



Understanding Leave Options in the Federal Workplace and Misconduct Implications

July 20, 2016



Federal Leave System



Leave Objectives

- Overview of the Federal Leave System, with a focus on leave used for medical purposes
- Roles and responsibilities: Congress, President , OPM, Agencies
- Managers' and employees' rights and responsibilities
- Knowledge of differences between entitlements and flexibilities
- Specifics of medical documentation
- Familiarity with sources of helpful information and guidance



Positive Impact of Leave Programs

- For Agencies—
 - Key element to making Federal Government employer-of-choice
 - Critical leverage on morale and productivity
 - Higher levels of employee satisfaction and commitment
 - Less unwanted turnover of high-performing employees
 - Responsiveness and continuity of operations during emergencies
- For Employees—
 - Greater work/life balance
 - Fewer distractions and multi-tasking to meet competing work/life demands
 - Minimizes impact of inevitable life crises



Roles and Responsibilities

- Congress—Enacts laws on leave, codified in title 5 of the United States Code (5 U.S.C.)
- President—Issues an Executive Order or Presidential Memorandum
- OPM—
 - Issues regulations in Title 5, Code of Federal Regulations (5 CFR) in response to legislation, when applicable; and/or
 - Issues guidance to Heads of Executive Departments and Agencies or Chief Human Capital Officers
 - Delegates authority to agencies to set certain agency policies



Roles and Responsibilities (continued)

- Agencies—
 - Head of the agency is given the authority for the administration of leave for his/her agency
 - Consistent with law and regulations, establish agency-specific policies associated with the leave program
 - When establishing agency policies must be consistent with current law, regulations, OPM guidance, current policy and any applicable collective bargaining agreement



Entitlements vs. Discretionary Programs and Flexibilities

- Entitlements
 - Identifying language
 - Will
 - Shall
 - Examples—Entitlement to:
 - Annual leave
 - FMLA leave (e.g., 5 CFR 630.1203 Leave Entitlement)
 - Sick leave



Entitlements vs. Discretionary Programs and Flexibilities

- Discretionary Programs/Elements and Flexibilities
 - Identifying language: May
- Discretionary Programs and Flexibilities
 - Advanced annual and sick leave (discretionary program)
 - Service credit for qualifying non-Federal work experience (flexibility)
 - Flexibilities
 - Purpose—to help agencies meet their strategic human capital needs
- Discretionary Elements of Entitlement Programs
 - Scheduling of annual leave
 - Intermittent use of FMLA leave for childbirth, adoption, and foster care



Federal Leave Programs and Policies

- Annual Leave
- Sick Leave (General)
- Sick Leave for Family Care and Bereavement
- Sick Leave to Care for a Family Member with a Serious Health Condition
- Sick Leave for Birth or Adoption
- Leave Sharing (VLTP, VLTB, ELTP, and VLTP for Combat-Related Disability)
- Family and Medical Leave Act (FMLA)
- Leave Without Pay
- Absence Without Leave
- Military Leave
- Court Leave
- Organ/Bone Marrow Donation
- Excused Absence
- 5 Days of Excused Absence for Returning Reservists
- Home Leave
- Shore Leave
- Funeral Leave



Leave Used For Medical Purposes

- Annual Leave
- Sick Leave
- FMLA
- Leave Transfer/Leave Bank



Annual Leave





Annual Leave

- Annual leave may be used for—
 - vacations;
 - rest and relaxation;
 - personal business; and/or
 - emergencies



Annual Leave Accrual

- Employees earn annual leave each pay period based on years of creditable service

- Creditable Service– Accrual Rates

0 to 3 years*	13 days per year
3 to 15 years*	20 days per year
15 or more years*	26 days per year

**Includes military time except for most military retirees*

- SES, SL, ST positions, and certain employees in “SES, SL, ST equivalent” positions accrue 8 hours of annual leave each pay period regardless of creditable service



Approval of Annual Leave

- Employee has a right to request leave, subject to the right of the supervisor to approve the time at which the leave may be taken
- Employees are not required to explain how they plan to use the annual leave, but in the absence of this information, the request may be denied based on the office's workload
- To address office workload needs, managers may—if necessary—ask an employee's reason for requesting annual leave



Advanced Annual Leave

- Discretionary—a supervisor may grant advanced annual leave consistent with the agency's leave policy
- The amount of annual leave that may be advanced may not exceed the amount of annual leave the employee will accrue in the remainder of the leave year
- Employees do not have an entitlement to advanced annual leave



Indebtedness for Advanced Annual Leave

- An agency should not advance annual leave if it is known (or reasonably expected) that the employee will not return to duty
- If an employee indebted for advanced annual leave separates from Federal service, he or she must repay the agency by—
 - Refunding the amount of unearned leave, or
 - Having agency deduct the owed amount from any pay due the employee
- If employee dies, retires on disability, or separates as a result of a disability, he or she does not have to repay the debt



Sick Leave





Sick Leave Accrual and Accumulation

- Sick leave is earned and used based on leave year, as defined in 5 CFR 630.201
- Sick leave accrual
 - FT employee: ½ day (4 hours) per biweekly pay period
 - PT employee: 1 hour for each 20 hours in a pay status
 - Uncommon tour of duty: pro-rated based on number of hours in employee's biweekly tour of duty
- Maximum annual carryover balance is unlimited



Types of Sick Leave

- An employee is entitled to use sick leave for-
 - personal medical needs
 - family care or bereavement
 - care of a family member with a serious health condition
 - adoption-related purposes



Sick Leave Use for Personal Needs

- An employee is entitled to use sick leave when he or she
 - Is incapacitated for the performance of duties by physical or mental illness, injury, pregnancy, or childbirth
 - Receives medical, dental, or optical examination or treatment, or
 - Would, as determined by the health authorities or a healthcare provider, jeopardize the health of others by his or her presence on the job because of exposure to a communicable disease
- There is no limit on the amount of sick leave an employee may use for his or her own personal needs



Definition of *Family Member*

Family member means an individual with any of the following relationships to the employee:

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



Sick Leave Use for Family Care and Bereavement

Most employees may use up to 13 days of sick leave each leave year to

- Provide care for a family member incapacitated as a result of physical or mental illness, injury, pregnancy, or childbirth
- Provide care for a family member receiving medical, dental, or optical examination or treatment
- Make arrangements for, or attend the funeral of, a family member; or
- Provide care for a family member who would, as determined by the health authorities or by a health care provider, jeopardize the health of others because of exposure to a communicable disease



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

- An employee may use up to 12 administrative workweeks of sick leave each leave year to care for a family member with a serious health condition
- *Serious health condition* has the same meaning as used in OPM's regulations for administering the Family and Medical Leave Act (FMLA)
- Any days the employee has already used for general family care and bereavement in the same leave year must be subtracted from the 12 weeks



Definition of Serious Health Condition (for both Sick Leave and FMLA)

A *serious health condition* under FMLA (also used for sick leave) is defined as, but not limited to, an illness, injury, impairment, or physical or mental condition that involves

- Inpatient care
- Continuing treatment by a health care provider, which may include
 - A period of incapacity of more than 3 consecutive days
 - **Any period of incapacity due to pregnancy or childbirth, or for prenatal care**
 - Any period of incapacity or treatment for such incapacity due to a chronic serious health condition
 - A period of incapacity which is permanent or long-term due to a condition for which treatment may not be effective
 - Any period of absence to receive multiple treatments for restorative surgery or for a condition that would result in incapacity of 3 calendar days if not treated (e.g., chemotherapy, dialysis, etc.)



Sick Leave for Adoption

- An employee may use sick leave for any activity necessary for an adoption to proceed (e.g., court proceedings, appointments with adoption agencies, social workers, and attorneys)
- There is no limit on the amount of sick leave that may be used for adoption purposes
- Sick leave may not be used by an adoptive parent who voluntarily chooses to be absent from work to bond with or care for a healthy adopted child
- Sick leave may be used if the parent is required by the adoption agency or the court to bond with a healthy child



Advanced Sick Leave

240 Hours: An agency may advance up to 240 hours (30 days) of sick leave to an employee

- who is incapacitated for the performance of his or her duties by physical or mental illness, injury, pregnancy, or childbirth;
- for a serious health condition of the employee or a family member;
- when the employee would, as determined by the health authorities, jeopardize the health of others by his or her presence on the job because of exposure to a communicable disease;
- for purposes relating to the adoption of a child; or
- for the care of a covered servicemember with a serious injury or illness when the employee is using the FMLA leave to care for a covered servicemember



Advanced Sick Leave (cont.)

104 Hours: An agency may advance up to 104 hours (13 days) of sick leave to an employee for

- his or her own medical appointments;
- general care for a family member or to accompany a family member to medical appointments;
- care of a family member who would, as determined by the health authorities, jeopardize the health of others by that family member's presence in the community because of exposure to a communicable disease; or
- making arrangements necessitated by the death of a family member or to attend the funeral of a family member



Advanced Sick Leave Indebtedness

- An agency should not advance sick leave if it is known (or reasonably expected) that the employee will not return to duty
- If an employee who is indebted for advanced sick leave separates from Federal service, he or she is required to repay the agency by—
 - Refunding the amount of unearned leave, or
 - Having the agency deduct the amount owed from any pay due to the employee
- If an employee dies, retires on disability, or separates as a result of a disability, he or she is not required to repay the debt



Sick Leave Limitations

- Unlimited for personal use or adoption purposes
- General family care and bereavement: 104 hours per leave year (13 workdays)
- Care for a family member with serious health condition: 480 hours (12 weeks) per leave year
- 480 hours (12 weeks) is the maximum for any combination of family care, bereavement, serious health condition of family member
- Up to 104 (13 days) or 240 hours (12 weeks) may be advanced based on the purposes for which it will be used



Requesting Sick Leave

- An employee must file an application for sick leave, either oral, written, or electronic as required by the agency within the time limits set by the agency
- An employee must request advanced approval for medical, dental, or optical examination or treatment
- To the extent possible, sick leave should be requested in advance



Administratively Acceptable Evidence

- Agency may grant sick leave only when supported by administratively acceptable evidence
- OPM does not specify what administratively acceptable evidence is
- May consider employee's self-certification, no matter the duration
- May require a medical certification or other administratively acceptable evidence for the absence
 - If absence is in excess of 3 days
 - For shorter periods when necessary



Medical Documentation Deadlines

- An employee must provide administratively acceptable evidence or medical certification no later than 15 calendar days after the date requested by the agency
- If the above is not practicable despite the employee's diligent, good-faith efforts, must provide within a reasonable period of time, but no later than 30 calendar days after agency request
- An employee who does not provide the required documentation within the specified time frames is not entitled to sick leave



Family and Medical Leave Act (FMLA)





FMLA Coverage

- Department of Labor--Administers title I of the FMLA which covers private sector, State and local government, and some Federal employees
- OPM--Administers title II of the Family and Medical Leave Act, which covers most Federal employees
- Eligible employees are those
 - Defined as employees in 5 U.S.C. 6301(2) (excluding those under 5 CFR 630.1201(b)(2) (some exceptions include employees on temporary NTE 1-year appointments, and intermittent employees))
 - Who have completed 12 months of service (not required to be recent or consecutive months)



FMLA Entitlements

Under FMLA, employees are entitled to use up to 12 weeks of unpaid leave during any 12-month period for

- Birth of a son or daughter and care of the newborn (within 1 year of birth);
- Placement of a son or daughter with the employee for adoption or foster care (within 1 year of placement);
- Care of a spouse, son or daughter, or parent with a serious health condition;
- A serious health condition of the employee that makes the employee unable to perform the duties of his or her position; or
- For any qualifying exigency arising out of the fact that the spouse, or a son, daughter, or parent of the employee is on covered active duty (or has been notified of an impending call or order to covered active duty) in the Armed Forces



Family Purposes and Medical Purposes

- It is important to note that FMLA covers both family purposes and medical purposes
 - Family
 - Birth
 - Adoption
 - Qualifying exigencies
 - Medical
 - Employee's serious health condition
 - Family member's serious health condition
- FMLA for birth and adoption is for care and bonding purposes, so *can* be used for healthy newborn or child



FMLA Definitions

- The term “family member” is not used in FMLA regulations
- Employee can take FMLA leave only to care for
 - Spouse (opposite or same sex)
 - Son or daughter
 - Parent
- Parent means a biological parent or an individual who stands or stood *in loco parentis* to employee when employee was a minor, but does not include parents-in-law
- Spouse includes common-law marriage in States where it is recognized
- Son or daughter means a biological, adopted, or foster child; a step child; a legal ward; or a child of a person standing *in loco parentis* who is
 - Under 18 years of age
 - 18 years of age or older and incapable of self-care because of a mental or physical disability



FMLA Definitions (cont.)

- A son or daughter incapable of self-care requires active assistance or supervision to provide daily self-care in three or more of the “activities of daily living” (ADLs) or “instrumental activities of daily living” (IADLs)
- Activities of daily living include adaptive activities such as caring appropriately for one's grooming and hygiene, bathing, dressing, and eating



FMLA Definitions (cont.)

- Instrumental activities of daily living include cooking, cleaning, shopping, taking public transportation, paying bills, maintaining a residence, using the telephones and directories, using a post office, etc.
- A “physical or mental disability” refers to a physical or mental impairment that substantially limits one or more of the major life activities of an individual as defined in 29 CFR 1630.2 (h), (i) and (j)



FMLA Definitions (cont.)

A serious health condition does not include

- Routine physical, eye, dental exams
- A condition requiring over-the-counter medications, exercise, bed-rest
- Cosmetic treatments (unless in-patient)
- Employee's absence because of use of an illegal substance (unless receiving treatment for substance abuse)
- Common cold, flu (with the exception of pandemic influenza), earaches, upset stomach, minor ulcers, headaches (other than migraines), routine dental problems (unless complications arise)



Requesting Leave under FMLA

- Employee must invoke entitlement to FMLA leave
- An agency cannot put an employee on FMLA leave
- An employee may take only the amount of FMLA leave required by the circumstances
- Generally, FMLA may not be invoked retroactively



Notice of Leave – Foreseeable Need

- When need for leave is foreseeable employee must provide 30 calendar days' notice of intent to take leave
- If date of birth or placement requires leave in less than 30 calendar days, employee must give notice as soon as practicable
- Employee must make reasonable effort to schedule planned medical treatment so as not to disrupt agency operations
- If employee does not give notice within 30 days with no reasonable explanation, agency may delay leave until 30 days after notice
- Agency may waive 30-day notice and replace with agency's usual and customary procedures for providing notice , but requirements may not be more stringent



Notice of Leave – Unforeseeable Need

- If the need for leave is not foreseeable (medical emergency, unexpected availability of a child for placement), the employee must give notice as soon as practicable before or during the period of absence
- If the need for leave is not foreseeable and the employee is unable to give notice due to circumstances beyond his or her control, **the leave may not be delayed or denied**



Intermittent or Reduced Schedule

- Intermittent or reduced schedule may be used when medically necessary for serious health condition of employee or employee's spouse, son, daughter, or parent
- Intermittent or reduced schedule may not be used for birth or adoption/foster care unless agency and employee both agree to this



Protection of Employment

- Upon completion of FMLA leave, employee must be restored to
 - Same position
 - Equivalent position with equivalent benefits, pay, status, and other terms and conditions of employment
- Employee may file a grievance if agency does not comply with FMLA rights and requirements
- An employee's request for FMLA leave does not prevent an agency from taking appropriate adverse or performance-based actions
- An employee on FMLA leave is not immune from the impact of RIF before, during, or after the period of FMLA leave



FMLA Grievances

- Congress provided OPM with no FMLA oversight function; therefore OPM has no authority to investigate employee FMLA complaints (Congress did give this function to DOL for their FMLA regulations)
- Employee may file a grievance under applicable agency administrative procedures or negotiated grievance procedures if he or she believes an agency has not fully complied with FMLA rights and requirements



Medical Certification

- For serious health condition of employee or a family member, an agency may require medical certification from a health care provider, to include
 - Date on which the serious health condition commenced
 - The probable duration of the serious health condition or that condition is chronic or continuing and whether the patient is presently incapacitated and the likely duration and frequency of episodes of incapacity
 - The appropriate medical facts within the knowledge of the health care provider regarding the condition
- For serious health condition of employee, a statement that the employee is unable to perform one or more essential functions of his or her position



Medical Certification for Care of a Family Member

- Statement from the health care provider that the family member
 - Requires psychological comfort and/or physical care
 - Needs assistance for basic medical, hygienic, nutritional, safety, or transportation needs or in making arrangements to meet such needs
 - Would benefit from the employee's care or presence
- Statement from the employee on the care he or she will provide and estimate of the amount of time needed



Medical Certification for Intermittent or Reduced Schedule

Additionally, if intermittent leave or leave on a reduced schedule is required, the certification must include

- The dates (actual or estimates) on which planned medical treatment is expected, the duration of such treatment, and the period of recovery
- If a chronic or continuing condition with an unknown duration, whether the patient is presently incapacitated and the likely duration and frequency of episodes of incapacity



Medical Certification Restrictions

- Information must relate only to the serious health condition which qualifies for FMLA leave
- Agency may not require any additional personal or confidential information
- Once completed medical certification is submitted, the agency may not request new information from the health care provider
- However, a health care provider employed by the agency or under administrative oversight may contact the health care provider who completed the medical certification with the employee's permission for purposes of clarifying the certification



Questionable Medical Certification

- **Second opinion** – If agency doubts validity of original certification (at agency's expense)
- **Third opinion** – If second opinion differs from original certification (at agency's expense)
- Third opinion is final and binding
- Employee must comply with second or third opinion request to remain eligible for FMLA leave
- If medical treatment must begin and employee cannot provide the requested (original) certification, or if agency questions validity of certification, agency must grant provisional leave pending final certification



Recertifications

- An agency may require subsequent recertifications on a reasonable basis, but no more than every 30 days (at agency's expense)
- A recertification may be requested more frequently if
 - The employee requests that leave period be extended
 - The circumstances described in the original medical certification have changed significantly
 - The agency receives information which casts doubt on the continuing validity of the medical certification



Medical Certification Deadlines

- An employee must provide medical certification within 15 calendar days
- If this is not possible, despite the employee's diligent, good-faith efforts, medical certification must be provided within a reasonable period, but not later than 30 calendar days after the date the agency requests such medical certification
- This requirement is consistent with the policy for providing administratively acceptable evidence for granting of sick leave



Leave Sharing Programs





Voluntary Leave Transfer Program (VLTP) Voluntary Leave Bank Program (VLBP)

- The Federal VLTP and VLBP allow employees to assist other employees—
 - who have a personal or family medical emergency; and
 - who have exhausted their own “available paid leave”
- Agencies are required to administer a VLTP for their employees
- Agencies may also establish a VLBP, but are not required to do so
- Employees may be leave recipients in either program, or in both programs



VLTP/VLBP Definitions

- “A *medical emergency* is a medical condition of either the employee or the employee's *family member* that is likely to require the employee to be absent from duty for a prolonged period and to result in a substantial loss of income because of the employee's lack of available paid leave”
- The threshold for “a substantial loss of income” is absence (or expected absence) from duty without available paid leave for at least 24 work hours for a full-time employee
- Same definition of *family member* as for sick leave purposes



Leave Sharing Definitions (cont.)

- “*Available paid leave*” includes accrued, accumulated, recredited, and restored annual or sick leave
- “Available paid leave” does not include
 - advanced annual or sick leave
 - any annual or sick leave in an employee's set aside leave accounts which has not yet been transferred to the employee's regular annual or sick leave account; or
 - other forms of paid time off (i.e., credit hours under flexible work schedules, compensatory time off, or religious compensatory time off)



Use of Donated Annual Leave

- Donated annual leave may be used only for the medical emergency for which the leave recipient was approved
- Except for leave in set-aside accounts, a leave recipient must use any accrued annual or sick leave before using transferred annual leave

Note: It is possible for leave to accrue into an employee's regular leave accounts even when the employee is in the program. Leave will accrue into an employee's regular leave accounts any time the employee is in pay status, e.g., for holidays, or for hours worked if the employee has returned to work part-time. The leave that accrues in the employee's regular leave accounts in such cases must always be used before transferred annual leave may be used



Termination of the Medical Emergency

- The agency must monitor the status of the medical emergency to ensure that it continues to affect the leave recipient
- When the medical emergency terminates
 - The agency may not grant further requests for transfer of annual leave to the recipient
 - Any unused donated annual leave must be returned to leave donors/the leave bank



Termination of the Medical Emergency (cont.)

- VLTP is not an entitlement and should not be used as a long-term solution to retain on the agency's rolls an employee who will not be able to return to work
- In such cases, other options would be more appropriate, including
 - FMLA
 - disability retirement
 - removal for medical inability to perform the duties of the employee's position



Interaction of Annual Leave with FMLA Leave

- The scheduling of annual leave is generally at the discretion of the supervisor, based on office work needs
- If an employee requests annual leave (including donated annual leave under VLTP/VLBP) for a personal or family member's serious health condition, the agency may deny the use of annual leave
- If the employee invokes his or her FMLA entitlement, however, the employee is entitled to substitute annual leave for unpaid FMLA leave



Interaction of Sick Leave with FMLA Leave

- Sick leave and FMLA leave are distinct and separate entitlements
- For conditions that meet both sick leave and FMLA requirements, employee may
 - Invoke FMLA entitlement (12 weeks)
 - Take unpaid FMLA leave
 - Substitute annual leave for unpaid leave
 - Substitute sick leave for unpaid leave
 - Invoke sick leave and FMLA leave separately, (12 sick + 12 FMLA = 24 total; greater benefit)



Sick Leave, VLTP/VLBP vs. FMLA Leave

For whom can it be used?

Sick Leave, VLTP/VLBP	FMLA
Spouses and their parents	Spouse (partner in any legally recognized marriage, regardless of employee’s state of residency; includes common-law marriage in states where recognized)
Sons and daughters and their spouses or domestic partners	Son or daughter (under the age of 18 or incapable of self-care because of a mental or physical disability)
Brothers and sisters and their spouses or domestic partners	Parents (not parents-in-law)
Grandparents and grandchildren, and their spouses or domestic partners	
Domestic partners (same and opposite sex) and their parents	
Any individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship	
Parents, and their spouses or domestic partners	



Sick Leave, VLTP/VLBP vs. FMLA Leave Two Separate but Similar Entitlements

Sick Leave, VLTP/VLBP	FMLA
12 weeks per leave year to care for a <i>family member</i> (as defined in 5 CFR 630.201) with a serious health condition	12 weeks for serious health condition of oneself; spouse; son or daughter (under age of 18 or incapable of self-care); or parent within any 12 month-period
Paid leave entitlement	LWOP – may substitute annual or sick leave (consistent with current laws and regulations)
Same definition as used in FMLA regulations (5 CFR 630.201)	<i>Serious health condition</i> defined in 5 CFR 630.1202
Agency may require medical certification	Agency may require medical certification
Documentation must be provided within 15 days, no later than 30 days	Documentation must be provided within 15 days, no later than 30 days
5 CFR part 630, subparts B and D	5 CFR part 630, subpart L



Leave Without Pay

- Leave Without Pay (LWOP) is an authorized temporary absence from duty without pay
- In most cases, granting LWOP is a matter of supervisory discretion and may be limited by agency internal policy
- A supervisor cannot put an employee on LWOP. An employee must request LWOP



Leave Without Pay

Employees are entitled to LWOP under certain circumstances—

- When an employee invokes his or her entitlement to FMLA
- Period of service in the uniformed service (under Uniform Services Employment and Reemployment Rights Act)
- When used by disabled veterans for necessary medical treatment of service-connected disability (under Executive Order 5396)
- When receiving worker's compensation payments from the Department of Labor



CORRECTIVE ACTION AND DISCIPLINE RELATED TO LEAVE – RELATED MISCONDUCT



Module Objectives

- Overview of methods by which to establish expectations regarding leave
- Highlight methods by which to identify leave-related misconduct.
- Identify and explain tools with which to correct leave-related misconduct



General Guidance to Supervisors

- Make expectations clear to employees
- Be consistent in application of rules
- Document
- Identify Potential Concerns Promptly
- Take Corrective Action Promptly



Establishing Expectations (Giving Notice)

- Post and/or Announce Regulations, Rules and Procedures
 - Collective Bargaining Agreement
 - Website
 - Staff Meetings
 - Staff Newsletters or Emails
 - Specific Email to individual Employee



Consistent Application of Rules

- Follow your own policies procedures
 - If you have a rule, refer to, and follow that rule
- Consistent does not mean identical
 - Be mindful of reasonable accommodation responsibilities
 - Be mindful of individual circumstances that may indicate need for flexibility



Documentation

- Keep Accurate Records
 - Leave requests—approvals and denials
 - If exceptions are made, document reasons for exceptions.
 - If disputes arise, document resolution
 - If corrections are required, document nature of error and correction.



Identifying Potential Leave Concerns

- Review agency/office leave policy/procedure and any applicable Collective Bargaining Agreement
- Prepare leave audit
 - Indicate all absences: late arrivals, early departures, etc.
 - Indicate whether scheduled or not
 - Indicate whether leave procedures were followed.
- Chart information on a calendar or other graph
- Stick to the facts



Addressing Leave Concerns Step 1

Counseling -

- Share results of leave audit
- Solicit employee input – consider options to assist employee, if appropriate
- Outline expectations – review policies and procedures
- Convey consequences if no improvement:
 - Leave Restriction
 - Disciplinary Action
- Follow up in writing
- Monitor and document progress



Addressing Leave Concerns Step 2

Leave Restriction - a non-disciplinary letter to the employee conveying:

- Policy/expectations regarding leave usage
- Specific information about leave balances; dates when employee did not follow proper procedure; demonstrated pattern of leave abuse
- **Specific leave procedures employee is required to follow going forward**
- **Period of restriction**
- **Consequences of not following policy and procedures as outlined in the letter**



Possible Charges Based on Leave/Attendance Issues

- Absence without leave (AWOL)
- Failure to follow leave requesting procedures/instructions
- Excessive Absence



AWOL

- **Elements**
 - Employee was required to be at duty station
 - Employee was absent; and
 - Absence was not authorized: leave not requested, or leave request was properly denied



LWOP versus AWOL

- **LWOP** is an absence from duty that is granted by the agency at the employee's request and which may be used for a variety of purposes
- **AWOL** is a non-pay status and covers any absence from duty that has not been approved
- Charging AWOL is not a disciplinary action, however to take disciplinary action based on AWOL, employee absence must have been recorded as AWOL



Failure to Follow Leave Requesting Procedures

- Agency has procedure requesting leave
- Employee knew procedures
- Employee failed to follow them
- Can also be used to address violation of rules in leave restriction letter

Agency may remove employee for failure to follow leave requesting procedures even if it subsequently approves leave in question. Wilkinson v. Air Force, 68 MSPR 4 (1995)



EXCESSIVE ABSENCE

- Absent for compelling reasons beyond his or her control so that approval or disapproval was immaterial because the employee could not be on the job
- The absence(s) continued beyond a reasonable time and the employee was warned that adverse action might be initiated unless the employee became available for duty on a regular, full-time or part-time basis; and
- The position needed to be filled by an employee available for duty on a regular, full-time or part-time basis

Cook v. Army, 18 MSPR 610 (1984)



Addressing Leave Concerns Step 3

Disciplinary Actions

- **Letter of Reprimand**
 - Temporary (stays in OPF 1-3 years)
 - Grievable; not appealable to MSPB (unless through Individual Right of Appeal procedures); can be raised with EEOC
- **Suspension from 1-14 days**
 - Permanent (SF-50 remains in OPF)
 - Grievable; unless through Individual Right of Appeal procedures); can be raised with EEOC
- **Suspensions greater than 14 days**
 - Permanent and appealable to MSPB; can be raised with EEOC
- **Removals**
 - Permanent and appealable to MSPB; can be raised with EEOC



Employee Assistance Program (EAP)

- Refer employees to EAP when there are signs of leave misuse or other attendance problems
 - Generally in writing
 - Do not speculate about possible personal problems
- EAP can also be helpful to supervisors
 - By providing tips on dealing with difficult situations
 - By providing another useful perspective on the matter



Pay and Leave Resources on Web

- Information on Pay and Leave <http://www.opm.gov/policy-data-oversight/pay-leave/>
- Leave Administration Page <http://www.opm.gov/policy-data-oversight/pay-leave/leave-administration/>
- Fact Sheets on Leave Programs <http://www.opm.gov/policy-data-oversight/pay-leave/leave-administration/#url=Fact-Sheets>



Recent Updates on Leave & Workplace Flexibilities

- Handbook on Leave and Workplace Flexibilities for Childbirth, Adoption, and Foster Care - <https://www.opm.gov/policy-data-oversight/pay-leave/leave-administration/fact-sheets/handbook-on-leave-and-workplace-flexibilities-for-childbirth-adoption-and-foster-care.pdf>
- Handbook on Workplace Flexibilities and Work-Life Programs for Elder Care - <https://www.opm.gov/policy-data-oversight/pay-leave/leave-administration/fact-sheets/handbook-on-workplace-flexibilities-and-work-life-programs-for-elder-care.pdf>
- Introduction to Leave, Work-Life, and Workplace Flexibilities - <https://www.opm.gov/policy-data-oversight/training-and-development/reference-materials/online-courses/introduction-to-leave-work-life-and-workplace-flexibilities/index.htm>

Thank you for attending!

