

§ 920 Leave

§ 920.10 Overview

§ 920.10.10 Purpose

The purpose of this section is to promulgate judiciary leave policy consistent with the government-wide framework established by [5 U.S.C. chapter 63](#), and [5 CFR 630](#). OPM has general authority to publish federal government-wide leave regulations. Links to the OPM website in this section provide additional information regarding leave provisions.

§ 920.10.20 Authority

The statutory and regulatory provisions governing leave are contained in [5 U.S.C. chapter 63](#) and [5 CFR part 630](#), respectively.

Note: In 1994, the Federal Employees Family Friendly Leave Act, Pub. L. 103-388 (FEFFLA) amended the law to provide for a three-year trial period to expand sick leave for the purposes of family care and bereavement. Although the FEFFLA expired in 1997, under its general authority to publish leave regulations, OPM amended [5 CFR part 630](#) to codify provisions for sick leave for general family care and bereavement.

§ 920.10.30 Applicability

For purposes of leave, the definition of employee found in [5 U.S.C. § 6301\(2\)](#) is generally applicable. This definition covers judiciary employees, including FPDO employees, with the following exceptions.

- (a) Judges
 - (1) Article III, Court of Federal Claims, and territorial judges are exempted under [5 U.S.C. § 6301\(2\)\(B\)\(xiii\)](#).
 - (2) Bankruptcy judges and magistrate judges are exempted under [28 U.S.C. §§ 153\(d\)](#) and [631\(k\)](#).

Note: Time off for judges (e.g., for vacation or illness) is taken at each judge's discretion, subject to local court policy and custom. In most situations, judges coordinate their absences with the chief judge of the court and/or with other judges whose cases might be affected by their absence.

- (b) Law clerks to circuit judges, district judges (including pro se, death penalty, or other law clerks who are appointed by a court), bankruptcy judges, magistrate judges, and Court of Federal Claims judges are exempt from the provisions of [5 U.S.C. chapter 63, subchapter I](#) (“Annual and Sick Leave Act of 1951,” formerly referred to as the “Leave Act”), unless specifically included by their appointing judge or local rule of court under authority of [28 U.S.C. §§ 712, 752, 156\(a\), 634\(c\)](#), and [794](#).

Note: The [5 U.S.C. chapter 63, subchapter I](#) exemption described in § 920.10.30(b), (c) and (e) includes annual leave, sick leave and home leave; and by reference, family and medical leave, voluntary leave transfer, and emergency leave transfer. Any law clerk, judge’s secretary or court reporter who is exempt from [5 U.S.C. chapter 63, subchapter I](#) remains eligible for court leave, military leave, bone marrow and organ donor leave, and time-off to attend the funeral of an immediate relative who died in military combat. For the latter, **see:** [§ 910.20.50\(c\)\(15\)](#).

- (c) Judges' secretaries hired prior to September 30, 1983, who are not covered by [5 U.S.C. chapter 63, subchapter I](#) ([JCUS-SEP 83](#), pp. 49-50) are exempt.
- (d) Part-time employees who do not have established regular tours of duty (i.e., intermittent employees (**see:** [5 U.S.C. § 6301\(2\)\(B\)\(ii\)](#))) are exempt.
- (e) Court reporters who are not assigned regular tours of duty by their courts are exempt.

§ 920.20 Policy

Policy guidance for the following types of leave is provided below:

- [Annual Leave \(§ 920.20.25\)](#)
- [Absence Without Leave \(§ 920.20.75\)](#)
- [Bone Marrow or Organ Donor Leave \(§ 920.20.50\)](#)
- [Court Leave \(§ 920.20.55\)](#)
- [Emergency Leave Transfer Program \(§ 920.20.45\)](#)
- [Excused Absence \(§ 910.20.50\)](#)
- [Family and Medical Leave Act \(§ 920.20.35\)](#)
- [Funeral for Military or Law Enforcement \(§ 920.20.65\)](#)
- [Home Leave \(§ 920.20.80\)](#)
- [Leave Without Pay \(§ 920.20.70\)](#)
- [Military Leave \(§ 920.20.60\)](#)
- [Sick Leave \(§ 920.20.30\)](#)
- [Voluntary Leave Transfer Program \(Medical\) \(§ 920.20.40\)](#)

§ 920.20.10 Leave Request and Approval

(a) Leave-Approving Officials

A leave-approving official is a manager or a supervisor, usually the immediate supervisor, who is responsible for and most knowledgeable of an employee's attendance and leave. For chambers staff, a judge is the leave-approving official. In the case of a circuit executive, a federal public defender, or a court unit executive, the leave-approving official is a chief judge representing a circuit judicial council, a court, or a panel with statutory appointing authority for the position.

If it is not possible or feasible for a chief judge to approve personally the leave of a circuit executive, a federal public defender, or a court unit executive, a chief judge may delegate this responsibility to another judge, a circuit executive or another court unit executive. Leave approval authority may be delegated to other appropriate persons, if so designated by a chief judge in writing for "good cause shown."

(b) Responsibilities of Leave-Approving Officials

A leave-approving official must:

- (1) Advise employees of leave policies, procedures for requesting and documenting leave, and procedures for notifying a supervisor in the event of any unscheduled absence; and
- (2) Approve or deny leave for subordinate employees in a consistent and equitable manner.

(c) Leave Approval Conditions

- (1) If it is not feasible or practical for a chief judge to approve each individual leave request of a circuit executive, a federal public defender, or a court unit executive, a chief judge may issue a memorandum that approves, in advance, leave for a circuit executive, a federal public defender, or a court unit executive as long as a positive leave balance is maintained.
- (2) For the leave of a circuit executive, a federal public defender, or a court unit executive, if the leave-approving official is not a chief judge, the delegated leave-approving official must submit quarterly leave usage reports to a chief judge for his or her review.

- (3) Circuit chief judges should keep in mind the value of independence and separateness of the federal public defender function when implementing procedures required by this section.
 - (4) Under no circumstances may an employee approve his or her own leave.
- (d) Employee Responsibilities

Each employee must provide documentation to support a leave request as required by the employee's leave-approving official. Administratively acceptable evidence or medical certification may be required to support a request for sick leave in excess of three consecutive workdays, or for a lesser period when determined necessary by a leave-approving official. For guidance regarding administratively acceptable evidence or medical certification to support a request for sick leave, **see: [§ 920.20.30\(e\)\(4\)](#)**. Documentation may also be required to support a request for:

- (1) Family and Medical Leave Act (FMLA) leave (**see: [§ 920.20.35\(g\)](#)**);
- (2) Voluntary Leave Transfer Program (VLTP) recipient status (**see: [§ 920.20.40\(b\)\(1\)\(C\)](#)**);
- (3) military duty or court leave (**see: [§ 920.20.60\(d\)](#)**); or
- (4) bone marrow or organ donor leave.

[§ 920.20.15 Duties of Court Reporters Not Covered by 5 U.S.C. Chapter 63, Subchapter I](#)

- (a) A court reporter who is not on a regular tour of duty (and therefore not eligible to earn leave under [5 U.S.C. chapter 63, subchapter I](#)) must provide substitutes as needed at his or her own expense or be placed in a nonpay status when taking vacations or leave for personal business or sickness (personal or family). The court will provide substitute coverage as needed when a court reporter not covered by [5 U.S.C. chapter 63, subchapter I](#) is absent for court leave, military leave, bone marrow or organ donor leave, or to attend the funeral of an immediate relative who died in military combat.
- (b) Reporters not covered by [5 U.S.C. chapter 63, subchapter I](#) are considered to be on call every day court is in session, whether or not they are assigned primarily to one judge as a matter of convenience. Therefore, if the court needs reporting services for senior judges, visiting

judges, magistrate judges or land commissioners, salaried reporters who are absent for whatever reasons are responsible for providing that coverage or providing a substitute.

§ 920.20.20 Leave Charge, Accrual, and Transfer

(a) Charge

(1) Supervisors may charge annual or sick leave only on those days an employee would otherwise work and receive pay (e.g., not on a holiday or when a court or FPDO is closed for a full day (except for employees who are required to telework or to report to the work-site or to an alternate location during a COOP event, inclement weather, or similar situation, or employees on official travel who are not impacted by the emergency closure)). **See:** [5 U.S.C. § 6302\(a\)](#). For example:

(A) When a court announces that it is “closed to the public” for a full day due to a COOP event, inclement weather, or a similar situation, some employees may be required to telework or to report to the court or FPDO or to another location. At its discretion, the court or FPDO may excuse the absence of employees who are prevented from either teleworking or reporting (for examples, **see:** [Guide, Vol 12, § 1020.20\(a\)](#)). Employees who choose not to telework or report may request to adjust their administrative work schedules, or to use compensatory time-off, or annual or sick leave as appropriate.

Note: Employees who are required to work (e.g., on site, at an alternate site, or by telework) during their regular tours of duty when a court or organization is closed to the public (or when other employees are authorized excused absence) during a COOP event, inclement weather or other similar situation, are not entitled to receive compensatory time or “in lieu of” time off for performing work during their regularly scheduled hours. **See:** [Guide, Vol 12, § 1020.30\(b\)\(2\)](#).

(B) When a court or FPDO is closed for a full day, all dismissed employees are placed on excused absence. This may occur when a court or FPDO is evacuated or power, transportation, internet, and other communication systems are disrupted, for example, during a short period following a major COOP event (usually one to three days). During that

period, all employees' absences are excused, and any leave that has already been requested and approved in advance must be changed to excused absence (except for employees on official travel or those working at different duty stations who are not impacted by the emergency closure and would continue working or request annual or sick leave as appropriate). Once alternate work sites are established, or remote access is reestablished, employees may be required to report or telework as described in [§ 920.20.20\(a\)\(1\)\(A\)](#).

Note: An employee who is on official travel or teleworking outside of the area of a COOP event or weather emergency during normal working hours when a court or FPDO excuses employees because of an emergency closure (full-day, early release, or late arrival) is not entitled to additional pay or paid time off (e.g., compensatory time or "in lieu of" time off).

- (C) If a court or FPDO announces a partial day closure (e.g., an "early release" or "delayed arrival" due to a COOP event, inclement weather, or similar situation), it may approve unscheduled telework or may allow employees to adjust their administrative work schedules to make up the time, approve annual or sick leave as appropriate if employees request unscheduled leave, or exercise its authority and discretion to excuse absence.

Note: For more information on teleworking during an emergency closure, **see:** [Guide, Vol 12, § 1020.20](#). For information on pay during an emergency closure, **see:** [Guide, Vol 12, § 1020.30\(b\)\(2\)](#). For information on emergency closure announcements including for partial day closures (e.g., early release or late arrival), a court or FPDO may consider the OPM [Washington, DC, Area Dismissal and Closure Procedures](#) (which are not binding on the courts). **See also:** [§ 910 \(Work Schedules\)](#), [§ 940 \(Compensatory Time\)](#).

- (2) When an employee is unavoidably tardy or absent for less than an hour, and the supervisor agrees that the reasons are acceptable, s/he may excuse the absence without charge to leave. **See:** [§ 910.20.50\(c\)\(1\)](#). If the reasons are not acceptable or an employee has exhibited a pattern of late arrivals, the supervisor may allow the employee to take leave, or may charge the employee absence without leave (AWOL). When the supervisor chooses

either of these options, an employee is not required to work during the leave or AWOL period. **See:** [5 CFR 630.206\(b\)](#).

- (3) The minimum increment for either annual or sick leave is 15 minutes. By local policy, a court or FPDO may establish a larger minimum leave charge of up to one hour.

(b) Accrual During Partial Pay Periods or Periods of Non-Pay Status

(1) Partial Pay Period

(A) Full-time Employee

A full-time employee does not earn sick or annual leave during a partial pay period resulting from an appointment or separation during that pay period (**see:** [5 CFR 630.202](#)), except where an employee is appointed the “first Tuesday” after a “first Monday” holiday (**see:** [5 U.S.C. § 6302\(b\)](#)).

(B) Part-time Employee

A part-time employee earns sick and annual leave on a prorated basis if the employee completes an established regular tour of duty on one or more days during each administrative workweek, or a flexible schedule when only a biweekly work requirement is established. For example, if a part-time employee on a flexible work schedule is required to work 30 hours per pay period, and completes that 30 hours during the first week of a pay period prior to separation at the end of the first week, the employee earns leave. However, if a part-time employee’s established work schedule includes hours in both weeks of the biweekly pay period, and the employee separates at the end of the first week, the employee does not earn leave.

(2) Non-Pay Status

(A) Full-time Employee

A full-time employee does not accrue sick or annual leave during a pay period in which an aggregate total of 80 hours in nonpay status is reached (i.e., leave without pay (LWOP), furlough, or absence without leave (AWOL)). An employee continues to earn leave in the next succeeding pay period

and each subsequent pay period until another 80 hours nonpay status is reached. If there are less than 80 hours in a nonpay status at the end of the leave year, those nonpay hours are dropped (i.e., not carried over to the next leave year as nonpay hours). **See:** [5 CFR 630.208](#).

(B) Part-time Employee

A part-time employee earns sick and annual leave on a prorated basis, based on the number of hours in pay status. Therefore, any hours in LWOP or AWOL are not included as 'pay status' hours and are not used for the calculation of leave accrual.

(c) Transfer of Leave

An employee's accumulated and accrued sick or annual leave that has not been used will be transferred along with an employee who transfers from a court or FPDO to another position under [5 U.S.C. chapter 63, subchapter I](#) in another court or FPDO or agency within the judicial branch or another federal agency. **See:** [§ 920.20.25\(i\)\(1\)](#) for annual leave, or [§ 920.20.30\(d\)\(2\)](#) for sick leave policies when an employee transfers to a position not covered by [5 U.S.C. chapter 63, subchapter I](#).

§ 920.20.25 Annual Leave

(a) Definition

[Annual Leave](#) is paid time off provided for vacations, rest and relaxation, personal business, or emergencies.

(b) Eligibility

(1) Appointment for 90 Days or More

An employee becomes eligible to earn annual leave on the first day of an appointment to a full-time, part-time, permanent, or temporary position for 90 days or more.

(2) Appointment for Less Than 90 Days

An employee appointed to a position limited to less than 90 days will not accrue annual leave. However, after being employed for a continuous period of 90 days under successive appointments

without a break in service, an employee may begin to accrue annual leave and will be entitled to retroactive credit for annual leave that would have accrued from the first day of continuous employment. **See:** [5 U.S.C. § 6303\(b\)](#). For leave purposes, a break in service is one work day or more when an employee is not in federal government employment.

(c) [Accrual Rate Based on Creditable Service](#)

An employee’s annual leave accrual rate is based on creditable service which includes any judiciary service, prior federal civilian service, and some prior federal uniformed/military service, and in some cases may include credit for prior non-federal work experience or experience in a uniformed service.

§ 920.20.25(c) Accrual Rate Based on Creditable Service	
Full-Time Employee — Service	Accrual Rate per Pay Period
Less than three years	4 hours
Three but less than 15 years	6 hours (10 hours are accrued in the last full pay period of the leave year)
15 or more years	8 hours
Part-Time Employee — Service	Accrual Rate per Pay Period
Less than three years	1 hour for each 20 hours in pay status
Three but less than 15 years	1 hour for each 13 hours in pay status
15 or more years	1 hour for each 10 hours in pay status

(1) Judiciary Service

Service is credited while a judiciary employee is in a pay or leave status. For purposes of computing accrual rates for annual leave, six months of nonpay status in a calendar year is also creditable service. **See:** [5 U.S.C. § 6303\(a\)](#) and [§ 8332\(f\)](#).

(2) Federal Civilian Service

All federal civilian service that is potentially creditable for Civil Service Retirement System (CSRS) or Federal Employee Retirement System (FERS) purposes, is also creditable for annual leave accrual.

(3) Federal Uniformed/Military Service

(A) Non-Retired Uniformed Service Member

Full credit is given for annual leave accrual purposes for all service performed under honorable conditions by a non-retired uniformed service member, including active duty and active duty for training. If the member is appointed while on terminal leave pending retirement from active duty, service is credited in the same manner as for a retired uniformed service member. **See:** [§ 920.20.25\(c\)\(3\)\(B\)](#).

(B) Retired Uniformed Service Member

Annual leave accrual credit is given only for actual service during a war declared by Congress or while participating in a campaign or expedition for which a campaign badge/medal is authorized; or all active duty when retirement was based on a disability received as a direct result of armed conflict or caused by an instrumentality of war and incurred in the line of duty during a period of war; or the employee has continuous federal employment since November 30, 1964, without a break in service of more than 30 days.

(4) Under [5 CFR 630.205](#), when an employee is first appointed or reappointed following a break in service of at least 90 calendar days, the chief judge or designee may approve additional leave credit for prior job-related non-federal experience or experience in a uniformed service, if the employee possesses skills and experience that are essential to the new position, are necessary to achieve an important agency mission or performance goal, and were acquired in a position with duties directly related to those of the position to which he or she is being appointed.

(A) In the supplemental information to the final rule (71 Fed. Reg. 54,567 (Sept. 18, 2006)), agencies were “cautioned to use this new leave benefit for the sole purpose for which it was established (i.e., to recruit an individual with the skills and experience necessary to achieve an important agency mission or performance goal). Agencies should not provide creditable service for nonfederal work experience or experience in a uniformed service across-the-board for all new hires.”

- (B) “Hard-to-fill” guidelines (as defined for recruitment and relocation bonuses) may be useful criteria for deciding when additional annual leave credit may be a necessary recruitment tool. **See:** [Guide, Vol 12, § 655](#).
- (d) [Accumulation Limit](#)
- (1) Annual leave may be accumulated and carried over to the next leave year up to a maximum of 240 hours for each employee regardless of full-time or part-time status.
 - (2) For employees stationed outside the United States who meet the criteria established by [5 U.S.C. § 6304\(b\)](#), the accumulation limit for annual leave is 360 hours. If an employee who is covered by the 360-hour accumulation limit is later assigned to a position in which he/she no longer meets the criteria under [5 U.S.C. § 6304\(b\)](#), the annual accumulation limit is subject to adjustment at the end of each leave year, as described in [5 CFR 630.302](#).
- (e) Use
- (1) Although an employee is entitled to use earned annual leave, it is the supervisor’s responsibility to plan work schedules and to approve the time at which leave may be taken.
 - (2) An employee may also request to use annual leave for an illness, medical appointment, or other absence which would be chargeable to sick leave, or may elect to substitute annual leave for any unpaid leave approved under the Family and Medical Leave Act (FMLA). For more information on the FMLA, **see:** [§ 920.20.35](#).
 - (3) An employee performing service with the uniformed services may elect to use any accrued annual leave during such service.
 - (4) An employee may also use any accrued or accumulated annual leave to remain in pay status after the effective date on which the employee would otherwise have been involuntarily separated through staff reduction or job abolishment, or when an employee declines an involuntary reassignment outside of the commuting area, in order to achieve initial eligibility for retirement, discontinued service or voluntary early retirement, and/or eligibility to continue health benefits into retirement.

(f) Scheduling and Approval

(1) Leave-Approving Official

A leave-approving official should manage and coordinate leave and vacation schedules in order to maintain appropriate staffing levels for workflow and coverage. Approval of leave should be made by the employee's supervisor, or other designated approving official, before the leave is taken. If leave is not approved in advance, because of an unusual or emergency situation, it should be reviewed for approval or disapproval as soon as reasonably possible after it is taken.

(2) Employee

Employees should normally request annual leave in advance, and obtain verbal, written, or electronic supervisory approval, or should notify the leave approving official as soon as possible (e.g., within one hour of the beginning of the workday) in cases where leave has not been requested and approved in advance. An employee should plan, request and schedule annual leave for vacations and personal time off in compliance with the *Guide* and local court or FPDO policies, but should try to save some leave for emergencies. An employee should also plan for the use of any annual leave that may accumulate beyond the 240-hour limit (i.e., potentially subject to "forfeiture" as discussed below in [§ 920.20.25\(h\)](#)).

(g) [Advancing](#)

- (1) An employee does not have an entitlement to advanced annual leave (i.e., to use leave before it has been earned). A leave-approving official may advance annual leave up to the amount of annual leave an employee would accrue in the remainder of the leave year. When an employee is serving under a limited appointment or one which will be terminated on a specified date, a court or FPDO may not advance annual leave beyond that which an employee is expected to earn during the appointment term.
- (2) In most cases, when an employee who is indebted for advanced annual leave separates from federal service, he or she is required to refund the amount of leave for which he or she is indebted, or the amount due may be deducted from final pay.

- (3) An advanced leave debt is not refunded or deducted from final pay when an employee dies, retires for disability, resigns or is separated because of disability which prevents him or her from returning to duty, and which is the basis of the separation as determined by the court or FPDO based on medical evidence acceptable to the court or FPDO. An employee who enters active military service with a right of restoration is deemed not separated for the purpose of this paragraph.

(h) [Forfeiture and Restoration](#)

(1) Forfeiture

- (A) Accumulated annual leave in excess of 240 hours which is not used by the last day of a leave year is forfeited at the beginning of the first full biweekly pay period of the next leave year.
- (B) For annual leave that is subject to forfeiture, an employee is responsible for requesting the leave timely (i.e., at least three biweekly pay periods prior to the end of a leave year), and for notifying his or her leave-approving official regarding any significant blocks of annual leave that are subject to forfeiture. If significant amounts of annual leave are requested late in a leave year (e.g., immediately prior to the deadline of three biweekly pay periods prior to the end of a leave year) without prior notification to a leave-approving official, a leave-approving official may not be able to schedule the leave within the leave year because of workflow and coverage, and some annual leave may be forfeited without restoration.

(2) Restoration

- (A) Once excess annual leave has been forfeited at the end of a leave year, a court or FPDO may restore annual leave that was forfeited because it was in excess of the maximum leave ceiling of 240 hours, only under the following limited circumstances:

- (i) Administrative Error

Leave may be restored when an administrative error has occurred which caused the forfeiture of an

employee's annual leave due to no fault of the employee. Examples of administrative error might include a documented leave crediting error, a leave calculation error, an incorrect leave balance statement provided to an employee, or failure to approve or reschedule annual leave that was requested properly and timely. **See:** [GAO Civilian Personnel Law Manual, Title II](#), Chapter 2.G.3.

The failure to remind employees of the requirement for forfeited annual leave to have been requested and scheduled prior to three biweekly pay periods before the end of a leave year, in order for a restoration request to be considered based on an exigency or illness, is not an administrative error since employees are charged with actual or constructive notice of the requirement. **See:** [56 Comp. Gen. 470](#) (1977).

(ii) Exigency of the Public Business

For restoration of annual leave based on an exigency of the public business, a court or FPDO may consider a restoration request only if the annual leave was scheduled in writing before the start of the third biweekly pay period prior to the end of the leave year. A chief judge or his or her designee must determine that an exigency is of major importance and that excess annual leave cannot be used, or that approved annual leave must be cancelled. When the authority to determine an exigency is delegated, the determination may not be made by an official whose leave would be affected by the decision.

(iii) Illness of Employee That Results in Leave Forfeiture

For restoration of annual leave based on an illness of an employee, a court or FPDO may consider a restoration request only if the annual leave was scheduled in writing before the start of the third biweekly pay period prior to the end of the leave year. A court or FPDO must determine that annual leave was forfeited because of a period of absence due to an employee's illness or injury that occurred late in the leave year or was of such duration that the excess

annual leave could not be rescheduled for use before the end of the leave year.

(B) Credited to Separate Accounts

Each instance of restored annual leave must be credited and maintained in a separate leave account established for the employee and maintained by the court or FPDO. Each account of restored annual leave (whether manual or automated) must include the date the leave was restored and the expiration date for the restored leave. Restored leave balances must appear on leave balance statements provided to employees.

(C) Expiration of Restored Annual Leave

- (i) Restored annual leave must be scheduled and used no later than the end of the leave year ending two years after:
- The date of restoration of the annual leave forfeited because of administrative error;
 - The date fixed by the court or FPDO as the termination date of the exigency of the public business that resulted in forfeiture of the annual leave; or
 - The date the employee is determined to be recovered and able to return to duty if the leave was forfeited because of sickness.
- (ii) Restored annual leave that is not used within the established time limit is forfeited with no further right to restoration.
- (iii) Administrative error may not serve as the basis to extend the two-year time limit within which to use restored annual leave, including when a court or FPDO fails to establish a separate leave account, fix the date for the expiration of the time limit, or properly advise an employee regarding the rules for using restored annual leave.
- (iv) The amount of restored annual leave that may be credited to one or more separate accounts does not

impact leave credited to a regular annual leave account (i.e., an employee may accumulate a maximum of 240 hours in a regular annual leave account regardless of the number of hours maintained in separate restored leave accounts).

(i) [Lump-Sum Payment at Separation](#)

- (1) An employee will receive a lump-sum payment for any unused annual leave when he or she separates from federal service, transfers to a position that is not covered under [subchapter I of 5 U.S.C. chapter 63](#) (e.g., to a law clerk position that does not earn leave, or a court reporter position without a regular established tour of duty), or enters on active duty in the armed forces and elects to receive a lump-sum payment.
- (2) A lump-sum payment is paid at the salary rate in effect at separation, with adjustments as required by [5 CFR 550.1205\(b\)](#). In calculating a lump-sum payment, an agency projects forward an employee's annual leave for all the workdays the employee would have worked if he or she had remained in federal service. By law, holidays are counted as workdays in projecting the lump-sum leave period. **See:** [OPM Fact Sheet: Lump Sum Payments for Annual Leave](#).
- (3) If an employee is reemployed (to a position covered by [subchapter I of 5 U.S.C. chapter 63](#)) during the lump-sum leave period, he or she must refund the portion of the lump-sum payment that represents the period between the date of reemployment and the expiration of the lump-sum period. A court or FPDO recredits to the employee's leave account the amount of annual leave equal to the days or hours of work remaining between the date of reemployment and the expiration of the lump-sum leave period.

Note: Lump sum payments are made in accordance with [5 CFR 550.1201-1207](#).

§ 920.20.30 Sick Leave

§ 920.20.30(a) Definitions	
Communicable Disease	Examples of communicable disease include cholera, diphtheria; infectious tuberculosis; plague; small pox, yellow fever; viral hemorrhagic fevers; Severe Acute Respiratory Syndrome (SARS); and influenza that causes or has the potential to cause a pandemic. This provides an illustrative, but not exhaustive list of the types of diseases that may result in federal quarantine. The use of sick leave for exposure to a communicable disease should be used only in very limited circumstances, and sick leave should not be granted for this purpose without guidance from the appropriate officials (e.g., Centers for Disease Control, OPM).
Family Member	For the purposes of sick leave, “family member” is defined as 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 sons and daughters, parents, brothers and sisters, and grandparents and grandchildren); and any individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship. Domestic partner means an adult in a committed relationship with another adult, including both same-sex and opposite-sex relationships. Son or daughter means a biological, adopted, step, or foster son or daughter, or a legal ward or person for whom the employee stands <i>in loco parentis</i> . Parent means a biological, adoptive, step, or foster parent, or a legal guardian or person who stands <i>in loco parentis</i> to the employee. For more specific definitions, see: 5 CFR 630.201 .
Serious Health Condition	An illness, injury, impairment, or physical or mental condition that involves inpatient care or continuing treatment or evaluation by a health care provider. For example, covered conditions may include cancer, heart attack, stroke, serious injury, asthma, diabetes, epilepsy, Alzheimer's disease, or pregnancy and childbirth, including prenatal care. “Serious health condition” is not intended to cover routine medical or dental exams, or short-term conditions for which treatment and recovery are brief (e.g., common cold, flu, upset stomach, headaches (other than migraines), or routine dental or orthodontia problems). For more information on covered conditions, see: 5 CFR 630.1202 .

(b) Usage

[Sick Leave](#) is accrued, paid absence that an employee may use for the following purposes. (This may include use of sick leave, as appropriate,

during periods when the employee is performing service with the uniformed services.)

(1) [Personal Use](#)

When an employee:

- (A) Receives medical, dental, or optical examination or treatment;
- (B) Is incapacitated for the performance of his or her duties by physical or mental illness, injury, pregnancy, or childbirth; 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 (**see**: definition of “communicable disease” in [§ 920.20.30\(a\)](#)).

(2) Adoption Related Purposes

When an employee must be absent from duty for purposes relating to his or her adoption of a child.

Note: Examples include but are not limited to: appointments with adoption agencies, social workers, and attorneys; court proceedings; 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 an adoption to proceed. Adoptive parents who voluntarily choose to be absent from work to bond with or care for an adopted child may not use sick leave for this purpose. Rather, they may use annual leave or LWOP. A court or FPDO may request administratively acceptable evidence for absences related to adoption.

(3) General Family Care and Bereavement

When an employee:

- (A) Provides care for a family member who is incapacitated by a medical or mental condition or attends to a family member receiving medical, dental, or optical examination or treatment;

- (B) Provides care for a family member who would, as determined by the health authorities having jurisdiction or by a health care provider, jeopardize the health of others by that family member's presence in the community because of exposure to a communicable disease (**see:** definition of "communicable disease" in [§ 920.20.30\(a\)](#)); or
- (C) Makes arrangements necessitated by the death of a family member or attends the funeral of a family member.

Note: Sick leave for general family care or funerals may not exceed the number of hours of sick leave the employee normally accrues during one leave year (i.e., 104 hours for a full-time employee and the hours are prorated for a part-time employee).

(4) Serious Health Condition

When an employee provides care for a family member with a serious health condition. The amount of leave granted during any leave year to care for a family member with a serious health condition may not exceed 480 hours for a full-time employee, inclusive of any sick leave used during the leave year for general family medical care or funeral attendance or arrangements described above for general family care and bereavement. For a part-time employee, the limit is 12 times the average number of hours worked per week.

(5) Exclusion for Court Reporters Not on a Regular Tour

Reporters who have no regular tours of duty may not remain in a pay status if they cannot record the proceedings because they are ill, unless they provide their own substitutes ([JCUS-MAR 84](#), pp. 11-12).

(c) Accrual Rate

A full-time employee will accrue four hours of sick leave each full biweekly pay period that the employee is in a pay status, and a part-time employee will accrue one hour for each 20 hours in a pay status.

(d) Accumulation

- (1) Unused sick leave earned by an employee may be accumulated without limitation and will be transferred along with an employee

who moves from a court or FPDO to another position under [5 U.S.C. chapter 63, subchapter I](#) in another court or FPDO or agency within the judicial branch or to another federal agency.

- (2) There is no lump-sum payment for unused sick leave remaining to an employee's credit upon separation, or upon transfer to a position that is not covered by [5 U.S.C. chapter 63, subchapter I](#).

(A) CSRS and CSRS Offset

Unused sick leave is creditable towards the annuity calculation under the CSRS and the CSRS Offset variation.

(B) FERS

The credit of unused sick leave towards an annuity calculation is phased in for employees enrolled in the FERS.

- (i) Between October 28, 2009 and December 31, 2013, 50% of unused sick leave remaining to an employee's credit upon death or separation is creditable towards a FERS annuity.
- (ii) Effective January 1, 2014, 100% of sick leave remaining to an employee's credit upon death or separation is creditable towards a FERS annuity.

See: [5 U.S.C. § 8415\(m\)\(2\)\(A\) and \(B\)](#).

- (3) Sick leave may be recredited to an employee without penalty in the event that the employee reenters federal service on or after December 2, 1994, after having separated from federal employment. **See:** [5 CFR 630.502](#).

(e) Requesting and Approval

- (1) An employee must request advance approval (written, oral, or electronic) for sick leave for the purpose of receiving medical, dental, or optical examination or treatment, and to the extent possible, for family care arrangements necessitated by the death of a family member, or for adoption-related purposes.
- (2) When an employee will be absent from duty due to a personal or family illness or injury, the employee must notify his or her leave-

approving official or a delegated contact, in compliance with a court or FPDO policy and within the time limits required by the court or FPDO, usually within one hour of an employee's reporting time. Insufficient justification for absence without advance approval or notification as described above may be charged as absence without leave (AWOL) and may be grounds for disciplinary action.

- (3) Upon return to duty following unscheduled sick leave, an employee must submit a written or electronic request for leave approval (usually the first day of return or no later than the last day of the pay period).
- (4) A court or FPDO may grant sick leave only when the need for sick leave is supported by administratively acceptable evidence. An employee's self-certification as to the reason for his or her absence may be accepted as administratively acceptable evidence, regardless of the duration of the absence. However, a court or FPDO may require a medical certificate or other administratively acceptable evidence as to the reason for an absence for any of the sick leave purposes described in [§ 920.20.30\(b\)](#), for an absence in excess of three workdays, or for a lesser period when the court or FPDO determines it is necessary.

(A) Time Period for Providing Administratively Acceptable Evidence or Medical Certification to Support Sick Leave

An employee must provide administratively acceptable evidence or medical certification for a request for sick leave no later than 15 calendar days after the date the court or FPDO requests such administratively acceptable evidence or medical certification. If it is not practicable under the particular circumstances to provide the requested evidence or medical certification within 15 calendar days after the date requested despite the employee's diligent, good faith efforts, the employee must provide the administratively acceptable evidence or medical certification within a reasonable period of time under the circumstances involved, but no later than 30 calendar days after the date such documentation is requested. An employee who does not provide the required evidence or medical certification within the specified time period is not entitled to sick leave.

Note: In the interim before required administratively acceptable evidence or medical certification is provided, an

employee may be placed on provisional sick leave. If the required evidence or medical certification is not provided within 15 days (or up to 30 days in some circumstances) as required, the court or FPDO may either charge the time as AWOL, or allow the employee to request that the provisional leave be charged as LWOP or charged to the employee's annual leave account.

(B) Medical Certification to Support a Request for Sick Leave to Care for a Family Member

A court or FPDO may require an employee requesting sick leave to care for a family member to provide an additional written statement from the health care provider concerning the family member's need for psychological comfort and/or physical care. The statement must certify that:

- (i) the family member requires psychological comfort and/or physical care;
- (ii) the family member would benefit from the employee's care or presence; and
- (iii) the employee is needed to care for the family member for a specified period of time.

(C) Medical Release or Fitness-for-Duty Upon Return from Sick Leave

- (i) As a condition to returning to work after sick leave, an employee may not be required to provide medical certification from a health care provider that the employee is fit to perform the essential functions of his or her position except under one of the following conditions:

- In certain circumstances when sick leave is substituted under FMLA leave ([see: § 920.20.35\(g\)\(6\)](#)); or
- When there is a direct question about a law enforcement officer's (LEO) or officer assistant's continued capacity to meet the

medical requirements of the position (**see:** [5 CFR 339.301\(b\)\(3\)](#)).

- (ii) If a court or FPDO requires an employee to obtain written medical certification before he or she returns to work that the employee is fit to perform the essential functions of his or her position (i.e., following FLMA leave or based on LEO medical requirements), the court or FPDO must notify the employee of this requirement before leave commences, or to the extent practicable in emergency medical situations, and pay the expenses for obtaining the written medical certification. An employee's refusal or failure to provide such written medical certification may be grounds for appropriate disciplinary or adverse action.

Note: Regardless of whether an employee is using or returning from sick leave or in a work status, a court or FPDO may at its own expense, offer (not require) a medical examination, including a psychiatric evaluation, in a situation where additional medical documentation is needed to make an informed management decision. This may include situations where an individual requests for medical reasons a change in duty status, assignment, working conditions, or any other benefit or special treatment (including reasonable accommodation or reemployment on the basis of full or partial recovery from a medical condition) or where the individual has a performance or conduct problem which may require agency action. Reasons for offering an examination must be documented (**see:** [5 CFR 339.302](#))

- (5) Denial of a sick leave request should be considered by a leave-approving official only in the absence of conditions described in [§ 920.20.30\(b\)](#).
- (6) When illness occurs within a period of annual leave, the period of illness may be retroactively charged as sick leave, subject to any supporting evidence required by a leave-approving official. An application for such substitution should normally be made within the pay period in which an employee returns to duty or within 30 days after an illness occurs, whichever is earlier.

- (7) An absence that could be charged to sick leave may be charged at an employee's request and with management approval to any available annual leave.

(f) Advancing

- (1) At the beginning of a leave year or at any time thereafter when required by the exigencies of the situation, a court or FPDO may advance a maximum of 240 hours of sick leave to a full-time employee (prorated for a part-time employee):
 - (A) Who is incapacitated for the performance of his or her duties by physical or mental illness, injury, pregnancy, or childbirth;
 - (B) For the serious health condition of the employee or a family member;
 - (C) When the employee 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;
 - (D) For purposes relating to the adoption of a child; or
 - (E) For the care of a covered service member with a serious injury or illness, provided the employee is exercising his or her entitlement under the Family and Medical Leave Act provision of [5 U.S.C. § 6382\(a\)\(3\)](#).
- (2) At the beginning of a leave year or at any time thereafter when required by the exigencies of the situation, a court or FPDO may grant advanced sick leave in the amount of up to 104 hours to a full-time employee (prorated for a part-time employee):
 - (A) When he or she receives medical, dental or optical examination or treatment;
 - (B) To provide care for a family member who is incapacitated by a medical or mental condition or to attend to a family member receiving medical, dental, or optical examination or treatment;
 - (C) To provide care for a family member who would, as determined by the health authorities having jurisdiction or by

a health care provider, jeopardize the health of others by that family member's presence in the community because of exposure to a communicable disease; or

- (D) To make arrangements necessitated by the death of a family member or to attend the funeral of a family member.
- (3) Two hundred forty hours is the maximum amount of advanced sick leave a full-time employee may have to his or her credit at any one time (prorated for a part-time employee).
- (4) When an employee is serving under a limited appointment (e.g., term or temporary) or one which will be terminated on a specified date, a court or FPDO may not advance sick leave beyond that which an employee would otherwise earn during the appointment term. For the purpose of this section, an employee serving a probationary or trial period is not serving under a limited appointment.
- (5) Sick leave may not be advanced if it is known that an employee does not plan to return to duty, except where application for disability retirement has been made and approval thereof has not been received from the OPM. (After official notice of OPM approval of the disability retirement has been received, no additional sick leave may be advanced).
- (6) In most cases, when an employee who is indebted for advanced sick leave separates from federal service, he or she is required to repay the amount of advanced sick leave for which he or she is indebted, or the amount due may be deducted from final pay.
- (7) When an employee dies, retires for disability, or resigns or is separated because of a disability which prevents an employee from returning to duty and is the basis for the separation, advanced sick leave is not refunded. An employee who enters active military service with a right of restoration is deemed not separated for the purpose of this paragraph.

§ 920.20.35 Family and Medical Leave Act

§ 920.20.35(a) Definitions	
Covered Active Duty	<p>(A) Duty during the deployment of a member of a regular component of the Armed Forces to a foreign country; or</p> <p>(B) Duty during the deployment of a member of a reserve component with the Armed Forces to a foreign country under a call or order to active duty under a provision of law referred to in 10 U.S.C. § 101(a)(13)(B) (does not include voluntary active duty under 10 U.S.C. § 12301(d) or annual training duty under 10 U.S.C. § 10147 or § 12301(b)). See: OPM memorandum, March 5, 2010, Recent Changes to the Family and Medical Leave Act.</p>
Covered Service Member	<p>(A) A member of the Armed Forces including a member of the National Guard or Reserves who is undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list for a serious injury or illness; or</p> <p>(B) A veteran who is undergoing medical treatment, recuperation, or therapy, for a serious injury or illness and who was a member of the Armed Forces (including a member of the National Guard or Reserves) at any time during the period of 5 years preceding the date on which the veteran undergoes that medical treatment, recuperation, or therapy;</p>
Family and Medical Leave Act (FMLA)	Provides unpaid leave for certain family and medical needs, in addition to other paid time off (accumulated and accrued sick and annual leave) that may be available to an employee.
Family Member	Family member means the spouse, son, daughter, or parent of the employee for basic FMLA under § 920.20.35(c)(1) , and also the next of kin (nearest blood relative) only for the care of a service member under § 920.20.35(c)(2) .
Serious Health Condition	An illness, injury, impairment, or physical or mental condition that involves inpatient care in a hospital, hospice, or residential medical care facility; or continuing treatment by a health care provider. For examples, see: definition of “serious health condition” in § 920.20.30(a) .

§ 920.20.35(a) Definitions	
Son or Daughter	<p>A biological, adopted, or foster child; a step child; a legal ward; or a child of a person standing in <i>loco parentis</i>, (with day-to-day responsibilities to care for or financially support a child) who is (1) under 18 years of age; or (2) 18 years of age or older and incapable of self-care because of a mental or physical disability. See: 5 CFR 630.1202.</p> <p>Note: Employees standing <i>in loco parentis</i> may include, for example, grandparents and other relatives, and unmarried or same-sex partners, who assume ongoing day-to-day or financial responsibility for raising a child, whether or not those situations ultimately lead to legal relationships (e.g., adoption or legal ward). There is no restriction on the number of parents a child may have under the FMLA. See: OPM memorandum, Aug. 31, 2010, Interpretation of “Son or Daughter” Under the Family and Medical Leave Act.</p>
Spouse	<p>A partner in any legally recognized marriage, regardless of the employee's state of residency. The term “spouse” does not include unmarried domestic partners unless they meet the requirements of being spouses in a common-law marriage in states where such marriages are recognized. See: OPM Memorandum, Family and Medical Leave Act (FMLA) Coverage of Same-Sex Spouses, Oct. 21, 2013.</p>
Veteran	<p>A person who served in the active military, naval, or air service, and who was discharged or released under conditions other than dishonorable. See: 38 U.S.C. § 101(2).</p>

(b) Coverage

A judiciary employee who is covered by [5 U.S.C. chapter 63, subchapter I](#) and has completed at least 12 months of civilian service with the federal government (not required to be recent or consecutive months) is entitled to FMLA.

(c) FMLA Entitlement

- (1) Covered employees are entitled to a total of up to 12 workweeks of unpaid leave during any 12-month period for the following purposes:
 - (A) The birth of a son or daughter of the employee and the care of such son or daughter;
 - (B) The placement of a son or daughter with the employee for adoption or foster care;

- (C) The care of a spouse, son or daughter, or parent of the employee who has a serious health condition; and/or
- (D) A serious health condition of the employee that makes the employee unable to perform the essential functions of his or her positions.
- (E) 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. Qualifying exigency leave may include leave to address issues that arise from the covered active duty or the call to active duty, such as the following: short-notice deployment; military events and related activities; childcare and school activities; financial and legal arrangements; counseling, rest and recuperation; and post-deployment or other activities.
See: [OPM memorandum, March 5, 2010, Recent Changes to the Family and Medical Leave Act.](#)

(2) Care for a Covered Service Member With a Serious Injury or Illness

Under [5 U.S.C. § 6382\(a\)\(3\)](#), an employee who is the spouse, son, daughter, parent, or next of kin (nearest blood relative) of a covered service member with a serious injury or illness is entitled to a total of 26 administrative workweeks of unpaid leave during a single 12-month period to care for the service member.

- (A) In the case of a member of the Armed Forces including a member of the National Guard or Reserves, “serious injury or illness” means an injury or illness incurred by the member in line of duty on active duty in the Armed Forces (or that existed before the beginning of the member’s active duty and was aggravated by service in line of duty in the Armed Forces) that may render the member medically unfit to perform the duties of the member’s office, grade, rank, or rating.
- (B) In the case of a veteran who was a member of the Armed Forces (including a member of the National Guard or Reserves) at any time during the period five years preceding the date on which the veteran undergoes medical treatment, recuperation, or therapy, “serious injury or illness” means an injury or illness that was incurred by the member

in line of duty on active duty in the Armed Forces (or existed before the beginning of the member's active duty and was aggravated by service in line of duty on active duty in the Armed Forces) and that manifested itself before or after the member became a veteran.

(d) Use

(1) Leave Period

(A) 12 Workweeks of FMLA Leave

- (i) The 12-month period referred to in [§ 920.20.35\(c\)\(1\)](#) begins on the date an employee first takes leave for a family or medical need, and continues for 12 months. An employee is not entitled to 12 additional workweeks of basic FMLA leave until the previous 12-month period ends and an event or situation occurs that entitles the employee to another period of family or medical leave. (This may include a continuation of a previous situation or circumstance.)
- (ii) Any holidays authorized under [5 U.S.C. § 6103](#) or by executive order and nonworkdays established by federal statute, executive order, or administrative order that occur during the period in which the employee is on family and medical leave may not be counted toward the 12-week entitlement to family and medical leave. **See:** [5 CFR 630.1203\(e\)](#).
- (iii) For birth or placement for adoption or foster care, the 12-month period expires 12 months after the date of birth or placement. If leave for the birth or placement begins prior to the date of the birth or placement, the 12-month period begins on the date the employee first takes leave.

(B) 26 Workweeks of FMLA Leave to Care for a Covered Service Member With a Serious Injury or Illness

Once an employee invokes FMLA to care for a covered service member with a serious injury or illness, during the single 12-month period described by [§ 920.20.35\(c\)\(2\)](#), an employee is entitled to a combined total of 26 administrative

workweeks of basic FMLA leave under [§ 920.20.35\(c\)\(1\)](#) and FMLA leave to care for a service member with a serious injury or illness under [§ 920.20.35\(c\)\(2\)](#). However, the 12-month period for purposes of the 26-week entitlement to care for a covered service member begins when the employee invokes that entitlement and begins to care for the service member. For example, an employee may use up to 12 weeks of basic FMLA to care for a child with a serious health condition, and then immediately use up to 26 weeks of FMLA to care for a spouse who is a covered service member with a serious injury or illness (**see**: [5 U.S.C. § 6382\(a\)\(4\)](#)).

(2) Intermittent Leave Use or Reduced Leave Schedule

An employee may use FMLA leave intermittently or on a reduced leave schedule, with hours of leave subtracted on an hour-for-hour basis under the following conditions.

- (A) Only with agreement between the employee and the leave-approving official in the following cases:
- (1) For the birth and/or care of a son or daughter of the employee, or
 - (2) The placement of a son or daughter with the employee for adoption or foster care;
- (B) When medically necessary for:
- (1) The care of a spouse, son, daughter, or parent of an employee who has a serious health condition;
 - (2) A serious health condition of the employee that makes the employee unable to perform the essential functions of his or her position; or
 - (3) To care for a service member with a serious injury or illness when an employee is the spouse, son, daughter, parent, or next of kin of a covered service member; or
- (C) Because of 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.

Note: When an employee takes leave intermittently or on a reduced leave schedule under [§ 920.20.35\(d\)](#), the court or FPDO may place the employee temporarily in an available alternative position for which the employee is qualified which has equivalent pay, benefits, work schedule, and tenure and that can better accommodate recurring periods of leave.

(3) Prorated for Part-time Work

FMLA leave will be made available equally for a full-time or a part-time employee in direct proportion to the number of hours in the employee's regular workweek, calculated on an hourly basis.

(e) Substitution of or Combination with Annual or Sick Leave

- (1) An employee is entitled to substitute any available paid leave for some or all of FMLA unpaid leave. Use of any sick leave is subject to the conditions and requirements stated in [§ 920.20.30](#). For example, only 480 hours of accrued and accumulated sick leave are available for FMLA substitution for the care of a family member with a serious health condition. **See:** [§ 920.20.30\(b\)\(4\)](#).

Note: The normal leave year limitations on the use and substitution of sick leave to care for a family member do not apply in the case of FMLA leave to care for a covered service member; an employee may substitute any annual or sick leave for any part of the 26-week period of unpaid FMLA leave to care for a covered service member with a serious injury or illness. Further, any sick leave used or substituted under an employee's 12-week basic FMLA entitlement prior to the first use of leave to care for a covered service member does not count towards the "single 12-month period" described in [§ 920.20.35\(c\)\(2\)](#). For example, an employee who has enough accumulated sick leave may use up to 12 weeks of sick leave to care for a spouse with a serious health condition, and then substitute an additional 26 weeks of sick leave for unpaid FMLA to care for a son or daughter who is a covered service member with a serious illness or injury — using a total of 38 weeks of sick leave.

- (2) An employee may elect to use any combination of available annual leave, sick leave, and/or unpaid FMLA leave (LWOP). An

employee may use annual or sick leave in addition to the FMLA entitlement to unpaid leave, as well as substituting paid leave for some or all of the unpaid leave. Use of additional annual leave, apart from leave that is being substituted for unpaid leave under FMLA, remains subject to management approval. **See:** [§ 920.20.25\(e\)](#). Use of any sick leave is subject to the conditions and requirements stated in [§ 920.20.30](#).

- (3) Compensatory time off may not be substituted for FMLA.
 - (4) An employee may not retroactively substitute paid leave for leave without pay taken under FMLA, except when using donated leave under the Voluntary Leave Transfer Program. **See:** [5 CFR 630.1205\(e\)](#) and [5 CFR 630.909\(d\)](#).
- (f) Job Benefits and Protection
- (1) 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. FMLA leave will not result in the loss of any employment benefit accrued before leave began.
 - (2) However, an employee has no greater right to reinstatement or to other benefits and conditions of employment than if the employee had been continuously employed during the FMLA leave period.
 - (3) An employee who takes FMLA leave is entitled to maintain health benefits coverage. An employee on unpaid FMLA leave (LWOP) will incur a debt for the employee share of the Federal Employees Health Benefits (FEHB) premiums which, upon return to work, will be deducted from the employee's pay in scheduled biweekly installments until the debt is repaid.
- Note:** FEHB coverage is limited to one year on LWOP at the employee's option and expense.
- (g) Notification and Medical Certification
- (1) Court or FPDO managers are responsible for informing employees of the entitlements and responsibilities under the FMLA, including employee obligations.

- (2) An employee must invoke his or her entitlement to family and medical leave. An employee may not retroactively invoke his or her entitlement to family and medical leave. However, if an employee and his or her personal representative are physically or mentally incapable of invoking the employee's entitlement to FMLA leave during the entire period in which the employee is absent from work for a FMLA-qualifying purpose, the employee may retroactively invoke his or her entitlement to FMLA leave within two workdays after returning to work. In such cases, the incapacity of the employee must be documented by a written medical certification from a health care provider. In addition, the employee must provide documentation acceptable to the court or FPDO explaining the inability of his or her personal representative to contact the court or FPDO and invoke the employee's entitlement to FMLA leave during the entire period in which the employee was absent from work for a FMLA-qualifying purpose.
- (3) An employee must provide 30 days' notice of his or her intent to take family and medical leave, when practicable, or within a reasonable period of time appropriate to the circumstances involved when the need for leave is not foreseeable (e.g., a medical emergency or the unexpected availability of a child for adoption or foster care). When FMLA leave is used for a planned medical treatment, the employee must consult with his or her supervisor and make a reasonable effort to schedule medical treatment so as not to disrupt unduly the operations of the court or FPDO, subject to the approval of the health care provider.
- (4) Medical Certification to Support a Request for FMLA Leave

A court or FPDO may require that a request for FMLA leave 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, as appropriate. The court or FPDO may waive the requirement for a subsequent request for the same chronic or continuing condition.

- (A) When medical certification is required for the serious health condition of an employee or spouse, son, daughter, or parent of the employee, the medical certification must include:
 - (i) The date the serious health condition commenced;

- (ii) The probable duration of the serious health condition or specify 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;
 - (iii) 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.
- (B) When medical certification is required in the case of an employee's serious health condition, the medical certification must also include:
 - (i) A statement that the employee is unable to perform one or more of the essential functions of his or her position or requires medical treatment for a serious health condition, based on written information provided by the court or FPDO 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; and
 - (ii) In the case of certification for intermittent leave or leave on a reduced leave schedule 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 specify 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.
- (C) When medical certification is required for the care of a spouse, son, daughter, or parent with a serious health condition, the following must be provided:
 - (i) 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

- (ii) 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 or her spouse, son, daughter, or parent.
- (D) The information on the medical certification may relate only to the serious health condition for which the current need for family and medical leave exists. The court or FPDO may not require any personal or confidential information in the written medical certification other than that required by § 920.20.35(g)(4).
 - (i) If an employee submits a completed medical certification signed by the health care provider, the court or FPDO may not request new information from the health care provider.
 - (ii) However, a health care provider representing the court or FPDO, including a health care provider employed by or under the administrative oversight of the court or FPDO, with the employee's permission may contact the health care provider who completed the medical certification for purposes of clarifying the medical certification.
- (E) A court or FPDO may require a second opinion, at its expense, if the court or FPDO doubts the validity of the original certification. A court or FPDO may require a third opinion, at its expense, from a health care provider jointly approved by the employee and court or FPDO when the second opinion differs from the original certification. The third opinion is limited to the information in the original certification, and is final and binding on the court or FPDO and the employee.
- (F) Time Limit for Providing Medical Certification to Support a Request for FMLA Leave

- (i) If an employee is unable to provide the requested medical certification before leave begins, or if the court or FPDO questions the validity of the original certification provided by the employee and the medical treatment requires the leave to begin, the court or FPDO must grant provisional leave pending final written medical certification.
 - (ii) An employee must provide the written medical certification required by § 920.20.35(g)(4), signed by the health care provider, no later than 15 calendar days after the date the court or FPDO requests such medical certification. If it is not practicable under the particular circumstances to provide the requested medical certification no later than 15 calendar days after the date requested despite the employee's diligent, good faith efforts, the employee must provide the medical certification within a reasonable period of time under the circumstances involved, but no later than 30 calendar days after the date such medical certification is requested.
 - (iii) If, after the leave has commenced, the employee fails to provide the requested medical certification within 15 days (or up to 30 days in some circumstances) as required, the court or FPDO may charge the employee as absent without leave (AWOL); or allow the employee to request that the provisional leave be charged as leave without pay or charged to the employee's annual and/or sick leave account, as appropriate.
- (5) Subsequent Medical Recertification on a Periodic Basis

At its own expense, a court or FPDO may require subsequent medical recertification on a periodic basis, but not more than once every 30 calendar days, for leave taken for purposes relating to pregnancy, chronic conditions, or long-term conditions. For leave taken for all other serious health conditions and including leave taken on an intermittent or reduced leave schedule, if the health care provider has specified on the medical certification a minimum duration of the period of incapacity, the court or FPDO may not request recertification until that period has passed, (unless the employee requests that the original leave period be extended, the

circumstances described in the original medical certification have changed significantly, or the court or FPDO receives information that casts doubt upon the continuing validity of the medical certification).

(6) Medical Release or Fitness-for-Duty to Return from FMLA Leave

(A) Under the following conditions, a court or FPDO may require an employee, as a condition to returning to work after FMLA leave, to provide written medical certification from a health care provider that the employee is able to resume work and perform the essential functions of his or her position:

- (i) The court or FPDO must have a uniformly applied policy for similarly situated employees (i.e., same occupation or same serious health condition);
- (ii) The court or FPDO must pay the expenses for obtaining the written medical certification;
- (iii) The employee must be notified of the requirement before leave commences, or to the extent practicable in emergency medical situations; and
- (iv) No second opinion on the medical certification to return to work may be required.

Note: A court or FPDO may not require medical certification to return to work during the period the employee takes leave intermittently or under a reduced leave schedule.

(B) A court or FPDO may delay the return of an employee until the medical certification is provided. An employee's refusal or failure to provide written medical certification may be grounds for appropriate disciplinary or adverse action.

See also: [5 CFR 630.1210\(h\) and \(i\)](#).

(C) The court or FPDO may also require periodic status reports on the employee's ability or intention to return to work.

(7) Security and Confidentiality of FMLA Medical Records

The security and confidentiality of any written medical certification documents required under § 920.20.35(g) must be maintained.

Note: OPM advises that agencies may use Department of Labor forms for medical certification. **See:** [WH-380-E \(Certification of Health Care Provider for Employee's Serious Health Condition\)](#) and [WH-380-F \(Certification of Health Care Provider for Family Member's Serious Health Condition\)](#).

(h) Court or FPDO Discretion

A court or FPDO may adopt policies that permit granting more LWOP than FMLA requires, but such policies may not provide entitlement to paid time off in an amount greater than that otherwise authorized by law or provide sick leave in any situation in which sick leave would not normally be allowed by law or regulation.

§ 920.20.40 Voluntary Leave Transfer Program (Medical)

(a) Policy

A court or FPDO must administer a [Voluntary Leave Transfer Program \(VLTP\)](#) whereby employees may donate annual leave to an employee who has an approved personal or family medical emergency and who has exhausted all available paid leave. For the definition of medical emergency, **see:** [5 CFR 630.902](#). Available paid leave is defined as all annual leave plus any sick leave that is available for a medical emergency (i.e., all sick leave for a **personal** medical emergency, or up to twelve weeks of sick leave for the care of a family member with a serious health condition).

Note: The requirement to exhaust all annual and sick leave prior to use of VLTP does not apply in the case of a leave recipient who sustains a combat-related disability while a member of the armed forces, including a reserve component of the armed forces; and is undergoing medical treatment for that disability ([5 U.S.C. § 6333\(b\)\(2\)](#)).

Note: For the purposes of donated leave, "family member" is defined as a 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 partners and parents thereof, including domestic partners of sons and daughters,

parents, brothers and sisters, or grandparents and grandchildren; and any individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship. For detailed definitions of son and daughter, parent, and domestic partner, **see:** [5 CFR 630.902](#).

Note: Medical emergency may include pregnancy and childbirth.

(b) Leave Recipient

(1) Application

An employee must submit a written request to the court or FPDO. The employee's [Application to Become a Leave Recipient Under the Voluntary Leave Transfer Program, Form OPM 630](#) must include:

- (A) the reasons leave donations are needed;
- (B) a brief description of the nature, severity, and anticipated duration of the medical emergency, and if it is a recurring one, the approximate frequency of the medical emergency;
- (C) certification from one or more physicians, or other appropriate experts with respect to the medical emergency if the potential leave recipient's employing court or FPDO so requires; and
- (D) any additional information that may be required by the potential leave recipient's employing court or FPDO.

(2) Approval

- (A) For approval of a VLPT request, based on the employee's [application](#) plus any medical certification or additional information required by the court or FPDO (**see:** [5 CFR 630.904\(3\) and \(4\)](#)), a unit executive must determine that an employee is or has been affected by a medical emergency (i.e., that a medical condition is likely to require an employee's absence from duty for a prolonged period of time and to result in a substantial loss of income to the employee because of the unavailability of paid leave). In determining whether a medical emergency is likely to result in a substantial loss of income, the court or FPDO may

consider only whether an employee is expected to be absent at least 24 hours without pay for a full-time employee, or 30 percent of the average weekly tour for a part-time employee ([5 CFR 630.905\(c\)](#)).

(B) Upon receipt of a request for donated leave, the court or FPDO must notify an employee within 10 work days whether the request was approved or denied (with reasons based on the criteria in the paragraph immediately above). Approval to participate as a leave recipient does not ensure the availability of donated leave.

(C) Publication of Leave Donation Request

(i) There is no requirement for a court or FPDO to solicit leave on behalf of an employee or to publicize an employee's request for donated leave. If a court or FPDO does solicit leave donations, the notice (paper or e-mail) should be posted only within the court or FPDO, except for certain conditions listed below under § 920.20.40(b)(2)(D) (Transfer of Leave Between Courts or FPDOs or Other Federal Agencies).

(ii) A court or FPDO should use [Form OPM 630, Application to Become a Leave Recipient Under the Voluntary Leave Transfer Program](#) when posting a leave donation request. The form allows a leave recipient to indicate whether a description of a medical emergency should be distributed, and if so, how a medical emergency should be described for distribution. A leave recipient may also indicate whether his or her name should be included in a notice for distribution.

(D) Transfer of Leave Between Courts or FPDOs or Other Federal Agencies

A leave recipient's employing court or FPDO must accept the transfer of annual leave from leave donors employed by other courts, FPDOs, or federal agencies only when:

(i) A family member of a leave recipient is employed by another court or FPDO or another federal agency and

requests the transfer of annual leave to the leave recipient;

- (ii) In the judgment of the court or FPDO, the amount of annual leave that was donated within the leave recipient's court or FPDO may not be sufficient to meet the needs of the leave recipient; or
- (iii) In the judgment of the court or FPDO, acceptance of leave transferred from another court or FPDO or another agency would further the purpose of the VLTP.

(E) Donated Leave While Awaiting Approval for Disability Retirement

- (i) An employee may apply for and receive donated annual leave while an application for disability retirement is being processed. An employee who is experiencing a personal or family medical emergency and has exhausted his or her available paid leave may request to become an approved leave recipient and receive donated annual leave. Once the disability retirement application has been approved by OPM, the leave recipient may no longer receive or use donated annual leave beyond the end of the pay period in which the court or FPDO receives the notice of allowance of disability retirement. **See also:** [Frequently Asked Questions About Leave](#).
- (ii) Additionally, donated annual leave may be substituted retroactively for periods of LWOP or used to liquidate a debt for advanced annual or sick leave granted on or after a date fixed by the agency as the beginning of the period of the medical emergency for which LWOP or advance annual or sick leave was granted. Courts or FPDOs should advise employees concerning the possible effects on retirement income of substituting donated annual leave for LWOP or advanced leave.

(3) Use of Leave Donations

- (A) A leave recipient may use annual leave donations only for the medical emergency for which the donation was approved.
- (B) Annual leave donations may be substituted retroactively for any period of LWOP or used to liquidate an indebtedness for any period of advanced leave that began on or after the date fixed by the court or FPDO as the beginning of the medical emergency.
- (C) Leave donations may be used on a part-time or intermittent basis when a leave recipient is able to return to work (or telework) on an part-time or intermittent basis. For information on accruing regular annual and sick leave while working on a part-time or intermittent basis, **see:** [§ 920.20.40\(d\)\(3\)](#).
- (D) Donated leave may not be included in a leave transfer recipient's lump-sum payment at separation, made available for recredit upon reemployment by a federal agency, or transferred to another leave recipient.
- (E) If a leave recipient separates from federal service while in a leave donation recipient status, any unused donated leave is restored to donors as specified in [5 CFR 630.911](#). However, when a leave recipient transfers to another court or federal agency while still in a donation recipient status (i.e., the medical emergency has not terminated), any unused donated annual leave will be transferred with the employee as documented on the [Record of Leave Data \(Form SF 1150\)](#) and [Transfer of Leave Records for a Leave Recipient Covered by the Voluntary Leave Transfer Program \(OPM 630-C\)](#).

(4) Limits

- (A) There is no limit on the amount of donated annual leave a leave recipient may receive from donor(s). However, any unused donated leave must be returned to the leave donor(s) on a pro-rated basis when the medical emergency ends. **See:** [§ 920.20.40\(f\)](#).

- (B) Annual leave donations may accumulate without regard to the 240-hour limitation on annual leave.
 - (C) Donated annual leave is subject to all of the conditions and requirements on the approval and use of annual leave. **See:** [§ 920.20.25](#) and [5 CFR 630.909\(c\)](#). In situations where an employee uses donated annual leave for absences resulting from personal incapacitation or medical examinations or treatments, establishing a limit on donated leave usage would typically be impracticable. However, in situations where the donated leave is used by an employee to care for a family member or to attend to a family member who is receiving medical examination or treatment, it would be within a court's discretionary authority to limit the amount used.
- (c) Leave Donor
- (1) To donate annual leave, an employee must submit a voluntary written request to his or her own court or FPDO that a specified number of hours of his or her accrued annual leave be transferred from his or her annual leave account to the leave transfer account of a specified leave recipient in a court, FPDO, or another agency.
 - (2) The amount of leave an employee may donate in any one leave year is limited to a total of one-half of the amount of annual leave he or she would be entitled to accrue during the leave year in which the donation was made.
 - (A) In the case of a leave donor who is projected to have annual leave that otherwise would be subject to forfeiture at the end of the leave year ("use or lose" leave over 240 hours in most cases), the maximum amount of annual leave that may be donated will be the lesser of one-half of the amount of annual leave he or she would be entitled to accrue during the leave year in which the donation is made; or the number of hours remaining in the leave year (as of the date of the transfer) for which the leave donor is scheduled to work and receive pay.
 - (B) Each court or FPDO must establish written criteria for waiving the limitations on donating annual leave under this section. Any such waiver must be documented in writing.

- (3) Subject to the limitations described in this section, all or any portion of the annual leave requested by the leave donor may be transferred to the annual leave account of the specified leave recipient under procedures established by the leave recipient's employing court, FPDO, or agency.
 - (4) The employing court or FPDO of a leave donor who wishes to donate annual leave to a leave recipient in another court, FPDO, or agency must verify the availability of annual leave in the leave donor's annual leave account, determine that the amount of annual leave to be donated does not exceed mandatory limitations, and ascertain that the leave recipient's employing court, FPDO, or agency has approved the request for a leave donation. Upon satisfying these requirements, the leave donor's employing court or FPDO must reduce the amount of annual leave credited to the leave donor's annual leave account, as appropriate; and notify the leave recipient's employing court or FPDO or agency in writing of the amount of annual leave to be credited to the leave recipient's annual leave account.
 - (5) A leave recipient's employing court or FPDO may not transfer annual leave to a leave donor's immediate supervisor.
- (d) Regular Annual and Sick Leave
- (1) While an employee is using donated leave related to a specific medical emergency, annual and sick leave will accrue to the credit of the employee up to a maximum of 40 hours each in connection with any particular medical emergency (for part-time employees, the average number of hours in the employee's weekly tour of duty).
 - (2) The annual or sick leave accrued while using donated leave (up to 40 hours each) must be held in separate set-aside accounts until it is transferred to the regular leave accounts after the medical emergency terminates or the employee has exhausted available leave donations.
- Exception:** When a medical emergency is terminated based on an employee's separation from the government, leave remaining in VLTP set-aside accounts is not transferred to the regular annual and sick leave accounts.

- (3) If a leave recipient is able to work part-time while using leave donations part-time, the employee will earn leave based on time worked. Any leave earned while in part-time work status must be used the following pay period before using additional leave donations.

(e) Termination of Medical Emergency

- (1) The medical emergency affecting a leave recipient will terminate:
 - (A) when the leave recipient's federal service is terminated;
 - (B) at the end of the biweekly pay period in which the court or FPDO receives written notice from the leave recipient that the leave recipient is no longer affected by a medical emergency;
 - (C) at the end of the biweekly pay period in which the court or FPDO determines, after written notice from the court or FPDO and an opportunity for the leave recipient or appropriate personal representative to answer orally or in writing, that the leave recipient is no longer affected by a medical emergency; or
 - (D) at the end of the biweekly pay period in which the leave recipient's employing court or FPDO receives notice that the OPM has approved an application for disability retirement for the leave recipient under CSRS or FERS.
- (2) The leave recipient's employing court or FPDO must continuously monitor the status of the medical emergency to ensure that the leave recipient continues to be affected by a medical emergency. A court or FPDO may deem a medical emergency to continue for the purpose of providing a leave recipient an adequate period of time within which to receive donations of annual leave.
- (3) When the medical emergency affecting a leave recipient terminates, no further requests for transfer of annual leave to the leave recipient may be granted, and any unused transferred annual leave must be restored to the leave donors.

- (f) Restoration of Transferred Annual Leave
 - (1) Any annual leave donations remaining when the medical emergency terminates must be restored (returned) back to the donors, prorated as follows:
 - (A) Divide the number of remaining/unused hours by the total number of hours donated.
 - (B) For each donor, multiply that ratio by the number of hours donated.
 - (C) Round the result obtained to the nearest whole hour.
 - (D) If the number of donors exceeds the number of excess hours remaining, no annual leave may be returned (each donor would receive less than a full hour). In no case may the amount of annual leave returned exceed the amount donated.
 - (2) Unused leave donations may not be returned to a donor who retires from federal service, dies, or is otherwise separated from federal service before the annual leave can be restored.
 - (3) At the election of the leave donor, unused leave donations are restored (returned) to the leave donor by:
 - (A) Crediting the restored annual leave to the leave donor's annual leave account in the current leave year;
 - (B) Crediting the restored annual leave to the leave donor's annual leave account effective as of the first day of the first leave year beginning after the date of election; or
 - (C) Donating such leave in whole or in part to another leave recipient.
 - (4) If a leave donor elects to donate only part of his or her restored leave to another leave recipient, the donor may elect to have the remaining leave credited to his or her annual leave account.
 - (5) Annual leave donations that are restored (returned back to a donor), are subject to the 240-hour annual leave limitation at the end of the leave year in which the restored leave is credited.

(g) Restoration of Leave That Recipient Buys Back

If a leave recipient elects to buy back annual leave as a result of a claim for an employment-related injury approved by the Office of Workers' Compensation Programs, the amount of annual leave bought back by the leave recipient must be restored to the leave donor(s). **See:** [JNet's Employees' Guide to Workers' Compensation/FECA](#) page.

(h) Prohibition of Coercion

An employee may not threaten, coerce, or attempt to intimidate any other employee for the purpose of interfering with any right such employee may have with respect to donating, receiving, or using annual leave under this subpart. This includes conferring or promising to confer any benefit, such as an appointment, promotion or compensation, or effecting or threatening to effect any reprisal such as deprivation of appointment, promotion, or compensation.

§ 920.20.45 [Emergency Leave Transfer Program](#)

(a) Authority

Under [5 U.S.C. § 6391](#), in the event of major disasters or emergencies declared by the President, such as floods, hurricanes, earthquakes, tornadoes, or bombings that result in severe adverse effects for a substantial number of employees, the President may direct OPM to establish an emergency leave transfer program (ELTP) to permit employees to donate unused annual leave for transfer to employees who are adversely affected by the disaster and who need time off from work without having to use their own paid leave. Coverage was extended to the judicial branch by Public Law 109-229, effective May 31, 2006.

Note: A “major disaster or emergency” is referred to in this section as a “disaster.”

(b) Delegated Authority

OPM has delegated authority to agencies to decide whether, and how much, donated annual leave is needed by affected employees, to approve leave donors and/or leave recipients in their agencies, and to administer ELTP programs within regulatory specifications outlined by this policy. For details, **see:** [5 CFR 630.1103](#).

(c) Policy

- (1) When the President declares a disaster and authorizes OPM to establish an ELTP, a chief judge may, at his or her discretion, approve the use of donated annual leave as an additional management tool along with telework, excused absence, and other leave programs where applicable.

Note: For the purposes of this policy, “chief judge” means a chief judge or delegated circuit executive, federal public defender, or court unit executive.

Note: Employees are required to follow any local Continuity of Operations Plan (COOP) directives, including local telework requirements.

Note: When a court facility is closed due to a disaster, essential or emergency staff should report to the worksite to assist with disaster recovery. Non-essential employees who are not able to work at an alternate or telework site may be granted excused absence until a court facility is reopened or an alternative work site is established, generally not to exceed three days.

- (2) While a facility is closed, or once a facility is reopened or operations are reestablished at an alternate work site, a chief judge may authorize the use of donated leave by impacted employees who need time off related to the disaster (balancing a court or FPDO’s need to reestablish communications and services with an employee’s need for time to take care of personal and family issues that are related to the disaster).

(d) Statutory Requirements

- (1) An employee who is approved to receive ELTP may not be required to exhaust his or her annual or sick leave balances prior to using ELTP.
- (2) The chief judge of a court impacted by a disaster may determine whether and how much donated annual leave is received by the court, based on the court’s need to maintain adequate staffing and the extent to which potential leave recipients are adversely impacted by the disaster; and may vary the amount of leave donated to individual employees according to individual employee

needs at the sole discretion of and based on evidence that is administratively acceptable to the chief judge.

- (3) A court or FPDO may advance annual or sick leave, up to the limits stated in [§ 920.20.25\(g\)](#) and [§ 920.20.30\(f\)](#), to a potential ELTP recipient during the interim period while leave donations are solicited, even if the employee has accrued annual and sick leave available, so that an ELTP recipient is not required to use accrued leave before donated annual leave becomes available.
- (4) Donated annual leave may be substituted retroactively for any leave without pay used by the emergency leave recipient during the disaster or may be used to liquidate an indebtedness incurred by the emergency leave recipient for advanced annual or sick leave.
- (5) While an emergency leave recipient is using donated annual leave from an ELTP, annual and sick leave will accrue to the credit of the employee at the same rate as if the employee were in a regular paid leave status, and annual leave will be subject to the accumulation limit imposed by [5 U.S.C. § 6304\(a\)](#).
- (6) An emergency leave recipient may not receive more than 240 hours of donated annual leave per request (an additional request may be approved by a chief judge). The following form may be used by an ELTP recipient: [OPM 1637 \(Application to Become a Leave Recipient\)](#).
- (7) The minimum amount of annual leave a donor may contribute in a leave year is one hour, and the maximum amount is 104 hours (although a donor court or FPDO may establish written criteria for waiving the 104 hour limitation). The following form may be used by an ELTP donor: [OPM 1638 \(Request to Donate Annual Leave\)](#).
- (8) A leave recipient must use donated leave for purposes related to the disaster for which the leave was donated.
- (9) Leave must be donated from court or FPDO to court or FPDO, at the discretion of the chief judges of the receiving and donating courts. Individual employees may not identify or designate donations for specific individuals, courts, court units, or FPDOs.
- (10) A recipient court or FPDO is responsible for ensuring that annual leave donations are used appropriately; tracked separately from regular annual leave; and not used for lump-sum payments,

recredit upon reemployment, retirement eligibility, or eligibility for retiree health benefits.

- (11) A donor court or FPDO is responsible for approving or denying donations after certifying each donor's available annual leave balance and certifying that the transfer is for an established ELTP for a declared disaster.
- (12) A recipient court or FPDO will return any unused leave donations back to the donor court or FPDO, in aggregate.
- (13) A donor court or FPDO is responsible for applying unused leave donations back to individual donors in proportion to the amount donated. Donations for one disaster may not be transferred to another program for a different disaster.
- (14) An employee may not directly or indirectly intimidate, threaten, or coerce any other employee for the purpose of interfering with any right such employee may have with respect to donating, receiving or using annual leave under an ELTP.

(e) Implementation

As warranted by the circumstances of a specific ELTP established by OPM, the AO will provide implementation procedures including an automated InfoWeb tool to enable realtime court-to-court donations of ELTP. The InfoWeb tool will only permit donations to a recipient court or FPDO up to the maximum limit designated by the donor court or FPDO, thereby reducing the amount of excess or unused ELTP donations that might otherwise occur.

§ 920.20.50 Bone Marrow or Organ Donor Leave

- (a) A judiciary employee may use up to seven days of paid leave in a calendar year to serve as a bone marrow donor (CR-JUDRES-MAR 95, pp. 10-11). This is a separate leave category in addition to sick or annual leave.
- (b) A judiciary employee may use up to 30 days of paid leave in a calendar year to serve as an organ donor. This is a separate leave category in addition to sick or annual leave ([JCUS-SEP 00](#), p. 57).

§ 920.20.55 [Court Leave](#)

(a) Purpose

This section describes the leave status of judicial branch officers and employees (referred to as employees in the remainder of this section) while summoned to serve as a juror or witness in a judicial proceeding, and the disposition of fees and reimbursements they receive for that service.

(b) Authority

This section is authorized under [5 U.S.C. §§ 5515, 5537, 6322; 28 CFR 21.2; 55 Comp. Gen. 1264](#) (1976); [55 Comp. Gen. 1266](#) (1976). **See also:** [OPM Fact Sheet on Court Leave](#).

(c) Application

(1) A judiciary employee should serve on jury duty or as a witness as requested. Court leave is time off without loss of pay for service as a juror or witness in the following cases:

(A) Jury Duty

An employee who is summoned to serve as a juror in a judicial proceeding in the federal, state, or local government is entitled to court leave.

(B) Witnesses

An employee who is summoned as a witness in a judicial proceeding in which the federal, state, or local government is a party is entitled to court leave.

(2) An employee who is summoned as a witness in an official capacity on behalf of the federal government is on official duty, not court leave.

(d) Request and Charge

(1) A request for court leave should be made in writing, using a specified form, e-mail or automated system as directed by an appointing officer or a delegated leave-approving official, and

accompanied by a court summons or other certificate of attendance.

- (2) An employee is responsible for informing his or her supervisor when excused from jury duty or witness service for four hours or more. For a partial day release, an employee should either return to duty when possible (at the court's or FPDO's discretion considering the employee's work schedule and transportation and commuting issues) or be charged annual leave, sick leave, or LWOP, as appropriate.
- (3) An employee must report back to work when:
 - (A) discharged or released from jury duty or witness service for a full day; or
 - (B) released for a full day or more subject to call (standby).

(e) Fees and Expenses

(1) Jury Fees and Expenses

(A) Travel Expenses

An employee is **not** entitled to official travel expenses from the employing court or FPDO.

(B) Transportation Reimbursements

An employee may keep transportation reimbursements from a federal or state court.

(C) Jury "Expense" Fees

An employee may keep any so-called juror fees that are actually in the nature of "expenses" (e.g., transportation or meal reimbursement) rather than compensation for service.

(D) Attendance Fees

- (i) In U.S. or District of Columbia court, an employee does **not** receive compensation (attendance fees) for jury service during the regular work schedule.

- (ii) In state or local court, an employee must turn in attendance fees to the employing court or FPDO, when the fees are compensation for jury service while on court leave. Such fees will be credited by the employing court or FPDO against the employee's pay.

(E) Juror Fees for Off-Duty Hours

An employee may keep all juror fees from any court for service during hours or days outside the regular work schedule, when not on court leave (e.g., after hours or on weekends and federal holidays).

(2) Witness Fees and Expenses

(A) Official Duty or Court Leave

An employee must turn in any compensation (attendance fees) for witness service while on official duty or court leave to the employing court or FPDO.

(B) Outside Work Hours

An employee may keep any witness fees for service after regular work hours or while on annual leave or LWOP, or on days outside the regular work schedule (e.g., weekends and federal holidays).

(C) Expense-Like Witness Fees

- (i) An employee may keep so-called witness fees that are in the nature of "expenses" (e.g., transportation or meal reimbursement) rather than compensation for service.
- (ii) Federal court officials may not receive fees for witness service in the court where they are "officiating." **See:** [5 U.S.C. § 5537\(b\)](#). The AO interprets this last statute to mean that any court officer or employee is on official duty when appearing before his or her employing court, regardless of who is a party to the case or the capacity in which the officer or employee is testifying.

(3) Official Travel Expenses

Whenever appearing as a witness in an official capacity, an employee is entitled to necessary official travel expenses from the employing court or FPDO. Official travel expenses are reduced to the extent they are paid by the court, authority or party that issued the summons. **See:** [28 CFR 21.2\(c\)](#). The Department of Justice pays, or reimburses the employing court or FPDO for, travel expenses of employees appearing on behalf of the United States in a proceeding involving the Department of Justice. **See:** [28 CFR 21.2\(d\)\(2\)](#).

(4) Fees and Leave Status During Witness Service

Use the following chart to determine leave status, disposition of witness fees, and entitlement to official travel expenses.

§ 920.20.55(e)(4) Fees and Leave Status During Witness Service	
<p>(A) Are you appearing on behalf of the U.S. or D.C. government,</p> <p style="text-align: center;"><i>OR</i> appearing before your employing court,</p> <p style="text-align: center;"><i>OR</i> appearing in your official capacity?</p>	<p>If YES, then, you are on official duty status.</p> <ul style="list-style-type: none"> • Official travel expenses from employer. See: § 920.20.55(e)(3). • Turn in fees to employer. See: § 920.20.55(e)(2)(A). <p>If NO, see (B) below.</p>
<p>(B) Is the U.S., D.C., state or local government a party to the proceeding?</p>	<p>If YES, then you are on court leave.</p> <ul style="list-style-type: none"> • No official travel expenses from employer. • Turn in fees to employer. See: § 920.20.55(e)(2)(A). <p>If NO, then you are on annual leave or LWOP.</p> <ul style="list-style-type: none"> • No official travel expenses from employer. • Keep fees.

§ 920.20.60 Military Leave

(a) Definition

Military leave is time off without loss in pay, time, or performance rating for certain types of active or inactive duty in the National Guard or the Reserves of the Armed Forces. 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 ([5 U.S.C. § 6323](#)). **See also:** [Department of Defense Instruction 1215.6 \(Feb. 7, 2007\)](#).

(b) Coverage

Any judiciary employee whose appointment is not limited to one year (permanent or temporary indefinite) is entitled to military leave, whether covered by [subchapter I of 5 U.S.C. chapter 63](#) or not.

(c) Accrual

- (1) A full-time employee who is member of the National Guard or Reserves of the Armed Forces accrues 15 days or 120 hours per year (prorated for part-time employees) of military leave for active duty (including extended active duty) and active or inactive duty training. **See:** [5 U.S.C. § 6323\(a\)](#). Military leave accrues at the beginning of each fiscal year and should be credited on October 1 of each year. An employee's civilian pay remains the same for periods of military leave under this paragraph. An employee may carry over a maximum of 15 days into the next fiscal year.
- (2) A full-time employee is provided an additional 22 workdays per calendar year (prorated for a part-time employee) for emergency duty as ordered by the President, the Secretary of Defense, or a state governor for employees who perform military duties in support of civil authorities in the protection of life and property or who perform full-time military service as a result of a call or order to active duty in support of a contingency operation as defined in [10 U.S.C. § 101\(a\)\(13\)](#) (as set forth below). **See:** [5 U.S.C. § 6323\(b\)](#). An employee's civilian pay is reduced by the amount of military pay for the days of military leave provided under this paragraph. However, an employee may choose not to take military leave and instead to use annual leave or earned compensatory time in order to retain both civilian and military pay.

Note: The term “contingency operation” is defined as a military operation that (a) is designated by the Secretary of Defense as an operation in which members of the armed forces are or may become involved in military actions, operations, or hostilities against an enemy of the United States or against an opposing military force; or (b) results in the call or order to, or retention on, active duty of members of the uniformed services under [10 U.S.C. §§ 688, 12301\(a\), 12302, 12304, 12305, or 12406](#); [10 U.S.C. chapter 15](#); or any other provision of law during a war or during a national emergency declared by the President or Congress.

- (3) Additional military leave may be provided 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. **See:** [5 U.S.C. § 6323\(c\)](#).

(d) Request

A request for military leave should be made in writing and accompanied by a copy of military orders.

(e) Charge

- (1) An employee may be charged military leave only for hours that the employee would otherwise have worked and received pay. The minimum charge to military leave is one hour.
- (2) Military leave for inactive duty training is charged only to cover the period of training and necessary travel (weekends and holidays within the period of military service are not charged).
- (3) An employee performing military service is entitled, upon request, to use any accrued annual leave, military leave, sick leave, as appropriate, or LWOP (either continuous or intermittently) while on active duty or active/inactive duty training.

Note: An employee who enters on active duty in the armed forces is entitled to request a lump sum payment for any accumulated and current accrued annual leave. **See:** [5 U.S.C. § 5552\(1\)](#).

§ 920.20.65 Law Enforcement Funeral

A federal LEO (e.g., probation or pretrial services officer) may be excused from duty without loss of pay or status to attend the funeral of a fellow federal LEO who was killed

in the line of duty. **See:** [5 U.S.C. § 6328](#). When so excused from duty, attendance at such service will be considered an official duty of the officer.

§ 920.20.70 Leave Without Pay

(a) Definition

Leave without pay (LWOP) is an approved absence without pay granted at the request of an employee in lieu of annual or sick leave.

(b) Granting

LWOP is not an entitlement (i.e., it is granted entirely at management's discretion (except for unpaid leave authorized under [§ 920.20.35 \(Family and Medical Leave Act\)](#)) by the supervisory level designated by a court or FPDO). LWOP should be granted only with a reasonable expectation that the employee will return to the position (except when the leave is pending an employee's claim for disability retirement or compensation). A request for LWOP in excess of 30 days should be approved by an appointing officer. The value to the government or the serious needs of the employee should be sufficient to offset costs and administrative inconvenience. Granting of LWOP for more than 30 days should result in at least one of the following:

- (1) Increased job ability;
- (2) Protection or improvement of the employee's health;
- (3) Retention of a desirable employee; and/or
- (4) Fostering a government program (e.g., Peace Corps).

(c) Minimum Increment

The minimum increment of LWOP that can be charged is 15 minutes. By local court policy, a court may establish a larger leave increment up to one hour.

(d) Effect of LWOP on Leave Accrual

Whenever a full-time employee accrues 80 hours in a nonpay status, such as LWOP, the employee does not earn annual leave and/or sick leave for the pay period in which the 80th hour occurs. A part-time employee

accrues leave only while in a pay status and therefore does not accrue leave while on LWOP.

Note: LWOP includes time for which an employee receives compensation from OWCP for a workers' compensation injury or illness; an employee does not accrue leave for a pay period in which the 80th hour of LWOP occurs (e.g., accrues no leave while receiving compensation from OWCP for a full biweekly pay period).

§ 920.20.75 Absence Without Leave

(a) Definition

Absence without leave (AWOL) is an absence from duty which is not authorized or approved, or absence for which a leave request has been denied. Although AWOL is not a disciplinary action, it may become the basis for initiating disciplinary action.

(b) Charging

An employee who fails to return to duty from a period of approved leave, or who is absent without prior approval and fails to notify a leave-approving official within a reasonable amount of time (e.g., one hour) from the beginning of the workday, may be charged AWOL. If it is later determined by management that the absence was excusable and the employee submits a request for approved leave, the AWOL may be changed to annual, sick or LWOP as appropriate.

§ 920.20.80 Home Leave

An employee stationed outside the United States who is covered by the 360-hour annual leave accumulation limit (**see:** [§ 920.20.25\(d\)](#)) earns and may be granted home leave under [5 U.S.C. § 6305\(a\)](#) and [5 CFR 630, subpart F \(Home Leave\)](#).

§ 930 Time and Attendance Reporting

§ 930.10 Overview

§ 930.10.10 Purpose

The purpose of this policy is to ensure that courts and FPDOs have time and attendance systems and procedures, whether automated or manual, that provide for:

- (a) proper review and approval of time and attendance,
- (b) maintenance of complete and accurate time and attendance and leave records, and
- (c) accurate reporting of employees' paid and unpaid hours to the AO Human Resources Office (HRO).

§ 930.10.20 Authority

The Government Accountability Office (GAO) issued guidance related to controls over employee time and attendance reporting in its report, *Maintaining Effective Control Over Employee Time and Attendance Reporting*, [GAO-03-352G](#), January 2003. Under [5 CFR 630.101](#), the head of an agency (which includes the judiciary) is required to maintain an account of leave for each employee according to methods prescribed by GAO. The policy in this section conforms to the guidelines established by the GAO.

§ 930.20 Policy

§ 930.20.10 Establishing Time and Attendance Systems

- (a) Each court or FPDO must establish a time and attendance system (manual or automated) that, at a minimum:
 - (1) Ensures that complete and accurate records are maintained of employee time and attendance and leave accrual, usage, and accumulation, consistent with this policy;
 - (2) Identifies officials who are responsible for certifying the time and attendance of all biweekly employees each pay period, including the use of leave hours, the earning or use of compensatory time, and any nonpaid time (time approvers);
 - (3) Identifies employees who are responsible for assisting with the recording of time and attendance (time administrators);
 - (4) Identifies an official, usually a court unit executive or federal public defender, who is responsible for certifying the payroll for all biweekly employees (payroll certifying officer (PCO));
 - (5) Ensures that the AO-HRO-CHRD Payroll Services Branch is given timely notification of the number of hours that should be paid for all employees, each pay period;

- (6) Provides for internal controls to ensure that local processes are working reliably;
- (7) Supports the preparation and certification of a [Record of Leave Data \(Form SF 1150\)](#) for:
 - (A) The lump-sum payment for accumulated annual leave at separation from employment;
 - (B) Transfer of accumulated sick and/or annual leave upon an employee's transfer within the judiciary or to another federal agency; and/or
 - (C) Crediting sick leave for retirement under the CSRS or FERS.

§ 930.20.20 Roles and Responsibilities

- (a) Time Approvers
 - (1) A time approver is a manager or supervisor, usually the immediate supervisor, responsible for and most knowledgeable of an employee's attendance and leave.
 - (2) Time approvers review employee time information and approve employee timesheets. For each employee the cognizant time approver certifies as correct the timesheet (whether manual or in an automated system) recording the number of paid hours the employee should receive for a pay period, the number of compensatory time hours earned or used, and the number of leave hours used, and notifies the PCO of the number of paid/unpaid hours.
 - (3) Serving as a time approver is subject to the following conditions:
 - (A) No individual may approve his or her own timesheet, or the timesheet of the official to whom he/she reports.
 - (B) In all cases assignment of the time approval responsibility should be made to the extent possible to an individual who is in a position to observe (or be aware of) an employee's time and attendance.
 - (C) If the time approver for an employee is not in the supervisory chain, the delegation of time approver responsibility must