

U.S. Customs and Border Protection

Leave Handbook

February 2007

**Office of Human Resources Management
HB 51600-01B**

FOREWORD

This Leave Handbook is a tool that both employees and supervisors can use to better understand the complexities of the various types of leave available to federal employees from annual and sick leave, to court, military and excused absence. The Handbook, based on existing laws and regulations, establishes leave policy for the U.S. Customs and Border Protection (CBP) and provides guidance and procedures for using and administering leave.

This Handbook also includes information on the Family and Medical Leave Act under Chapter 4, which supercedes HB 51600-01, “Family and Medical Leave Act (FMLA) of 1993” dated October 1994.

We will issue periodic updates as needed whenever the leave policy or regulations change. For more details, or if you have questions, please contact your servicing Labor and Employee Relations Specialist.

Assistant Commissioner
Human Resources Management

TABLE OF CONTENTS

FOREWORD	ii
TABLE OF CONTENTS	iii
Chapter 1 Overview	1
Chapter 2 Annual Leave	2
1. Purpose and Accruals	2
2. Requesting Annual Leave	2
3. Advanced Annual Leave	3
4. Annual Leave Ceilings.....	3
5. Restoration of Annual Leave	4
6. Procedures for Requesting Restoration of Annual Leave	4
7. Use of Restored Annual Leave	5
Chapter 3 Sick Leave.....	6
1. Purpose and Accruals	6
2. Sick leave for Personal Medical Needs.....	6
3. Sick Leave for Family Care or Bereavement Purposes	6
4. Sick Leave to Care for a Family Member with a Serious Health Condition.....	7
5. Sick Leave for Adoption	7
6. Requesting Sick Leave	8
7. Administratively Acceptable Evidence.....	8
8. Advanced Sick Leave.....	9
9. Misuse / Abuse of Sick Leave	10
Chapter 4 Family and Medical Leave Act.....	11
1. Purpose and Entitlement.....	11
2. Eligibility.....	11
3. Definitions	11
4. Requesting Leave Under FMLA.....	12
5. Administratively Acceptable Documentation	13
6. Provisional Approval.....	15
7. Intermittent FMLA Leave.....	15
8. Substituting Paid Leave.....	15
9. Job Benefits and Protection	15
Chapter 5 Leave Without Pay.....	16
1. Definition	16
2. Requesting LWOP	16
3. Granting LWOP.....	16
4. Changing LWOP to Annual Leave	17
5. Impact of LWOP on Benefits	17
Chapter 6 Military Leave.....	19
1. Purpose	19
2. Eligibility.....	19
3. Types of Military Leave	19
4. Requesting Military Leave	20
5. Requesting Other Leave When Activated into Military Duty.....	20
6. Effect of Military Leave on Civilian Pay	20
7. Dual Compensation.....	21
8. Excess and Restored Annual Leave	21
Chapter 7 Court Leave.....	22
1. Purpose	22
2. Eligibility.....	22
3. Requesting Court Leave	22
4. Granting Court Leave	22
5. Return to Duty Upon Release by Court.....	23
6. Collection of Fees	24

Chapter 8 Excused Absence.....	25
1. Purpose.....	25
2. Granting Excused Absence.....	25
3. Excused Absence for Tardiness and Brief Periods.....	25
4. Excused Absence for Voting.....	25
5. Excused Absence for Blood Donations.....	26
6. Excused Absence for Emergency Rescue/Protective Work or for Civil Defense Activities ...	26
7. Excused Absence for Taking Examinations.....	26
8. Excused Absence for Employee Interviews.....	27
9. Excused Absence for Medical Examinations and Treatment.....	27
10. Excused Absence for Bone Marrow/Organ Donation.....	27
11. Excused Absence for Attending Meetings and Conferences.....	27
12. Excused Absence for Relocation.....	28
13. Absence for Hazardous Weather Conditions.....	28
14. Excused Absence for Funeral of Immediate Relative in the Armed Forces.....	28
15. Excused Absence for Funeral of Fellow Law Enforcement Officer.....	28
16. Excused Absence of Veterans to Attend Funeral Services.....	28
Chapter 9 Home Leave.....	30
1. Purpose.....	30
2. Eligibility.....	30
3. Earning Rates.....	30
4. Home Leave Authorization and Use.....	30
5. Home Leave Address of Record.....	31
6. Requesting Home Leave.....	32
7. Home Leave Travel.....	32
8. Refund for Home Leave.....	33
9. Transfer and Recredit of Home Leave.....	33
Chapter 10 Related Leave Topics.....	34
1. Holidays.....	34
Pay on a Holiday.....	34
Holiday Work.....	35
Holiday Premium Pay.....	35
Determining an “in lieu of” holiday.....	35
State and Local Holidays.....	36
2. Compensatory Time for Religious Observances.....	36
3. Absence Without Leave (AWOL).....	37

Appendices

Appendix A Request for Leave or Approved Absence	A-1
Appendix B Family Medical Leave Act Request Form	B-1

Chapter 1 Overview

1. Overview

This Handbook provides current information about the federal leave program as it applies to U.S. Customs and Border Protection (CBP) employees and supervisors. It is organized into separate chapters, each addressing a different category of leave.

Additional sources of information are in the Supervisor's Desk Top Reference Guide. Information concerning the actual recording of leave is provided in the Payroll Handbook and the Customs and Border Protection Overtime and Scheduling System (COSS). Questions regarding leave use should be directed to your servicing Labor and Employee Relations Specialist.

2. References

The statutory and regulatory authorities for leave administration are contained in Title 5, United States Code (USC) Chapter 63, Title 5, Code of Federal Regulations (CFR) Part 630, and the Family and Medical Leave Act.

3. Employees Covered

Generally, all employees earn annual leave except those in an intermittent and when-actually-employed status who do not work a full-time schedule in a pay period, as well as consultants and Presidential appointees.

4. Delegations of Authority to Approve/Disapprove Leave

The delegation of authority varies throughout the offices and locations in CBP, depending on both the type and amount of leave requested. Employees should submit their leave request(s) to their immediate supervisor, who will either approve/disapprove the request(s) or forward them to the official with the delegated authority to act on the request(s).

5. Bargaining Unit Information

CBP bargaining unit employees are covered by the terms of their respective negotiated agreements. Where there are differences between the provisions of this Handbook and those found in the negotiated agreements, the provisions of the negotiated agreements will govern bargaining unit employees.

Chapter 2 Annual Leave

1. Purpose and Accruals

Annual leave is a period of approved absence from work with pay. Annual leave may be used for vacations, rest and relaxation, and for attending to personal business or emergencies. An employee has a right to take accrued annual leave and to schedule the time when annual leave may be taken, subject to the right of the supervisor, based on mission requirements. Supervisors have the discretion to cancel previously approved annual leave because of mission requirements.

Full-time employees assigned to an 80-hour tour of duty shall earn and be credited with annual leave for each full biweekly pay period in accordance with 5 U.S.C. 6303 as follows:

Years of Service	All other pay periods	Last pay period of the calendar year
Up to 3	4 hours	4 hours
3 to 15	6 hour	10 hours
15/over	8 hours	8 hours

For part-time employees and employees on uncommon tours of duty, leave is accrued on a prorated basis.

2. Requesting Annual Leave

Except for emergencies, annual leave should be scheduled in advance, in writing, and approved by the supervisor. The Office of Personnel Management (OPM) Form 71, "Request for Leave or Approved Absence" (paper or electronic), is the acceptable and recommended format for requests for annual leave and is found at Appendix A.

In emergency situations, an employee must contact his/her supervisor (or designated alternate) about the emergency. In general, the supervisor should be notified as soon as possible, but no later than one hour after the time in which the employee is scheduled to report for duty. At the time the emergency request for annual leave is made, the supervisor will advise the employee as to whether the request for leave is approved. If the supervisor is not available, the employee should leave a message with a telephone number where he/she can be reached.

Failing to follow established procedures for requesting leave may result in disapproval of an employee's leave request and being charged as absent without leave (AWOL).

3. Advanced Annual Leave

Employees may be advanced annual leave when they have exhausted their accrued annual leave; however, advanced annual leave is not an entitlement. The number of hours of annual leave that may be advanced is limited to the number of hours that the employee will accrue by the end of the current leave year. Supervisors may grant advanced annual leave if there is a reasonable expectation that the employee will accrue/repay such leave. An employee shall not be advanced:

- A. Leave earned while serving under an initial temporary appointment.
- B. More leave than he/she will earn during the term of a successive temporary appointment.
- C. More leave than he/she will earn prior to the anticipated date of separation or retirement when it is known that an employee will retire or separate from Federal service within the leave year.

In most cases, when an employee who is indebted for advanced annual leave separates from federal service, he/she is required to repay the amount of advanced leave for which he/she is indebted.

Requests for advanced annual leave must be made in writing using the OPM Form 71 (paper or electronic).

4. Annual Leave Ceilings

The maximum annual leave that may be carried over into the new leave year is as follows:

Employees Stationed within the United States	30 days (240 hours)
Employees Stationed overseas and entitled to home leave	45 days (360 hours)
Members of the Senior Executive Service	90 days (720 hours)

Any accrued annual leave in excess of the maximum allowed by law, commonly referred to as “use or lose” leave, will be forfeited at the end of the leave year. Forfeited annual leave may only be restored under the provisions of 5 USC 6304(d).

Once employees stationed overseas have returned to duty in the United States, the maximum annual leave accumulation is 30 days (240 hours) or the amount carried over from the previous leave year, whichever is greater, not to exceed 45 days (360 hours).

5. Restoration of Annual Leave

To avoid forfeiture, both supervisors and employees should make every effort to assure that annual leave is scheduled for use during the year so as to avoid significant accumulations of “use or lose” leave near the end of the leave year. Annual leave may not be substituted for sick leave previously granted and documented where the substitution is solely for the purpose of avoiding forfeiture of annual leave.

Annual leave requested and approved in writing before November 15th of each leave year and subsequently canceled by management and forfeited may be restored under the following circumstances:

- A. Exigencies of the Public Business. The exigency must have been of such importance and duration as to prevent the use of annual leave which was scheduled in advance before the end of the leave year.
- B. Sickness. The period of sickness must have interfered with the usage of scheduled annual leave, and must have occurred or continued so late in the leave year that annual leave could not be rescheduled to avoid forfeiture.
- C. Administrative error.

6. Procedures for Requesting Restoration of Annual Leave

Requests to restore forfeited annual leave may be made after the start of each new leave year and guidance addressing this process will be distributed at that time. An employee's written request for restoration of annual leave should include the following:

- A. Evidence that the leave was approved before the cutoff date and subsequently canceled, and reason(s) for cancellation. An OPM Form 71 is acceptable.
- B. The reason(s) why the annual leave could not be rescheduled.
- C. Any pertinent documentation, such as medical certification, supporting a request to restore the forfeited leave.

All requests must be processed through the employee's supervisor. A designated agency official will review the documentation in support of each case before approving the restoration of annual leave. All approved requests and supporting documentation will be forwarded to the Payroll Branch.

7. Use of Restored Annual Leave

Restored annual leave must be scheduled and used not later than the end of the leave year ending 2 years after:

- A. The date fixed as the termination date of the exigency which resulted in forfeiture of the annual leave;
- B. The date of restoration of the annual leave forfeited because of administrative error; or
- C. The date the employee is determined to be recovered and able to return to duty if the leave was forfeited because of illness.

Restored annual leave is not added to the employee's current annual leave balance, but is kept in a separate account. Any restored leave unused at the expiration of the 2-year period is forfeited with no further right to restoration.

Chapter 3 Sick Leave

1. Purpose and Accruals

Sick leave is a period of approved absence with pay from work and may be used for personal medical needs, to provide general care for a family member, provide care to a family member with a serious health condition, make funeral arrangements for a family member, and for adoption-related purposes.

Full-time employees assigned to an 80-hour tour of duty earn 4 hours of sick leave for each full biweekly pay period in accordance with 5 USC 6307. Part-time employees earn 1 hour for each 20 hours in a pay status. There are no limits on the amount of sick leave that can be carried over into a new leave year.

2. Sick leave for Personal Medical Needs

An employee may use sick leave when he/she:

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

3. Sick Leave for Family Care or Bereavement Purposes

Full-time employees may use a total of up to 104 hours (13 workdays) of sick leave each leave year to:

- A. Provide care for a family member who is incapacitated as a result of physical or mental illness, injury, pregnancy, or childbirth;
- B. Provide care for a family member as a result of medical, dental, or optical examination or treatment; or
- C. Make arrangements necessitated by the death of a family member or attend the funeral of a family member.

Part-time employees are also covered, but the hours available under this provision are prorated.

"Family member" is defined as:

- A. Spouse, and parents thereof;
- B. Children, including adopted children, and spouses thereof;

- C. Parents;
- D. Brothers and sisters, and spouses thereof; and
- E. Any person related by blood or affinity whose close relationship with the employee is the equivalent of a family relationship.

4. Sick Leave to Care for a Family Member with a Serious Health Condition

Employees may use a total of up to 480 hours (12 work weeks) of sick leave each leave year to care for a family member with a serious health condition. For part-time employees, an amount of sick leave equal to 12 times the average number of hours in his or her scheduled tour of duty each week, subject to regulatory limitations. If an employee has previously used any portion of the 104 hours (13 workdays) of sick leave for general family care or bereavement purposes in a leave year, that amount must be subtracted from the 480 hour entitlement. Stated another way, an employee may not use more than a total of 480 hours of sick leave each year for all family care/bereavement needs.

Serious Health Condition: The term "serious health condition" has the same meaning as used in regulations for administering the Family and Medical Leave Act of 1993 (FMLA) – see Chapter 4. That definition includes such conditions as cancer, heart attacks, strokes, severe injuries, Alzheimer's disease, pregnancy, and childbirth. The term "serious health condition" is not intended to cover short-term conditions for which treatment and recovery are very brief. The common cold, flu, earaches, upset stomach, headaches (other than migraines), routine dental or orthodontia problems, etc., are not serious health conditions unless complications arise. The supervisor may require medical certification of a family member's serious health condition. The Department of Labor Form WH-380, Certification of Health Care Provider, may be used for this purpose and is found at Appendix B.

5. Sick Leave for Adoption

The amount of sick leave which an employee may use in the adoption process is limited only by the amount of accrued sick leave available to the adoptive parent and the hours which can be supported as adopted-related. Sick leave may be approved for appointments with adoption agencies, social workers, and attorneys; any court proceedings and required travel; any periods of time the adoptive parents are ordered or required by the adoption agency or by the court to take time off from work to care for the adopted child; and any other activities necessary to allow the adoption to proceed. Adoptive parents who voluntarily choose to be absent from work to bond with an adopted child may not use sick leave for this purpose; however, they may request annual leave or leave without pay.

6. Requesting Sick Leave

Routine or Non-emergency Medical Appointments: Sick leave for routine or non-emergency medical examinations should be requested in advance, in writing, and approved by the supervisor. The Office of Personnel Management (OPM) Form 71, "Request for Leave or Approved Absence" (paper or electronic), is the acceptable and recommended format for requests for sick leave and is found in Appendix A. Employees should check the appropriated "Purpose" box that describes the need for sick leave. A supervisor may deny sick leave for routine appointments if approving the employee's request would adversely impact mission requirements.

Unscheduled Sick Leave: The employee is responsible for contacting his/her supervisor (or designated alternate) about the need for unscheduled sick leave as soon as possible, but no later than one hour after the time in which the employee is scheduled to report for duty. If the supervisor is not available, the employee should leave a message with a telephone number where he/she can be reached.

The employee should submit a completed OPM Form 71 (paper or electronic) to his/her supervisor immediately upon return to duty, and is responsible for providing administratively acceptable evidence to support his/her request for sick leave, as required by the supervisor. If an employee fails to provide administratively acceptable evidence or medical certification within 15 calendar days of his or her supervisor's request, the supervisor may deny the request for sick leave and charge the employee as absent without leave (AWOL).

7. Administratively Acceptable Evidence

Self-certification: In most cases of short-term absences, an employee's statement that he/she has a legitimate reason for using sick leave (e.g., one's own or a family member's medical condition) can be sufficient and provides the administratively acceptable evidence required.

Medical Certificate: In cases where a supervisor believes that an employee is abusing his/her sick leave or in cases where the employee's absence exceeds 3 consecutive workdays, the supervisor may require the employee to furnish a medical certificate before approving the sick leave request. The medical certificate is a written statement signed by a registered, practicing physician or other practitioner certifying to the employee's own or a family member's medical condition and/or treatment, the period of incapacitation, as well as verification of when the employee can return to duty.

Extended Absences: For more prolonged absences, a supervisor may request more extensive medical information from an employee's health care provider including, but not limited to, diagnosis, clinical findings, prognosis, estimated return to duty date, and any necessary restrictions.

In all instances, when requested, an employee must provide administratively acceptable evidence or medical certification no later than 15 calendar days after the date the supervisor requests such documentation.

8. Advanced Sick Leave

Supervisors may approve up to 240 hours (30 workdays) of advanced sick leave in a leave year for any purpose for which the use of sick leave is authorized, subject to any limitations imposed for its use. In addition, approval of advanced sick leave is subject to the following limitations:

- A. The amount of sick leave advanced may not exceed the amount required to cover the documented period for which the advanced sick leave is requested.
- B. Advanced sick leave shall not be granted to an employee under leave restriction.
- C. Advanced sick leave is not appropriate for short periods (less than 5 days) of absence due to the employee's or the employee's family member's minor illnesses or for medical appointments to treat minor illnesses.
- D. The amount of sick leave which may be advanced to full-time employees serving under probationary or trial period (during their first year) normally should not exceed the amount which will be earned during the remainder of the first year. An exception to this provision may be authorized when there is reasonable expectation that the employee's service will continue beyond the probationary or trial period.
- E. The total amount of sick leave that may be advanced to an employee serving under a limited appointment, or one expiring on a certain date, may not exceed the amount that he/she will earn during the remaining period of the appointment.
- F. Advanced sick leave shall not be granted to an employee when it is known that he/she does not intend to return to duty or when available information indicates that his/her return is only a remote possibility (Comp. Gen. Decision B-166032, dated April 17, 1969).
- G. Advanced sick leave will not be granted to an employee who has filed an application for disability retirement.
- H. Advanced sick leave will not be granted to an employee who has indicated an intention of resigning for disability.

Request for Advanced Sick Leave

Each application for advance sick leave must be submitted in writing using the OPM Form 71 (paper or electronic), and must be supported by acceptable medical certification.

When the employee is requesting advanced sick leave due to incapacitation, the medical certificate must provide information necessary to enable the supervisor to make a decision. Documentation must include a diagnosis, a prognosis and an estimate of the date of full or partial recovery of the employee.

When the employee is requesting advanced sick leave to care for a family member, the medical certificate must provide information necessary to enable the supervisor to make a decision. Documentation must certify that:

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

9. Misuse / Abuse of Sick Leave

Employees are responsible for requesting and using sick leave in accordance with the provisions of this Handbook and the regulations governing sick leave. Supervisors are responsible for monitoring their employees' use of sick leave and taking appropriate action in cases of sick leave abuse. Supervisors should contact their servicing Labor and Employee Relations (LER) Specialist for advice and assistance in correcting sick leave abuse.

Chapter 4

Family and Medical Leave Act

This Chapter supersedes Customs Handbook 51600-01, "Family and Medical Leave Act (FMLA) of 1993" dated October 1994.

1. Purpose and Entitlement

The Family and Medical Leave Act (FMLA) entitles eligible federal employees to take leave without pay (LWOP), or to substitute appropriate accrued paid leave, for up to a total of 12 administrative workweeks during a 12-month period for certain family and medical needs. FMLA is intended to allow employees to balance their work and family life by taking unpaid leave for the following medical reasons:

- A. Birth of a son or daughter of the employee and the care of such son or daughter;
- B. Placement of a son or daughter with the employee for adoption or foster care;
- C. Care of an employee's spouse, child under 18 years of age, or parent who has a serious health condition; or
- D. Serious health condition of the employee that makes the employee unable to perform the essential functions of his or her position.

The 12-month period begins on the date the employee first takes leave under FMLA. An employee is not entitled to another 12 weeks of FMLA leave until the previous 12-month period ends and an event or situation that entitles the employee to another period of FMLA leave occurs.

2. Eligibility

Most employees who have completed 12 months of civilian service with the government are eligible under Title II of FMLA, which is regulated by the Office of Personnel Management at 5 CFR 630 Subpart L. The service need not be recent or consecutive.

An employee serving under a temporary appointment with a time limitation of one year or less, and intermittent employees are excluded from FMLA coverage.

3. Definitions

Serious health condition means an illness, injury, impairment, or physical or mental condition that involves:

- A. Period of incapacity or treatment in connection with or consequent to inpatient care in a hospital, hospice, or medical care facility; or
- B. Condition that results in incapacity requiring an absence of more than 3 consecutive calendar days involving continuing treatment by a health care provider; or
- C. Continuing treatment/supervision by a health care provider for a chronic or long-term condition that, if not treated, would likely result in incapacity of more than 3 consecutive calendar days.

Serious health condition does not include routine physical, eye, or dental examinations; a regimen of continuing treatment that includes the taking of over-the-counter medications, bed-rest, exercise, and other similar activities that can be initiated without a visit to the health care provider; a condition for which cosmetic treatments are administered, unless inpatient hospital care is required or unless complications develop; or an absence because of an employee's use of an illegal substance, unless the employee is receiving treatment for substance abuse by a health care provider or by a provider of health care services on referral by a health care provider. Ordinarily, unless complications arise, the common cold, the flu, earaches, upset stomach, minor ulcers, headaches (other than migraines), routine dental or orthodontia problems, and periodontal disease are not serious health conditions. Sick leave is appropriate in these circumstances.

Allergies, restorative dental or plastic surgery after an injury, removal of cancerous growth, or mental illness resulting from stress may be serious health conditions only if such conditions require inpatient care or continuing treatment by a health care provider.

Health Care Provider is a licensed Doctor of Medicine or Doctor of Osteopathy; a health care provider recognized by the Federal Employees Health Benefits Program; a Christian Science practitioner listed with the First Church of Christ, Scientist, in Boston, Massachusetts; or a Native American, including an Eskimo, Aleut, and Native Hawaiian, who is recognized as a traditional healing practitioner.

4. Requesting Leave Under FMLA

An employee who wishes to invoke his/her leave entitlement under FMLA will complete the Office of Personnel Management (OPM) Form 71, "Request for Leave or Approved Absence" (paper or electronic), which is the acceptable and recommended format for requests for sick leave and is found in Appendix A. Employees will check the appropriate box on the OPM Form 71 that describes the need for FMLA and attach administratively acceptable documentation supporting the need for leave. When possible, an employee must provide notice

of his/her intent to take leave under FMLA not less than 30 days before leave is to begin. In medical emergencies, an employee must provide notice as soon as practicable.

An employee may not retroactively invoke his/her entitlement to leave under FMLA. However, if an employee and his/her personal representative (if any) are physically or mentally incapable of invoking the employee's entitlement to FMLA leave during the entire period the employee is absent from work for a FMLA-qualifying purpose, the employee may retroactively invoke his/her FMLA entitlement within 2 workdays of returning to duty. The employee must provide medical documentation addressing his/her incapacitation and documentation *acceptable* to CBP explaining the inability of his/her representative to contact CBP during the entire absence to invoke FMLA leave.

Supervisors will not place an employee on FMLA leave unless the supervisor has obtained confirmation from the employee of his/her intent to invoke entitlement to FMLA leave.

5. Administratively Acceptable Documentation

Each request for leave under FMLA must be supported by written medical certification issued by the health care provider of the employee or the health care provider of the spouse, son, daughter, or parent of the employee. Certification of Health Care Provider, Form WH-380, from the U.S. Department of Labor, should be used by employees to satisfy this mandatory requirement to furnish a medical certification from a health care provider. A copy of form WH- 380 is found at Appendix B.

Employees must provide the medical certification no later than 15 calendar days after the request for FMLA leave. If, due to circumstances beyond an employee's control, the medical certification is not available within 15 calendar days, the employee must submit it no later than 30 calendar days after the request for FMLA leave. Supervisors may waive the requirement for an additional medical certificate in a subsequent 12-month period if the FMLA leave is for the same chronic or continuing health condition.

The written medical certification shall include :

- A. The date the serious health condition commenced;
- B. The probable duration of the serious health condition or specification that the serious health condition is a chronic or continuing condition with an unknown duration and whether the patient is presently incapacitated and the likely duration and frequency of episodes of incapacitation;
- C. The appropriate medical facts within the knowledge of the health care provider regarding the serious health condition, including a general statement as to the incapacitation, examination, or treatment that may be required by a health care provider; and

- D. Certification for intermittent leave, for planned medical treatment, the dates (actual or estimates) on which such treatment is expected to be given, the duration of such treatment, and the period of recovery, if any, or specification that the serious health condition is a chronic or continuing condition with an unknown duration and whether the patient is presently incapacitated and the likely duration and frequency of episodes of incapacity.

When the employee is requesting FMLA leave for a personal medical need, certification will state that the employee is unable to perform one or more of the essential functions of his/her position or requires medical treatment for a serious health condition. The health care provider's determination of incapacitation is based on written information provided by CBP on the essential functions of the employee's position or, if not provided, discussion with the employee about the essential functions of his or her position.

The written medical certification when providing care to a family member shall also include:

- A. A statement from the health care provider that the spouse, son, daughter, or parent of the employee requires psychological comfort and/or physical care; needs assistance for basic medical, hygienic, nutritional, safety, or transportation needs or in making arrangements to meet such needs; and would benefit from the employee's care or presence; and
- B. A statement from the employee on the care he or she will provide and an estimate of the amount of time needed to care for his/her spouse, son, daughter, or parent.

The medical information on the certification shall relate only to the serious health condition for which the current need for FMLA leave exists. Supervisors may not require any personal or confidential information in the written medical certification other than that required above. If an employee submits a medical certification signed by the health care provider that addresses all the required elements, the supervisor may not request new information from the health care provider during the period of FMLA leave. However, a health care provider representing CBP may contact the health care provider who completed the medical certification, with the employee's permission, for purposes of clarifying the medical certification.

The employee invoking FMLA leave for adoption purposes must provide acceptable documentation when taking leave for appointments with adoption agencies, social workers and attorneys, court proceedings, required travel and other activities necessary to allow the adoption to proceed.

6. Provisional Approval

If an employee requesting FMLA leave is unable to provide the requested medical certification before the leave begins, or if the supervisor questions the validity of the medical certificate provided and the medical treatment requires the leave to begin, supervisors will grant provisional FMLA leave pending receipt of final written medical certification. If an employee fails to provide the required medical certification, supervisors may charge the employee as absent without leave (AWOL) or permit the employee to request that the provisional FMLA leave be charged as leave without pay (LWOP) or annual leave, as appropriate.

7. Intermittent FMLA Leave

FMLA leave taken under items 1.A. or 1.B. above may be taken on an intermittent basis if the employee so requests, and if the supervisor determines that such a schedule will not adversely impact the accomplishment of the mission. FMLA leave under items 1.C. or D. may be taken on an intermittent basis or on a reduced leave schedule (employee's usual number of hours of regularly scheduled work per work day is reduced), only when medically necessary to care for a seriously ill family member or for the serious health condition of the employee.

8. Substituting Paid Leave

An employee may elect to substitute annual leave and/or sick leave, consistent with current laws and OPM's regulations for using annual or sick leave, for any unpaid leave under the FMLA.

The employee who elects to substitute paid leave for FMLA leave must notify his/her supervisor of that election prior to the date the leave begins. An employee may not retroactively substitute paid leave for unpaid FMLA leave.

9. Job Benefits and Protection

Upon return from FMLA leave, an employee must be returned to the same position or to an equivalent position with equivalent benefits, pay, status, and other terms and conditions of employment. An employee who takes FMLA leave is entitled to maintain health benefits coverage. An employee on unpaid FMLA leave may pay the employee share of the premiums on a current basis or pay upon return to work.

Chapter 5 Leave Without Pay

1. Definition

Leave without pay (LWOP) is an approved temporary absence from duty, in a nonpay status, requested by the employee. The term does not cover a suspension, furlough, an absence for which leave has not been approved (absent without leave or AWOL), or nonpay status during hours or days for which an employee would be compensated on an overtime basis.

2. Requesting LWOP

Except for emergencies, LWOP should be scheduled in advance, in writing, and be approved by the supervisor authorized to approve such a request. The Office of Personnel Management (OPM) Form 71, "Request for Leave or Approved Absence" (paper or electronic), is the acceptable format for requesting LWOP and is found at Appendix A. Requests for LWOP of over 30 days must be documented with a Request for Personnel Action, SF-52, either in a paper or electronic version. The reason(s) for the LWOP must be indicated on the SF-52.

Requests for LWOP must include an explanation of circumstances surrounding the request, and a medical certificate if the absence is for health reasons. An acceptable medical certificate must be a statement from the physician or other licensed health care practitioner indicating the need for the absence and the prognosis of the employee's ability to return to work at the end of the period of LWOP.

3. Granting LWOP

The granting of LWOP is a matter of supervisory discretion except for the following specific circumstances:

- A. The Family and Medical Leave Act of 1993 (FMLA) provides covered employees with an entitlement to a total of up to 12 weeks of unpaid leave (LWOP) during any 12-month period for certain family and medical needs (see Chapter 4).
- B. The Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA) provides employees with an entitlement to LWOP for military training or active duty for members of the Reserves or National Guard, who are not entitled to, or have exhausted their military leave.
- C. An employee who is a disabled veteran and presents an official statement from a medical authority that medical treatment is required in connection

with the disability is entitled to LWOP. The employee must give prior notice of the period during which absence for treatment will occur.

- D. Employees who are in receipt of compensation from the Department of Labor for work-related injuries or occupational diseases may not be in a pay status, and must therefore be carried in a LWOP status.

In all other cases, leave-approving officials must use discretion in approving requests for LWOP. In granting a request for LWOP, the leave-approving official must consider whether the value to the government, the public good, or the needs of the employee are sufficient to offset the administrative inconvenience and the cost of granting the LWOP. Such factors as increased job ability, protection or improvement of an employee's health, job performance, and retention of a desired employee may be considered. In addition, the leave-approving official should have a reasonable expectation that the employee will return to duty at the end of the LWOP (except in cases where an employee is relocating).

4. Changing LWOP to Annual Leave

LWOP may be retroactively changed to annual leave if:

- A. Due to an administrative error or misunderstanding, the employee was not aware that he/she had an annual leave balance or that annual leave could have been used; or
- B. The employee is accepted into the Voluntary Leave Transfer Program and donated leave is available.

5. Impact of LWOP on Benefits

LWOP may impact upon various employee benefits and other personnel actions, as follows:

Within-Grade Increases: LWOP in excess of the following amounts is not counted toward the service required for within-grade increases:

General Schedule Employees:

- 2 workweeks for advancement to rates 2,3, & 4;
- 4 workweeks for advancement to rates 5, 6, & 7; and
- 6 workweeks for advancement to rates 8, 9, & 10.

Federal Wage System Employees:

- 1 workweek for advancement to rate 2;
- 3 workweeks for advancement to rate 3; and
- 4 workweeks for advancement to rates 4 & 5.

Retirement, Annual Leave Earning Category, and Reduction in Force (RIF): LWOP in excess of 6 months within a calendar year is not counted as creditable

service for purposes of retirement, annual leave earning category, or seniority in a reduction in force (RIF).

Probationary Period: LWOP in excess of 22 workdays extends the probationary period for regular employees, as well as the probationary period for supervisory or managerial employees, by the amount of the excess LWOP. The probationary periods for members of the Senior Executive Service are similarly affected.

Conversion to Career Tenure: LWOP in excess of 30 calendar days extends the 3-year period for conversion from career-conditional to career tenure by the amount of the excess LWOP.

Health Benefits: Employees must pay their share of health benefits premiums while on LWOP. Generally, health benefits coverage continues for up to 365 days of LWOP, if the employee continues to pay his/her share of the premium.

Life Insurance: Life insurance coverage (basic and optional) continues for up to 12 months of LWOP without cost to the employee.

Annual and Sick Leave Accrual: When an employee accumulates 80 hours of LWOP during a pay period, the employee does not earn annual leave or sick leave during that pay period. The employee earns leave in the next succeeding pay periods until he or she again accumulates 80 hours of LWOP during a pay period.

Holidays: An employee who is in a non-pay status immediately before AND after a holiday is not entitled to pay for the holiday. However, if he/she is in a pay status either before OR after a holiday, he/she is entitled to pay for the holiday. An employee scheduled to be on LWOP during a pay period when a holiday occurs must not be returned to pay status either the day before or the day after the holiday for the sole purpose of taking advantage of being paid for the holiday.

Thrift Savings Plan (TSP): Employee contributions to TSP accounts must be made as deductions from civilian pay. Consequently, an employee in a LWOP status for one or more pay periods cannot contribute to their TSP account for those period(s). Employees should refer to the TSP Fact Sheet - Effect of Nonpay Status on TSP Participation, available from the TSP web site at www.tsp.gov for more detailed information.

Chapter 6 Military Leave

1. Purpose

Military leave is absence from duty from the employee's civilian position without loss of pay (including pay for regularly scheduled overtime) to perform military duty.

NOTE: The Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA) states that an employee performing service with the uniformed services must be permitted, upon request, to use military leave or accrued annual leave during such service.

2. Eligibility

In order to be entitled to military leave, an employee must meet the following criteria:

- A. A member of a Reserve component of the Armed Forces or the National Guard;
- B. A full-time, part-time or indefinite employee who does not have an intermittent work schedule; and
- C. Serving in an appointment that is not limited to 1 year or less.

3. Types of Military Leave

- A. 5 USC 6323 (a) provides 15 calendar days (120 hours) per fiscal year for active duty, active duty training, inactive duty training, and funeral honors duty. An employee may carry over a maximum of 15 days into the next fiscal year. Inactive duty training is authorized training performed by members of a Reserve component not on active duty and performed in connection with the prescribed activities of the Reserve component. It consists of regularly scheduled unit training periods, additional training periods, and equivalent training.
- B. 5 USC 6323 (b) provides an additional 22 workdays (176 hours) of military leave per calendar year for emergency duty as ordered by the President or a State governor. This leave is provided for employees who perform military duties in support of civil authorities in the protection of life and property. Those employees who perform full-time military service as a result of a call or order to active duty in support of a contingency operation are also entitled to 22 days of military leave. CBP must determine on a case-by-case basis whether an employee is being activated in support of civil authorities or in support of a contingency operation, and may ask for

military orders or any other evidence (such as a statement by the appropriate military command) to make this determination.

- C. 5 USC 6323(c) provides unlimited military leave to members of the National Guard of the District of Columbia for certain types of duty ordered or authorized under title 39 of the District of Columbia Code.
- D. 5 USC 6323(d) provides that Reserve and National Guard Technicians *only* are entitled to 44 workdays (352 hours) of military leave in a calendar year for duties overseas under certain conditions. This entitlement is in addition to the entitlement to 15 days of military leave under 5 USC 6323(a).

4. Requesting Military Leave

Whenever possible, employees should request military leave in advance, using the Office of Personnel Management (OPM) Form 71, Request for Leave or Approved Absence (paper or electronic). A copy of military orders (if available) or a copy of the weekend drill schedule should be provided to the supervisor when requesting military leave.

The minimum charge for leave is 1 hour. An employee may be charged military leave only for hours that the employee otherwise would have worked and received pay. Time taken on a work day for traveling to the military training location cannot be charged to military leave unless the military orders encompass the required travel time.

Holidays and non-duty weekends are not charged against military leave.

5. Requesting Other Leave When Activated into Military Duty

Military leave does not have to be exhausted prior to using other appropriate types of leave (i.e. annual leave or LWOP) to perform military duty, and may be intermingled with other leave. In accordance with 5 CFR 353.208, an employee may request, and CBP must approve, the use of accrued annual leave, previously earned compensatory time off, previously earned credit hours, or LWOP intermittently when he/she is activated into military service.

6. Effect of Military Leave on Civilian Pay

An employee's civilian pay remains the same for periods of military leave under 5 USC 6323(a), including any premium pay (except Sunday premium pay) an employee would have received if not on military leave. For military leave under 5 USC 6323(b) and (c), employee's civilian pay is reduced by the amount of military pay for the days of military leave. However, an employee may choose not to take military leave and instead take annual leave in order to retain both civilian and military pay.

7. Dual Compensation

The Comptroller General has ruled that an individual on active duty military service *may not* work in a civilian capacity with the government. The Comptroller General has held that the rendition of services to the government in a civilian capacity by a member of the armed services on active duty is incompatible with the member's actual or potential military duties, and payment for such services is not authorized in the absence of specific statutory authority. This is the case even if civilian services can be rendered during the military member's hours of relaxation or time provided to attend to personal affairs.

8. Excess and Restored Annual Leave

Employees activated into military service with "use or lose" annual leave must schedule and use their annual leave or apply for a lump sum payment so that their use or lose annual leave is not forfeited at the end of the leave year. If an employee requests a lump sum payment of annual leave, **all** of their annual and any restored annual leave is paid. Once paid, the annual leave cannot be bought back upon the employee's return to federal service.

Chapter 7 Court Leave

1. Purpose

Court leave is an approved absence from duty without loss of pay or charge to an employee's accrued leave to perform jury duty in a federal, state, or municipal court or to serve as a witness for the United States, the District of Columbia, or a state or local government.

An employee who is summoned by the courts or assigned by CBP to testify in an official capacity or to produce official records on behalf of any party in any judicial proceeding is performing official duty. Therefore, the employee is not entitled to court leave, but is in an official duty status for the time involved.

2. Eligibility

Permanent or temporary employees with a regularly scheduled tour of duty (part-time or full-time) are eligible for court leave. Intermittent employees without a regular tour of duty are not entitled to court leave.

3. Requesting Court Leave

Court leave should be requested in advance, in writing, and approved by the supervisor. The Office of Personnel Management (OPM) Form 71, "Request for Leave or Approved Absence" (paper or electronic), is the acceptable and recommended format for requests for court leave and is found at Appendix A. Employees should check "Other paid absences (specify in remarks)." A copy of a summons, court order, subpoena or official request will be required when requesting court leave; the employee should provide his/her supervisor with a copy as soon after receipt as possible. An employee who is not officially "summoned" by the court or authority responsible for the proceeding is not entitled to court leave.

4. Granting Court Leave

Court leave is granted for absences during an employee's regularly scheduled tour of duty, including regularly scheduled overtime. It can be granted only for those days and hours the employee would otherwise be in a pay status.

Employees assigned to night shifts or standby tours of duty are granted court leave comparable with employees assigned to regular day shift work. Since jury or witness duty generally requires an employee's presence in court during daytime hours, an employee who is scheduled to work at night shall be granted court leave during the day on which the night shift begins or ends.

If the employee's absence is properly chargeable to court leave, the employee may not elect to have the absence charged to annual leave. If an employee is on annual leave when called for jury duty or witness service, court leave shall be substituted.

A. Jury Duty. Except in cases of extreme mission hardship, it is CBP's policy not to request that an employee be excused from jury service. An employee who is under summons from a state or federal court to serve on a jury should be granted court leave from the date stated in the summons to the time the employee is discharged by the court. However, court leave will not be authorized for time during which the employee is excused or discharged by the court for any indefinite period subject to call by the court or for a definite period in excess of one day.

B. Witness Service. An employee is authorized court leave for service as a witness in a nonofficial capacity on behalf of the United States, District of Columbia, state and local government. An employee is also entitled to court leave when he/she appears as a witness in a nonofficial capacity on behalf of a private party in any judicial proceeding to which the United States, the District of Columbia, or a state or local government is a party. Since numerous jurisdictions are involved, specific questions should be directed to the servicing Labor and Employee Relations Specialist or Regional Counsel's office, as appropriate.

C. Participation in Suits Between Private Individuals and Companies. Court suits between private individuals or companies in which the United States, the District of Columbia, or a state or local government is not an involved party do not entitle employees to court leave. Annual leave or leave without pay may be authorized.

D. Employee as Plaintiff in Suit Against the Government. When an employee-plaintiff has been called to give a deposition or otherwise summoned to testify in a case in which a party in the proceeding is the United States, the District of Columbia, or a state or local government, the employee-plaintiff is a "witness" and is entitled to court leave for the time involved in giving a deposition or being a witness. When an employee is a party in a suit against the government, the time the employee-plaintiff spends in preparation for the trial and answering the government's interrogatories, as well as the time spent observing the conduct of the trial do not qualify as court leave. Annual leave or LWOP is appropriate for such periods.

5. Return to Duty Upon Release by Court

An employee properly summoned by a state or federal court to serve on a jury is under the jurisdiction and control of the court for the term of the jury service. However, an employee is expected to return to duty during periods when the employee is excused from jury duty unless this would be impractical. An

employee excused or discharged by the court for a substantial portion of a workday is not entitled to court leave, but must report to duty. As a general rule, an employee is expected to contact his/her supervisor to determine if the employee should report for duty.

Once the employee has completed his/her jury or witness service, he/she must submit a certificate of attendance, signed by a clerk of the court or other appropriate official, to his/her supervisor. Supervisors will retain a copy of the certificate of attendance with the timekeeping records.

6. Collection of Fees

Fees for Lost Compensation: Many jurisdictions provide compensation to individuals to help make up for any wages lost as a result of serving as a juror or witness. Since court leave permits the employee to fulfill their obligation to the court without any loss of pay, the employee is required to collect any such compensation and forward it to the National Finance Center. The employee must turn in any compensation by money order or personal check to the National Finance Center, Payroll Branch, P.O. Box 68903, Indianapolis, Indiana 46268. If the employee fails to collect any fees payable or waives payment of such fees, an equivalent amount will be withheld from his/her salary. Full-time employees may retain fees for compensation paid for jury service on holidays and other non-workdays.

Reimbursement for Expenses: However, in addition to fees intended as compensation for lost wages, some jurisdictions also provide jurors and/or witnesses certain reimbursement to cover costs of incidental expenses such as meals, parking or transportation. Employees may keep any expense fees they receive while on court leave.

A certificate of attendance issued by the court should separately identify fees and expenses/allowances. If the certificate of attendance does not identify expenses separately or if it is not clear whether the fee received is for expenses or for compensation for lost wages, employees are responsible for obtaining written clarification from the court.

Chapter 8 Excused Absence

1. Purpose

Excused absence, which is more commonly referred to as "administrative leave", is an authorized absence from duty without loss of pay or charge against leave. An employee may be excused from duty when the absence is not specifically prohibited by law and is:

- A. Directly related to CBP's mission;
- B. Officially sponsored or sanctioned by CBP;
- C. Determined to enhance the professional development or skills of an employee in his/her current position, or
- D. Brief and is determined to be in the interest of CBP.

This chapter will highlight the most common uses of excused absence. Questions on specific requests not addressed here should be directed to your servicing Labor and Employee Relations Specialist.

2. Granting Excused Absence

Supervisors delegated with the authority may grant excused absence for the purposes/amounts of time listed in this chapter. If not otherwise defined, reasonable limits should be established based on the activity.

3. Excused Absence for Tardiness and Brief Periods

Supervisors may excuse absences from duty for occasional tardiness or other brief absences up to one hour (the so-called "59-minute" rule). However, supervisors are reminded that this authority to grant excused absence should be used judiciously. The supervisor will determine, based on the circumstances, whether the employee is to be granted excused absence or charged as Absent Without Leave (AWOL). As an alternative to charging AWOL, the supervisor may, at the employee's request, allow the employee to take annual leave, compensatory time (if available) or leave without pay (LWOP).

4. Excused Absence for Voting

An employee may, subject to the needs of CBP operations, be granted excused absence from duty to vote if the polls are not open at least 3 hours before or after an employee's regularly scheduled hours of work; excused absence may be permitted at either the beginning or end of the daily tour of duty, depending on

which requires less excused absence. In those rare circumstances where an employee's voting place is beyond normal commuting distance and vote by absentee ballot is not permitted, the employee may be granted sufficient time off to make the trip to the polls to vote. Time off in excess of 1 day is to be charged to annual leave or to leave without pay if annual leave is exhausted. Employees are responsible for ascertaining the hours during which polls are open in their voting jurisdiction and notifying their supervisors in advance of their request for excused absence to vote.

Employees who elect to participate in electoral activities, such as serving as election officers, precinct inspectors or clerks, or poll workers may not be granted excused absence for these purposes.

5. Excused Absence for Blood Donations

Excused absence to give blood transfusions or donations to an officially authorized blood bank (or in emergency situations) may be granted, up to four hours on the same day on which the donation is made. This also includes participation in platelet donations. This period of excused absence is to allow time to travel to the donation site and return (if appropriate), as well as the time for actually donating blood and recovery. Should the employee want or need additional time, he/she may request annual leave, sick leave, accrued compensatory time, or leave without pay (LWOP). Excused absence for this purpose is subject to supervisory approval based on workload and staffing requirements. This provision does not cover an employee who gives blood for his or her personal use or receives compensation for giving blood.

6. Excused Absence for Emergency Rescue/Protective Work or for Civil Defense Activities

An employee who can be spared without interference to essential operations or obligations may be granted excused absence to participate as a volunteer in emergency rescue/protective work or to participate in a federally recognized civil defense program, not to exceed 5 workdays in a calendar year. Emergency situations include but are not limited to extreme weather conditions or disasters such as fire, flood or other natural phenomena, or search operations. At the conclusion of the employee's participation in the emergency work or civil defense program, he/she must provide acceptable evidence to his/her supervisor certifying his/her attendance through the excused absence period.

7. Excused Absence for Taking Examinations

Employees may be granted excused absence to take an examination that is related to employment with CBP, i.e., examinations to establish an employee's qualifications for promotion in CBP.

At the discretion of the supervisor, based on workload and staffing requirements, employees may be granted excused absence to take examinations (e.g., CPA or bar exam) which are directly related to the employee's current or prospective duties within CBP. An eligible employee may also be granted excused absence for travel to and attendance at an oral interview required as a prerequisite to the grant of a professional license. The time authorized under this provision is limited to a single examination for any one employee.

8. Excused Absence for Employee Interviews

Employees competing for positions within CBP may be granted excused absence for interviews or testing. Employees interviewing for a position outside of CBP may not be granted excused absence and should request annual leave, compensatory time or LWOP.

9. Excused Absence for Medical Examinations and Treatment

Excused absence will be granted for travel time and to undergo a medical examination requested by an authorized CBP official.

An employee undergoing initial examination and emergency treatment of work-related injuries on the day of the injury will be granted excused absence.

10. Excused Absence for Bone Marrow/Organ Donation

An employee will be granted up to 7 workdays of excused absence per calendar year to serve as a bone marrow donor. An employee will be granted up to 30 workdays of excused absence per calendar year to serve as an organ donor. However, an employee who is the bone marrow or organ recipient is not eligible for excused absence.

11. Excused Absence for Attending Meetings and Conferences

An employee may be granted excused absence to attend a convention, conference, or meeting that is **not** directly related to official duties if management believes the employee's attendance will contribute to the goals of the CBP. After evaluating the request, the authorized approving official may grant or deny the excused absence. If denied, the employee may be allowed to take annual leave or LWOP to attend. The leave and duty status of all employees who attend a convention, conference, or meeting should be clearly established in advance.

Employees who are authorized to attend conventions, conferences, or meetings in connection with, or as a part of their official duties, are in an official duty status.

12. Excused Absence for Relocation

A CBP career or career conditional employee, who is relocated in the interest of the government, may be granted excused absence to enable him/her to make pre-moving and post-moving arrangements. An employee not approved for a house-hunting trip may be authorized up to 40 hours for finding a home and making moving arrangements before or after he/she reports to their new duty station. An employee who was approved for a house-hunting trip may be granted 2 days of excused absence for general relocation arrangements when that employee cannot complete moving arrangements during regular working hours.

13. Absence for Hazardous Weather Conditions

Group dismissals of certain employees without charge to leave because of severe storm, snow or icing conditions, or disasters occurring during or outside regular duty hours may be authorized in accordance with current guidelines. Offices and facilities may be closed, or activity restricted, upon a determination by local authority that hazardous weather conditions justify the early closing of offices, and on rare occasions when all Federal activities in the particular locality are closed because of weather conditions during the night or off-duty hours. Non-emergency essential employees will be excused from duty for the period during which their offices are closed.

14. Excused Absence for Funeral of Immediate Relative in the Armed Forces

An employee is entitled under 5 USC 6326 to not more than 3 days of excused absence to make arrangements for, and/or attend the funeral or memorial service for an immediate relative who died in a combat zone (as determined by the President of the United States), as a result of wounds, disease, or injury incurred while serving as a member of the Armed Forces. The definition of an immediate relative is the same definition used for a family member in Chapter 3, Sick Leave.

15. Excused Absence for Funeral of Fellow Law Enforcement Officer

Under the provisions of 5 USC 6326, a federal law enforcement officer may be granted excused absence to attend the funeral of a fellow federal law enforcement officer or federal firefighter who was killed in the line of duty.

16. Excused Absence of Veterans to Attend Funeral Services

Under the provisions of 5 USC 6321, an employee who is a veteran of a war, or of a campaign or expedition for which a campaign badge has been authorized, or a member of an honor or ceremonial group of an organization of those veterans,

may be granted not more than 4 hours in any given day to participate as a pallbearer or as a member of a firing squad or a guard of honor in a funeral ceremony for a member of the armed forces whose remains are returned from abroad for final interment in the United States.

Chapter 9 Home Leave

1. Purpose

Home leave is a period of approved absence with pay authorized by 5 USC 6305 for employees stationed abroad. The purpose of home leave is to ensure that an employee and his/her family remain familiar with their actual residence of record during a prolonged assignment to a foreign area. Home leave allows the employee an opportunity to return to his/her homeland before reporting for another overseas tour.

2. Eligibility

Employees serving outside the United States who meet the requirements of 5 USC 6304(b) for the accumulation of a maximum of 45 days (360 hours) of annual leave are eligible for home leave. Employees recruited and hired locally in an overseas area do not accrue home leave.

3. Earning Rates

CBP employees recruited from the United States and serving at a post outside of the United States or employees recruited/reassigned from the Commonwealth of Puerto Rico or the possessions or territories of the United States and stationed outside of those areas earn 5, 10 or 15 days of home leave for each 12 months of service. Earning rates are based on foreign post assignment and the post differential rate. The leave shall be credited to an employee's leave account as it is earned.

An employee who is eligible for home leave will not accrue home leave when their period of service abroad is interrupted by a tour of duty in the United States Armed Forces. However, the time spent in the Armed Forces will be counted towards "continuous creditable service."

Home leave accumulates for future use without limit, i.e., there is no maximum amount of home leave an employee can accrue. However, employees are not paid for unused home leave upon separation or retirement.

4. Home Leave Authorization and Use

An employee may not be granted home leave until he/she has completed 24 months of continuous creditable service abroad. Completion of the basic 24 months of continuous service period abroad is broken by:

- A. A break in service of 1 or more workdays; or
- B. An assignment (other than a detail) to a position in which an employee is no longer subject to Section 6305(a) of Title 5, United States Code.

Completion of the basic 24 months of continuous creditable service period abroad is delayed by:

- A. Any time spent in the United States or a U.S. Commonwealth or possession in annual leave status (e.g., rest and recuperation, family or emergency visitation travel, annual leave taken in conjunction with official duty time authorized by the U.S. Government temporary duty orders);
- B. Time spent in a leave without pay (LWOP) status that exceeds two work weeks within a 12-month period while assigned abroad; or
- C. Any time spent in the United States or a U.S. Commonwealth or possession while on personal travel in an annual leave status, sick leave (without official travel orders), or LWOP status.

Further, home leave is to be granted only when the employee is expected to return overseas for at least 12 months after using it.

Home leave is for use only in the United States, the Commonwealth of Puerto Rico, or territory or possession of the United States, when these possessions or territories are outside the area of employment. Any leave used en route will be charged to annual leave, sick leave, compensatory leave, or leave without pay, as appropriate.

Home leave must be used in increments of a full day, and in blocks of 10 days. However, employees who have accrued additional home leave may extend their home leave to the extent that leave is available.

Home leave will be used within 90 days after the employee becomes eligible (has completed 24 continuous months of service abroad and has been selected to return to service abroad for a minimum of a 1-year assignment), subject to workload and staffing needs. Requests for exceptions to use home leave within the 90 days will be considered on a case-by-case basis and must be approved by the Assistant Commissioner of the organization to which the employee is assigned. The 90-day "window" may be extended by management when the home leave request is disapproved because of operational/mission requirements.

5. Home Leave Address of Record

Employees must officially document their address of record prior to departing for their overseas assignment in writing. The home leave address of record

represents a permanent location in the United States, or a U.S. Commonwealth or possession, if the employee's place of residence outside the area of employment, to which the employee and eligible family members are authorized to proceed when granted home leave.

Requests for changes in home leave address of record may be approved by the appropriate Headquarters official only if the employee can establish that changed circumstances so require. Requests for such change will be reviewed on a case-by-case basis. The selection of a new location intended to accommodate the employee's personal convenience is not an acceptable basis for approval.

6. Requesting Home Leave

Requests for home leave will be made when the employee has requested and received approval to continue assignment abroad. The Office of Personnel Management (OPM) Form 71, "Request for Leave or Approved Absence" (paper or electronic), is the acceptable format for requests for home leave and is found at Appendix A. "Home Leave" should be annotated in the remarks section of the form, as well as the employee's travel destination and location of official residence (home leave address of record).

7. Home Leave Travel

Once home leave has been approved, round-trip travel to the employee's official residence and return, and per diem while in a travel status will be authorized at government expense for the employee and his/her immediate family if the employee has agreed to return to work at the overseas duty station for the succeeding 12 months.

"Immediate family" includes the employee's spouse, unmarried children under the age of 22 (including adopted children, stepchildren, foster children or recognized natural children) or unmarried children older than 22 who are incapable of self-support because of physical or mental disability that existed before the age of 22. Dependents qualify for home leave based on eligibility of the employee. (Normally, the employee and dependents will travel together on home leave.)

Employees may elect to take home leave to other than their official residence, but such travel must still be within the areas specified under Section 4: "Home Leave Authorization and Use". However, an employee who elects an alternate travel destination will be reimbursed by the government only up to the cost of round-trip travel for the employee and his/her immediate family to the employee's official residence and return. Home leave travel benefits may not be used to travel to the United States merely as a stopping off point enroute to or from foreign destinations.

Official travel time will be granted to the employee's travel destination and return to the duty station without charge to either home leave or annual leave. The amount of official travel time will be limited to the period needed by common carrier over the most direct route.

8. Refund for Home Leave

An employee is indebted for the home leave used by him/her when he/she fails to return to service abroad after the period of home leave, or after the completion of an assignment in the United States. The indebtedness may be paid by a charge against the employee's annual leave or by cash payment to be arranged between the employee and CBP. However, a refund for this indebtedness is not required when:

- A. The employee has completed not less than 6 months of service in an assignment in the United States following the period of home leave;
- B. CBP determines that the employee's failure to return was due to compelling personal reasons of a humanitarian or compassionate nature, such as may involve physical or mental health or circumstances over which the employee has no control; or
- C. CBP, which granted the home leave, determines that it is in the public interest not to return the employee to his/her overseas assignment

When a determination is made that a refund of all home leave is required, the employee shall repay the transportation costs connected with the home leave. If a partial refund of home leave is required, there is no requirement to repay the transportation costs.

9. Transfer and Recredit of Home Leave

An employee is entitled to have his/her home leave account transferred or recredited when moving between agencies or is reemployed without a break in service of more than 90 days. No lump-sum payment is made for home leave.

Chapter 10 Related Leave Topics

1. Holidays

By 5 USC 6103, eligible employees receive their basic rate of pay for all of the non-overtime hours scheduled on days declared as a legal public holiday and any other day declared to be a holiday by Federal Statute or Executive Order. Because federal offices are closed on legal public holidays, many employees enjoy a scheduled workday off with pay.

The following are legal public holidays for federal employees:

- New Year's Day, January 1
- Presidential Inauguration Day, January 20 (Washington, DC metro area only)
- Martin Luther King's Birthday, the third Monday in January
- Washington's Birthday/Presidents' Day, the third Monday in February
- Memorial Day, the last Monday in May
- Independence Day, July 4
- Labor Day, the first Monday in September
- Columbus Day, the second Monday in October
- Veteran's Day, November 11
- Thanksgiving Day, the fourth Thursday in November
- Christmas, December 25

Additions to and subtractions from this list require passage of law or an Executive Order.

Pay on a Holiday

Full-time employees who are not required to work on a holiday receive their basic rate of pay for all of the non-overtime hours they would otherwise work on that day.

Part-time employees are entitled to a holiday when the holiday falls on a day he/she is regularly scheduled to work. Part-time employees who are excused from work on a holiday receive their rate of basic pay for the hours they are regularly scheduled to work on that day.

Holiday Work

"Holiday work" is non-overtime work performed by an employee during his/her regularly scheduled hours of duty on a holiday. (See 5 CFR 550.103)

Holiday Premium Pay

Holiday premium pay is equal to an employee's rate of basic pay. Employees who are required to work during non-overtime hours on a holiday receive his/her rate of basic pay, plus holiday premium pay, for each hour of holiday work. (See 5 USC 5546(b)).

Employees who are required to perform any work during non-overtime holiday hours are entitled to a minimum of 2 hours of holiday premium pay. (See 5 USC 5546(c)).

Determining an "in lieu of" holiday.

When a holiday falls on an employee's workday, the employee, unless directed to work, will observe that day as the holiday.

The observance of holidays that fall on an employee's regular day off (RDO) always falls back unless it occurs on an employee's 1st RDO of an administrative workweek. In those cases, holiday observance is always rolled forward to the next workday. In determining the "in lieu of" holiday, it's important to remember that an administrative workweek always begins on a Sunday and ends on Saturday.

Supervisors must determine an employee's first RDO during the administrative workweek. (For most, but not all, employees that would be Sunday.) Whenever a holiday falls on an employee's first RDO of a workweek, the holiday is observed the following workday. For example, an employee's tour of duty is Saturday through Wednesday with Thursday and Friday as RDO. Since Thursday is this employee's 1st RDO, the Thanksgiving holiday will be observed on the employee's next workday, i.e., Saturday.

When a holiday falls on an employee's 2nd or 3rd RDO during the administrative workweek, the holiday is observed on an employee's previous scheduled workday. For example, an employee's RDO include Sunday, Monday, and Saturday during an administrative workweek when there is a Federal holiday on that Monday. The employee will observe the holiday on the previous Friday because Monday is the employee's 2nd RDO that week.

Part-time employees are not entitled to an "in lieu of" holiday when a holiday falls on a non-workday of the employee. (See 5 CFR 610.405.)

State and Local Holidays

A management official with delegated authority may close an office or worksite and grant excused absence on state, local, territorial, or foreign holidays upon determination by that designated official that Federal work may not be properly performed. Any of the following circumstances may be the basis that prevents work from being properly performed:

- A. The building or office in which the employees work is closed, or building services essential to proper performance of work are not available;
- B. Local transportation services are discontinued or interrupted to the point where employees are prevented from reporting to their work location; or
- C. The duties of the employees consist largely or entirely of dealing directly with employees and officials of business, industry, or local government, and most of such establishments are closed in observance of the holiday, and there are no other appropriate duties to which employees can be assigned on the holiday.

When the entire office or worksite is closed, the day is treated as a non-workday and no charge to leave will be made for the day regardless of an employee's pay, duty, or leave status otherwise. When portions of an office or worksite are closed, affected employees may be granted excused absence.

Premium pay is not granted for working on a state or local holiday.

2. Compensatory Time for Religious Observances

Under the provisions of 5 USC 5550(a), an employee may work and earn compensatory time for religious observances requiring the employee's absence from duty. The employee may work religious compensatory time before and after actually taking the compensatory time off.

An employee may earn such compensatory time off no earlier than 5 pay periods prior to the date of its use. Compensatory time not used within the 5 pay period time frame will be converted to regular compensatory time and will be subject to the regulations which govern routine compensatory time.

If an employee fails to perform compensatory overtime work within 3 pay periods after using advanced compensatory time off, the agency should charge the employee annual leave to eliminate the negative balance. The premium pay provisions for overtime work do not apply to compensatory time performed under this section.

Supervisors will not grant excused absence for religious observances. However, in addition to religious compensatory time off, requests for annual leave or LWOP, or requests to make other reasonable arrangements for the religious

needs of employees will be granted if such arrangements do not cause undue hardship on the business of CBP.

3. Absence Without Leave (AWOL)

AWOL is an unauthorized absence from duty, resulting from an employee's:

- A. Failure to report for duty as scheduled;
- B. Failure to secure prior supervisory approval for an absence; or
- C. Unauthorized departure from the work site.

Pay is withheld for the entire period of AWOL. If it is subsequently determined that the absence was excusable, AWOL may be converted to annual leave, sick leave, or LWOP, as appropriate. While not a disciplinary action in itself, AWOL may form the basis for disciplinary action for unauthorized absence from duty.

Request for Leave or Approved Absence

1. NAME (<i>Last, first, middle</i>)			2. Employee or Social Security Number		
3. Organization					
4. TYPE OF LEAVE/ABSENCE <small>(Check appropriate box(es) and enter date and time below)</small>	DATE From To		TIME From To		TOTAL HOURS
<input type="checkbox"/> Accrued Annual Leave					
<input type="checkbox"/> Restored Annual Leave					
<input type="checkbox"/> Advance Annual Leave					
<input type="checkbox"/> Accrued Sick Leave					
<input type="checkbox"/> Advance Sick Leave					
Purpose: <input type="checkbox"/> Illness/injury/incapacitation of requesting employee <input type="checkbox"/> Medical/dental/optical examination of requesting employee <input type="checkbox"/> Care of family member, including medical/dental/optical examination of family member, or bereavement <input type="checkbox"/> Care of family member with a serious health condition <input type="checkbox"/> Other					
<input type="checkbox"/> Compensatory Time Off					
<input type="checkbox"/> Other Paid Absence <small>(Specify in Remarks)</small>					
<input type="checkbox"/> Leave Without Pay					
5. FAMILY AND MEDICAL LEAVE					
If annual leave, sick leave, or leave without pay will be used under the Family and Medical Leave Act of 1993 please provide the following information: <input type="checkbox"/> I hereby invoke my to Family and Medical Leave for: <input type="checkbox"/> Birth/Adoption/Foster Care <input type="checkbox"/> Serious Health Condition of Spouse, Son, Daughter, or Parent <input type="checkbox"/> Serious Health Condition of Self <small>Contact your supervisor and/or your personnel office to obtain additional information about your entitlements and responsibilities under the FMLA. Medical certification of a serious health condition may be required by your agency.</small>					
6. REMARKS:					
7. Certification: I hereby request leave/approved absence from duty as indicated above and certify that such leave/absence is requested for the purpose(s) indicated. I understand that I must comply with my employing agency's procedures for requesting leave/approved absence (and provide additional documentation, including medical certification, if required) and that falsification of information on this form may be grounds for disciplinary action, including removal.					
7a. Employee signature			7b. Date signed		
8a. Official action on request: <input type="checkbox"/> Approved <input type="checkbox"/> Disapproved (<i>If disapproved, give reason. If annual leave, initiate action to reschedule.</i>)					
8b. Reason for disapproval					
8c. Signature			8d. Date signed		
PRIVACY ACT STATEMENT					
Section 6311 of title 5, United States Code, authorizes collection of this information. The primary use of this information is by management and your payroll office to approve and record your use of leave. Additional disclosures of the information may be: To the Department of Labor when processing a claim for compensation regarding a job connected injury or illness; to a State unemployment compensation office regarding a claim; to Federal Life Insurance or Health Benefits carriers regarding a claim; to a Federal, State, or local law enforcement agency when your agency becomes aware of a violation or possible violation of civil or criminal law; to a Federal agency when conducting an investigation for employment or security reasons; to the Office of Personnel Management or the General Accounting Office when the information is required for evaluation of leave administration; or to the General Services Administration in connection with its responsibilities for records management.					
Public Law 104-134 (April 26, 1996) requires that any person doing business with the Federal Government furnish a social security number or tax identification number. This is an amendment to title 31, Section 7701. Furnishing the social security number, as well as other data, is voluntary, but failure to do so may delay or prevent action on the application. If your agency uses the information furnished on this form for purposes other than those indicated above, it may provide you with an additional statement reflecting those purposes.					

Appendix B
This form is available on line at www.DepartmentofLabor.gov

Certification of Health Care Provider
(Family and Medical Leave Act of 1993)

U.S. Department of Labor
Employment Standards Administration
Wage and Hour Division

(When completed, this form goes to the employee, **Not to the Department of Labor.**)

OMB No.: 1215-0181
Expires: 07/31/04

1. Employee's Name

2. Patient's Name (If different from employee)

3. Page 4 describes what is meant by a "**serious health condition**" under the Family and Medical Leave Act. Does the patient's condition¹ qualify under any of the categories described? If so, please check the applicable category.
(1) _____ (2) _____ (3) _____ (4) _____ (5) _____ (6) _____, or None of the above _____

4. Describe the **medical facts** which support your certification, including a brief statement as to how the medical facts meet the criteria of one of these categories:

5. a. State the approximate **date** the condition commenced, and the probable duration of the condition (and also the probable duration of the patient's present **incapacity**² if different):

b. Will it be necessary for the employee to take work only **intermittently or to work on a less than full schedule** as a result of the condition (including for treatment described in Item 6 below)?

If yes, give the probable duration:

c. If the condition is a **chronic condition** (condition #4) or **pregnancy**, state whether the patient is presently incapacitated² and the likely duration and frequency of **episodes of incapacity**²:

¹ Here and elsewhere on this form, the information sought relates **only** to the condition for which the employee is taking FMLA leave.

² "Incapacity," for purposes of FMLA, is defined to mean inability to work, attend school or perform other regular daily activities due to the serious health condition, treatment therefor, or recovery therefrom.

Appendix B
This form is available on line at www.DepartmentofLabor.gov

Page 1 of 4

Form WH-380
Revised December 1999

-
6. a. If additional **treatments** will be required for the condition, provide an estimate of the probable number of such treatments.

If the patient will be absent from work or other daily activities because of **treatment** on an **intermittent** or **part-time** basis, also provide an estimate of the probable number of and interval between such treatments, actual or estimated dates of treatment if known, and period required for recovery if any:

- b. If any of these treatments will be provided by **another provider of health services** (e.g., physical therapist), please state the nature of the treatments:

- c. **If a regimen of continuing treatment** by the patient is required under your supervision, provide a general description of such regimen (e.g., prescription drugs, physical therapy requiring special equipment):

-
7. a. If medical leave is required for the employee's **absence from work** because of the **employee's own condition** (including absences due to pregnancy or a chronic condition), is the employee **unable to perform work** of any kind?

- b. If able to perform some work, is the employee **unable to perform any one or more of the essential functions of the employee's job** (the employee or the employer should supply you with information about the essential job functions)? If yes, please list the essential functions the employee is unable to perform:

- c. If neither a. nor b. applies, is it necessary for the employee to be **absent from work for treatment**?

Appendix B
This form is available on line at www.DepartmentofLabor.gov

-
8. a. If leave is required to **care for a family member** of the employee with a serious health condition, **does the patient require assistance** for basic medical or personal needs or safety, or for transportation?
- b. If no, would the employee's presence to provide **psychological comfort** be beneficial to the patient or assist in the patient's recovery?
- c. If the patient will need care only **intermittently** or on a part-time basis, please indicate the probable **duration** of this need:

Signature of Health Care Provider

Type of Practice

Address

Telephone Number

Date

To be completed by the employee needing family leave to care for a family member:

State the care you will provide and an estimate of the period during which care will be provided, including a schedule if leave is to be taken intermittently or if it will be necessary for you to work less than a full schedule:

Appendix B
This form is available on line at www.DepartmentofLabor.gov

Employee Signature

Date

Page 3 of 4

A “**Serious Health Condition**” means an illness, injury impairment, or physical or mental condition that involves one of the following:

1. Hospital Care

Inpatient care (i.e., an overnight stay) in a hospital, hospice, or residential medical care facility, including any period of incapacity² or subsequent treatment in connection with or consequent to such inpatient care.

2. Absence Plus Treatment

(a) A period of incapacity² of **more than three consecutive calendar days** (including any subsequent treatment or period of incapacity² relating to the same condition), that also involves:

- (1) **Treatment**³ **two or more times** by a health care provider, by a nurse or physician’s assistant under direct supervision of a health care provider, or by a provider of health care services (e.g., physical therapist) under orders of, or on referral by, a health care provider; or
- (2) **Treatment** by a health care provider on **at least one occasion** which results in a **regimen of continuing treatment**⁴ under the supervision of the health care provider.

3. Pregnancy

Any period of incapacity due to **pregnancy**, or for **prenatal care**.

4. Chronic Conditions Requiring Treatments

A **chronic condition** which:

- (1) Requires **periodic visits** for treatment by a health care provider, or by a nurse or physician’s assistant under direct supervision of a health care provider;
- (2) Continues over an **extended period of time** (including recurring episodes of a single underlying condition); and
- (3) May cause **episodic** rather than a continuing period of incapacity² (e.g., asthma, diabetes, epilepsy, etc.).

5. Permanent/Long-term Conditions Requiring Supervision

A period of **Incapacity**² which is **permanent or long-term** due to a condition for which treatment may not be effective. The employee or family member must be **under the continuing supervision of, but need not be receiving active treatment by, a health care provider**. Examples include Alzheimer’s, a severe stroke, or the terminal stages of a disease.

6. Multiple Treatments (Non-Chronic Conditions)

Any period of absence to receive **multiple treatments** (including any period of recovery therefrom) by a health care provider or by a provider of health care services under orders of, or on referral by, a health care provider, either for **restorative surgery** after an accident or other injury, **or** for a condition that **would likely result in a period of Incapacity² of more than three consecutive calendar days in the absence of medical intervention or treatment**, such as cancer (chemotherapy, radiation, etc.), severe arthritis (physical therapy), and kidney disease (dialysis).

This optional form may be used by employees to satisfy a mandatory requirement to furnish a medical certification (when requested) from a health care provider, including second or third opinions and recertification (29 CFR 825.306).

Note: Persons are not required to respond to this collection of information unless it displays a currently valid OMB control.

3 Treatment includes examinations to determine if a serious health condition exists and evaluations of the condition. Treatment does not include routine physical examinations, eye examinations, or dental examinations.

4 A regimen of continuing treatment includes, for example, a course of prescription medication (e.g., an antibiotic) or therapy requiring special equipment to resolve or alleviate the health condition. A regimen of treatment does not include the taking of over-the-counter medications such as aspirin, antihistamines, or salves; or bed-rest, drinking fluids, exercise, and other similar activities that can be initiated without a visit to a health care provider.

Public Burden Statement

We estimate that it will take an average of 10 minutes to complete this collection of information, including the time

Appendix B

This form is available on line at www.DepartmentofLabor.gov

for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. If you have any comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, send them to the Administrator, Wage and Hour Division, Department of Labor, Room S-3502, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

DO NOT SEND THE COMPLETED FORM TO THIS OFFICE; IT GOES TO THE EMPLOYEE.

Page 4 of 4