative history, Congress specifically defined "family" to include only a spouse, son or daughter, and parent. Therefore, the law prohibits us from expanding this definition. The broader definition which we can no longer use for FMLA purposes included brothers and sisters and any individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship.

The two minor changes involve clarity issues. The first change spells out the legal definition of a family member (the employee's spouse, son, daughter, or parent) within the context of the Instruction. The second change defines the level of incapacitation of an employee with a serious health condition. The employee is unable to perform any one or more of the essential functions of his or her position.

The above changes bring HHS Instruction into conformance with existing OPM regulations and the applicable law.

Any reference to AOPDIV in this Instruction now includes AHCPR, ATSDR, CDC, FDA, HRSA, IHS, NIH, SAMHSA, the Office of the Secretary, the Program Support Center, HCFA, ACF, and AoA.

Implementation of this issuance must be carried out in accordance with applicable laws, regulations, and bargaining agreements.

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- b. When the employee has suffered an incapacitating job-related injury or illness, has exhausted any available continuation of pay, and is awaiting adjudication of a claim for employees compensation by the Office of Workers=Compensation Programs.

C. Uncommon Tours of Duty

For employees who work uncommon tours of duty during a regularly scheduled administrative work week which is in excess of 40 hours in a calendar week, leave is charged for the number of hours of absence during the regularly scheduled tour, for example:

1. An employee whose regularly scheduled tour of duty is 10 hours a day is absent for 8 hours and works 2 hours. The employee is charged 8 hours leave.
2. An employee whose regularly scheduled tour of duty is 44 hours a week is absent for a full week. The employee is charged 44 hours leave.

D. Leave Without Pay

Leave without pay (LWOP) is approved leave for which the employee is not paid. Except for specified situations such as the Family and Medical Leave Act, employees do not have a right to LWOP. Management has the discretion to determine whether requests for LWOP will be approved. LWOP must not be granted when absence without leave (AWOL) is appropriate, see E below.

E. Absence Without Leave

1. AWOL is a nonpay status for any absence from duty not authorized by the proper leave- approving official.
2. AWOL should be charged when an employee is absent without permission or has not notified his/her supervisor or provided satisfactory explanation or documentation for the absence from duty. An AWOL charge may be changed later to an appropriate type of leave if the leave-approving official determines that the employee has satisfactorily explained the absence or presented acceptable documentation.

F. Charges to AWOL or LWOP for Holidays

Legal holidays that occur during a period of AWOL or LWOP are charged to AWOL or LWOP as follows:

1. Employees who are in a nonpay status (AWOL or LWOP) immediately before and after a holiday are not entitled to pay for the holiday. They must be charged AWOL or LWOP, as appropriate, for the holiday. See CG Decision B-187520, dated February 22, 1977, and the HHS Guide for Timekeepers, Chapter 5, Section D.
2. Employees who are in a nonpay status (AWOL or LWOP) before or after a holiday are not charged AWOL or LWOP for the holiday. They are entitled to pay for the holiday. It is presumed that the employee would have been available for work on the holiday unless the employee was in a nonpay status both before and after the holiday. See 56 CG 393.
3. Employees scheduled to be on LWOP during a pay period when a holiday occurs must not be returned to pay status (i.e., duty or paid leave) either the day before or the day after the holiday for the sole purpose of taking advantage of being paid for the holiday.

G. Repayment of Advance Leave by Employees Who Are Separating

Employees separating from the Federal service must repay any annual or sick leave advanced and not earned at the time of separation, except that no repayment is necessary under any of the following conditions:

1. If the separation is because of entry into the military service with restoration rights. (However, if the employee exercises the restoration rights, the leave indebtedness will be recredited as an indebtedness.)
2. If the separation is because of death or disability retirement.
3. If the separation is based on a disability that prevents the employee from returning to duty or continuing in the service.

H. Family and Medical Leave Act

Under the Family and Medical Leave Act, employees are entitled to up to 12 weeks of LWOP for (a) the birth of a son or daughter and care of the newborn; (b) the placement of a child with the employee for adoption or foster care; (c) the care of the employee's spouse, son, daughter, or parent with a serious health condition; or (d) a serious health condition of the employee that makes the employee unable to

perform any one or more of the essential functions of his or her position. This is in addition to other leave which the employee may be entitled to.

630-1-40 ANNUAL LEAVE

A. Qualifying Period

1. An employee whose appointment is for 90 calendar days or longer earns and may be granted annual leave beginning with the first day of the first full pay period following appointment. If an appointment is for less than 90 days, the employee is not entitled to annual leave but may request leave without pay. (If an appointment of less than 90 days is extended or converted to another appointment of less than 90 days without a break in service of one work day, the employee will still not earn annual leave until the actual employment counted from the initial appointment equals 90 days. As soon as the employee has 90 days of employment, he/she earns annual extension or conversion to another appointment was for 90 days or more, the employee earns annual leave retroactive to the date of the initial appointment.
2. If an employee took leave without pay while under an appointment of less than 90 days and then earns annual leave retroactive to the initial date of the appointment as described in number 1 above, he/she may not substitute annual leave for the leave without pay.
3. If an employee is currently on an appointment of less than 90 days and has annual leave recredited from a lump-sum payment from previous Federal service, the employee may use the recredited annual leave during the current appointment.

B. Maximum Accumulation

Employees can carry over to the net year a maximum of 30 days (240 hours) of accrued annual leave, (720 hours for members of the Senior Executive Service). Leave earned in excess of these maximums is forfeited if not used by the end of the leave year. (Under special conditions, forfeited annual leave may be restored, as described in 630-1-40F below.)

C. Granting Annual Leave

1. The employee initiates a request for use of annual leave, and the request is acted upon by the leave-approving official. Leave-approving officials may, consistent with operational demands, prescribe when annual leave may be taken, refuse to grant annual leave, or revoke annual leave that has been granted and recall an employee to duty.
2. For circumstances in which annual leave may be substituted for sick leave, see 630-1-50A.3 below.
3. For circumstances in which sick leave may be substituted for annual leave, see 630-1-50A.2f below.

D. Advance Annual Leave

Employees have no entitlement to advance annual leave. However, under very unusual circumstances, an employee may be granted advance annual leave up to the amount to be earned by the end of the appointment or the end of the current leave year, whichever is sooner. Annual leave must not be advanced when it is likely the employee will retire, be separated, or resign before the advanced leave will be earned.

E. Leave Indebtedness

1. An employee's annual leave account may be overdrawn at the end of the leave year through error or because the employee was advanced annual leave and then did not earn the expected amount because the employee was on leave without pay or was absent without leave. When an employee's account is overdrawn, the debit will be carried over and charged against annual leave earned in the following year, unless the employee elects to make a refund payment.
2. An employee who is separated while indebted for advance annual leave must refund the amount due or have the amount owed deducted from any monies due to the employee. For exceptions, see 630-1-30F.

F. Restoration of Annual Leave

1. Conditions

- a. As a general rule, annual leave in excess of an employee's maximum carryover balance is forfeited if not used by the end of the leave year. This excess annual leave, sometimes called **use or lose** leave,

- c. Employees with a restored annual leave account may use their regular annual leave and their restored leave in any order they may wish, but they must advise their leave-approving official and the timekeeper of their choice. Once an employee makes an election, he/she may not change it after the leave has been used.

3. Time Limit for Use of Restored Annual Leave B Extended Exigency

- a. An extended exigency is defined as significant circumstances that meet all of the following conditions:
 - (1) Threaten the national security, safety, or welfare;
 - (2) Last more than 3 calendar years;
 - (3) Affect a segment of an agency or occupational class; and
 - (4) Preclude subsequent use of both restored and accrued annual leave within the time limit specified in 630-1-40F.2 above.
- b. The maximum time limit for use of annual leave restored because of an extended exigency is two years for each calendar year, or part thereof, that the exigency existed, regardless of the number of years during the exigency in which the employee forfeited leave.

G. Lump-Sum Payment for Annual Leave

An employee with accumulated annual leave, including unused restored leave in a separate account, who is separated is paid a lump-sum at his/her current hourly rate for all unused annual leave at the time of separation. If there is a general pay increase during the period of time which would have been covered by the leave had the employee actually used it, the employee is paid at the higher rate of pay for leave which would have covered the period following the effective date of the pay increase. The lump-sum payment may be adjusted to collect the amount of any debts owed to the Government.

630-1-50 SICK LEAVE

A. Granting Sick Leave

1. A leave-approving official may grant sick leave to an employee for non-emergency dental, optical, or medical

examination or treatment (including for physical or mental conditions). The employee must request sick leave for non-emergency purposes in advance.

2. If the employee has followed proper leave-requesting procedures and provides acceptable evidence, a leave-approving official must grant an employee's request for sick leave (but is not required to grant a request for advance sick leave):
 - a. When the employee is incapacitated to perform duties due to illness (physical or mental), injury, or temporary disability, including pregnancy. An employee with a disability who depends on an aid, mechanical or otherwise, to perform work is normally incapacitated without the aid. A seeing-eye dog, a wheelchair, or any prosthetic device may be considered an extension of the person, and a grant of sick leave for such purposes as training, replacement, or repair is appropriate under the same conditions as any other incapacitation
 - b. For emergency medical, dental, or optical examination or treatment.
 - c. Subject to the limitations in the Family Friendly Leave Act and OPM regulations, when an employee is required to care for a member of his/her immediate family. These limitations concern the amount of sick leave the employee may use. Full-time employees may use 104 hours in a year as long as their balance remains at 80. Sick leave may not be advanced to keep the balance at 80. Employees whose balance is less than 80 hours may use 40 hours. The limitation for part-time employees are proportional to those for full-time employees, see 5 CFR 630.401.
 - d. Sick leave may be used in connection with the adoption of a child, see 5 CFR 630.401.
 - e. When the organization has made a determination that the employee is incapacitated and meets the requirements for disability retirement and OPM is processing the employee's retirement application.
 - f. For treatment of a disabled veteran or adjudication of a claim concerning a job-related injury or illness, as described in 630-1-30B.1 above.