

Guide to Judiciary Policy

Vol. 12: Human Resources

Ch. 9: Leave and Attendance

(*Note: No [unauthorized](#) disclosure of this policy guidance outside the judiciary is permitted.*)

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§ 910 Work Schedules

§ 910.10 Overview

§ 910.10.10 Purpose

This section is intended to ensure that organizations establish work schedules for employees consistent with Judicial Conference policy.

§ 910.10.20 Authority

- (a) The Judicial Conference has adopted an 80-hour biweekly administrative work schedule for full-time court employees ([JCUS-SEP 90](#), p. 91).
- (b) In September 1987, the Judicial Conference approved a policy to require a court that places some of its reporters on a regular tour of duty to place all reporters in the same location on a regular tour of duty, although courts may, for good and sufficient reasons when approved by their judicial councils, exempt any reporters on staff at the time of adoption of this policy ([JCUS-SEP 87](#), p. 63).

§ 910.15 Basic Requirement

The requirement for an 80-hour biweekly work schedule means that all full-time court, circuit executive office, bankruptcy administrator office (the term “court” will be used in the remainder of this chapter to apply to courts and the offices of circuit executives and bankruptcy administrators), and federal public defender organization (FPDO) employees must be in a work or paid leave status for 80 hours in each biweekly pay period to receive full pay.

§ 910.20 Court Responsibility

Each court or FPDO is responsible for establishing hours of operation and permissible work schedules for its employees, based on court and organizational requirements, and the 80-hour biweekly requirement.

§ 910.30 Guidelines for Work Schedules

- (a) Local policy may establish daily work schedules and tours of duty that are traditional (five eight-hour days per week), or alternative (compressed or flexible), within each biweekly pay period, consistent with organizational objectives and the duties and requirements of each position. For information on implementing alternative work schedules, including the treatment of holidays and emergency closures within an alternative work schedule, a court may consider the Office of Personnel Management's (OPM) Handbook on Alternative Work Schedules, which provides guidance for the executive branch but is not binding on the judiciary. **See also:** [HR Manual, Ch. 9, Sec. 3 and Sec. 4.](#)
- (b) A lunch or other meal period is a period of time interrupting a basic workday during which the employee is in a nonpaid and nonwork status. For example, a full-time employee with an eight-hour day and a 30-minute lunch period has a total daily tour of duty of eight and a half hours, including the 30-minute lunch period. The duration of meal periods is set at the discretion of the employing court or FPDO.
- (c) Depending on the nature of a position and the flexibility an employee may have to leave his or her work station during the workday, a court or FPDO may elect to provide up to two paid 15-minute rest breaks per day. For example, a defined break of this nature may be appropriate when mobility is restricted by an employee's position or duties.

§ 910.40 Holidays

- (a) The following are authorized by the Judicial Conference as official "federal public holidays" honored by courts and FPDOs:
- New Year's Day, January 1;
 - Martin Luther King's Birthday, 3rd Monday in January;
 - Washington's Birthday, 3rd Monday in February;
 - Memorial Day, last Monday in May;
 - Independence Day, July 4;
 - Labor Day, 1st Monday in September;
 - Columbus Day, 2nd Monday in October;
 - Veterans Day, November 11;
 - Thanksgiving Day, 4th Thursday in November;
 - Christmas Day, December 25; and
 - Inauguration Day, January 20 (every four years for employees whose duty station is in the District of Columbia; Montgomery, Charles, and Prince George's Counties in Maryland; Arlington and Fairfax Counties in Virginia; and the cities of Alexandria and Falls Church in Virginia).

- (b) An employee is entitled to pay for a holiday so long as he or she is in a pay status on the workday either preceding or following the holiday. The employee is paid for the holiday based on the presumption that, but for the holiday, the employee would have worked. An employee in non-pay status (e.g., LWOP or furlough) for the entire workday before a holiday and the entire workday after a holiday is not paid for the holiday. See: [56 Comp. Gen. 393](#) (1977).

§ 920 Leave and Other Absences

§ 920.10 Overview

§ 920.10.10 Purpose

Judiciary leave policy derives from 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. No.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 court and 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 (including pro se, death penalty, or other law clerks who are appointed by a court) to circuit judges, district judges, 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](#). The Judicial Conference discourages appointing judges or local rules from including term law clerks under the Annual and Sick Leave Act of 1951 (JCUS-SEP 07, pp. 25-26).

Note: The [5 U.S.C. chapter 63, subchapter I](#) exemption described in § 920.10.30(b) and (c) 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 or judge’s secretary who is exempt from [5 U.S.C. chapter 63, subchapter I](#) remains eligible for court leave, military leave, disabled veteran 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:** [§ 920.40.30\(o\)](#).

- (c) Judges’ secretaries hired prior to September 30, 1983, who were not covered as of that date by [5 U.S.C. chapter 63, subchapter I](#) ([JCUS-SEP 83](#), pp. 49-50) are exempt. **See:** [§ 920.10.30\(b\) Note](#).
- (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 from [5 U.S.C. chapter 63, subchapter I](#) but remain eligible for court leave, military leave, disabled veteran 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:** [§ 920.40.30\(o\)](#).

§ 920.10.40 Leave Request and Approval

- (a) Leave-Approving Officials
- (1) 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.
- (A) For chambers staff, a judge is the leave-approving official.

(B) 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.

(2) 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:** [§ 920.75.50\(d\)](#). Documentation may also be required to support a request for:

- (1) Family and Medical Leave Act (FMLA) leave (**see:** [§ 920.45.70](#));
- (2) Voluntary Leave Transfer Program (VLTP) recipient status (**see:** [§ 920.80.20\(a\)\(3\)](#));
- (3) military duty or court leave (**see:** [§ 920.65\(d\)](#));
- (4) bone marrow or organ donor leave; or
- (5) disabled veteran leave (**see:** [§ 920.33.50](#)).

§ 920.10.50 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 or FPDO 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 are not able to telework or report may request permission to use compensatory time-off, annual leave, 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 to the public” for a full day due to a COOP event, inclement weather, or similar situation, all dismissed employees unable to perform work at their normal worksite or travel safely to or from their normal worksite, a telework site, or other approved location, may be 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 [§ 920.10.50\(a\)\(1\)\(A\)](#).

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 for those employees unable to perform

work at their normal worksite or travel safely to or from their normal worksite, a telework site, or other approved location.

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:** [§ 920.40.30\(a\)](#). 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 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:** [§ 920.20.50\(a\)](#) for annual leave, or [§ 920.75.40\(b\)](#) for sick leave policies when an employee transfers to a position not covered by [5 U.S.C. chapter 63, subchapter I](#).

§ 920.15 Absence Without Leave

(a) Definition

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 Annual Leave

§ 920.20.10 Definition

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

§ 920.20.15 Eligibility

(a) 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.

(b) 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.

§ 920.20.20 [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.

§ 920.20.20 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

(a) 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\(f\)](#).

(b) 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.

(c) Federal Uniformed/Military Service

(1) 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:** § 920.20.20(c)(2).

(2) 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.

- (d) 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.
- (1) 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.”
- (2) “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](#).

§ 920.20.25 [Accumulation Limit](#)

- (a) 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.
- (b) 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](#).

§ 920.20.30 Use

- (a) 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.
- (b) 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:** [§ 920.45](#).
- (c) An employee performing service with the uniformed services may elect to use any accrued annual leave during such service.
- (d) 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.

§ 920.20.35 Scheduling and Approval

- (a) 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.

- (b) 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 [§ 920.20.45](#)).

§ 920.20.40 [Advancing](#)

- (a) 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.
- (b) 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.
- (c) 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.

§ 920.20.45 [Forfeiture and Restoration](#)

- (a) Forfeiture
 - (1) 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.
 - (2) 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.

(b) Restoration

- (1) 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:

(A) Administrative Error

- (i) 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.
- (ii) A court or FPDO's failure to remind employees that annual leave must be 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, is not an administrative error. Employees are presumed to have constructive knowledge of annual leave statutory requirements relating to them. **See:** [56 Comp. Gen. 470](#) (1977).

(B) 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.

(C) 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.

(2) 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.

(3) Expiration of Restored Annual Leave

(A) 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.

(B) Restored annual leave that is not used within the established time limit is forfeited with no further right to restoration.

(C) 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.

- (D) 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).

§ 920.20.50 Lump-Sum Payment at Separation

- (a) 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.
- (b) 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](#).
- (c) 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](#).

§ 920.25 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).

§ 920.30 Court Leave

§ 920.30.10 Purpose

This subsection describes the leave status of employees 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.

§ 920.30.20 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](#).

§ 920.30.30 Application

- (a) 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:
 - (1) **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.
 - (2) **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.
- (b) 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.

§ 920.30.40 Request and Charge

- (a) A request for court leave should be made in writing, using a specified form, email, 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.
- (b) 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 must 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 request annual leave, sick leave, or LWOP, as appropriate.

- (c) An employee must report back to work when:
 - (1) discharged or released from jury duty or witness service for a full day; or
 - (2) released for a full day or more subject to call (standby).

§ 920.30.50 Fees and Expenses

- (a) Jury or Witness Fees and Expenses
 - (1) Travel Expenses
 - (A) An employee is **not** entitled to official travel expenses from the employing court or FPDO to perform jury or witness service, unless appearing as a witness in an official capacity.
 - (B) When appearing as a witness in an official capacity (e.g., appearing before the employing court; testifying or producing official records on behalf of the United States or District of Columbia; or testifying in an official capacity or producing official records on behalf of a party other than the United States or the District of Columbia), 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\(d\)\(2\)](#).
 - (2) Expense Reimbursements

An employee may keep transportation or meal reimbursements for expenses from a federal, state, or local court.
 - (3) Fees for Service
 - (A) An employee does not receive fees for service during the regular work schedule as a juror in a court of the United States or the District of Columbia, or as a witness on behalf of the United States or the District of Columbia.

- (B) 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 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.
- (C) An employee must turn in fees for service as a juror or witness to the employing court or FPDO, when the fees serve as compensation for juror or witness service while on official duty, or while the employee was on court leave. Such fees will be credited by the employing court or FPDO against the employee’s pay.

(4) Juror or Witness Fees for Service Outside Work Hours

An employee may keep all juror or witness fees from any court for service during hours or days outside the regular work schedule, when not on court leave (e.g., while on annual leave, leave without pay, after official work hours or on weekends and federal holidays).

(b) 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.

§ 920.30.50(d) 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="padding-left: 40px;"><i>OR</i> appearing before your employing court,</p> <p style="padding-left: 40px;"><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: § 920.30.50(a)(1)(B). • Turn in service fees to employer. See: § 920.30.50(a)(3)(C). • Keep travel and meal reimbursements. <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 either yes or no, keep travel and meal reimbursements.</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 service fees to employer. See: § 920.30.50(a)(3)(C).

§ 920.30.50(d) Fees and Leave Status During Witness Service	
	<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.

§ 920.33 Disabled Veteran Leave

§ 920.33.10 Definitions	
Disabled Veteran Leave	Provides a one-time credit of paid leave to any Federal employee hired on or after November 5, 2016, who is a veteran with a service-connected disability rated at 30 percent or more for the purposes of undergoing medical treatment for such disability for which sick leave could regularly be used. Wounded Warriors Federal Leave Act of 2015 (Public Law 114-75, November 5, 2015).
Service-Connected	Refers to a disability that was incurred or aggravated in the line of duty in the active military, naval, or air service as determined by the Veteran Benefits Administration. See: 38 U.S.C. § 101(16) .
Veteran	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) .

§ 920.33.20 Applicability

- (a) Any judiciary employee whose appointment has an established tour of duty under which leave is charged for periods of absence (e.g., employees with an intermittent work schedule are exempt) is entitled to disabled veteran leave, whether covered by [subchapter I of 5 U.S.C. chapter 63](#) or not.
- (b) Disabled veteran leave is only available to eligible employees hired on or after November 5, 2016. The term “hired” refers to employees who are:
 - (1) newly hired with no previous Federal Service,
 - (2) reappointed with at least a 90-day break in service, and
 - (3) military reservists or members of the National Guard who return to duty in their civilian positions after a period of military service (during which the individual was in continuous civilian leave status).
- (c) Employees must provide their court or FPDO with acceptable documentation from the Veterans Benefits Administration certifying that the employee has a qualifying service-connected disability.

- (1) For the purposes of disabled veteran leave, a qualifying service-connected disability is defined as a disability rating at 30 percent or more, as determined by the Veterans Benefits Administration, to include a combined degree of disability of 30 percent or more that reflects the combined effect of multiple individual disabilities.
- (2) A temporary disability rating issued by the Veterans Benefits Administration under 38 U.S.C. § 1156 is considered a valid rating for as long as such rating is in effect.

§ 920.33.30 Leave Credit

- (a) Eligible full-time employees receive a one-time credit of 104 hours.
- (b) Offset

Eligible employees with part-time, seasonal, or uncommon tours of duty will be provided a proportionally equivalent amount of leave based on their established tour of duty for the period of time designated. The amount of disabled veteran leave initially credited to an employee must be offset by the number of hours of sick leave an employee has credited to his or her account as of the first day of employment. For crediting leave for part-time employees, **see:** [Human Resources Office memo, Oct. 25, 2016, on Disabled Veteran Leave.](#)

§ 920.33.40 Usage

Disabled veteran leave may only be used for the purpose of medical treatment of a qualifying service-connected disability.

§ 920.33.50 Request and Approval

- (a) An employee must request advanced approval (written, oral, or electronic) for disabled veteran leave unless the need for leave is critical and not foreseeable.
- (b) The employee is required to self-certify that the disabled veteran leave is being used (or was used) for the treatment of the qualifying service-connected disability.
- (c) When an employee will be absent from duty due to a personal illness or injury related to the qualifying service-connected disability, 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), which may be grounds for disciplinary action.

- (d) Upon return to duty following unscheduled disabled veteran 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).
- (e) A court or FPDO may grant disabled veteran leave only when the need for disabled veteran leave is supported by administratively acceptable evidence.

(1) Self-Certification

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.

(2) Medical Certification or Other Supporting Evidence

A court or FPDO may require a medical certificate or other administratively acceptable evidence to support the use of disabled veteran leave for an absence in excess of three workdays or for a lesser period when the court or FPDO determines it is necessary.

(3) Time Period for Providing Certification or Other Supporting Evidence

- (A) An employee must provide administratively acceptable evidence for a request for disabled veteran leave no later than 15 calendar days after the date the court or FPDO requests such administratively acceptable evidence or medical certification.
- (B) If it is not practicable under the particular circumstances to provide administratively acceptable evidence 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.
- (C) An employee who does not provide the required evidence or medical certification within the specified time period is not entitled to disabled veteran leave.

- (D) In the interim before required administratively acceptable evidence or medical certification is provided, an employee may be placed on provisional sick leave.
- (E) 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.

§ 920.33.60 Retroactive Substitution

- (a) In cases where an eligible employee does not provide certification as determined by the Veterans Benefits Administration of the qualifying service-connected disability before receiving medical treatment for such disability, the employee may still use disabled veteran leave through retroactive substitution. The medical treatment must have occurred within the employee's 12-month eligibility period.
- (b) The employee is entitled to substitute approved disabled veteran leave retroactively for a period of absence for qualifying medical treatment, excluding periods of suspension or absence without leave (AWOL), but including approved leave without pay (LWOP), sick leave, annual leave, compensatory time off, or other paid time off.

§ 920.33.70 Benefit Period

- (a) Disabled veteran leave is available during the continuous 12-month period following the first day of employment, which is the first day in a covered position occurring on the later of:
 - (1) The earliest date an employee is hired after the effective date of a qualifying disability; or
 - (2) The effective date of the qualifying disability when the hiring event occurs before the effective date of Veterans Benefits Administration certification of a qualifying disability.
- (b) The leave benefit expires at the end of the 12-month eligibility period, and any unused leave is forfeited at that time. An employee will not receive a lump-sum payment for any unused disabled veteran leave.
- (c) Disabled veteran leave is a leave category that is a one-time benefit. Once an employee has been provided this leave benefit, he or she will not have any further entitlements to the benefit.

§ 920.35 Emergency Leave Transfer Program

§ 920.35.10 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 No. 109-229, effective May 31, 2006.

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

§ 920.35.20 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](#).

§ 920.35.30 Policy

- (a) 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.
 - (1) For the purposes of this policy, “chief judge” means a chief judge or his or her designee (circuit executive, federal public defender, or court unit executive).
 - (2) Employees are required to follow any local COOP directives, including local telework requirements.
 - (3) When a court facility is closed due to a disaster, employees performing excepted activities or emergency staff should report to the worksite to assist with disaster recovery. Employees not performing excepted activities 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.
- (b) 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).

§ 920.35.40 Statutory Requirements

- (a) 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.
- (b) The chief judge of a court affected 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 affected 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.
- (c) A court or FPDO may advance annual or sick leave, up to the limits stated in [§ 920.20.40](#) and [§ 920.75.60](#), 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.
- (d) 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.
- (e) 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\(a\)](#).
- (f) 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, if needed). The following form may be used by an ELTP recipient: [OPM 1637 \(Application to Become a Leave Recipient\)](#).
- (g) 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 \(Request to Donate Annual Leave\)](#).

- (h) A leave recipient must use donated leave for purposes related to the disaster for which the leave was donated.
- (i) 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.
- (j) 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.
- (k) 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.
- (l) A recipient court or FPDO will return any unused leave donations back to the donor court or FPDO, in aggregate.
- (m) 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.
- (n) 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.

§ 920.35.50 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.

§ 920.40 Excused Absence

§ 920.40.10 Definition

An excused absence is an absence from duty without loss of pay or charge to leave. Excused absence is sometimes referred to as administrative leave.

§ 920.40.20 Statutory and Regulatory Background

There is no specific statutory or regulatory authority under which federal employees may be excused from their official duties without loss of pay or charge to leave. However, the Comptroller General has recognized certain situations where an agency could appropriately excuse employees for brief periods of time without charge to leave or loss of pay, generally for emergency/disaster closures, national interests, civil defense, civic, charitable, or community support activities such as voting and blood drives. Comptroller General decisions have generally limited excused absences to relatively short periods of time not exceeding three consecutive work days in a single period of excused absence.

§ 920.40.30 Appropriate Use of Excused Absence

Courts and FPDOs are urged to use discretion and restraint in granting excused absences. Some of the more common situations in which a court or FPDO may excuse absence without charge to leave include the following:

- (a) Brief absences and tardiness. **See:** [§ 920.10.50\(a\)\(2\)](#).
- (b) Closure of a court facility in response to emergencies, disasters, or hazardous weather conditions, or other circumstances as determined by the court or FPDO (typically, some staff might be excluded from the excused absence approval).
- (c) Absence for a period of time equal to the time worked by the employee on a holiday or on a day on which employees are generally granted excused absence (e.g., situations in which some staff are required to report for work or to remain on duty).
- (d) Registration and voting (excused absence normally should be warranted only when the polls are open less than 3 hours before and after an employee's daily tour of duty).
- (e) Donating blood.
- (f) Employment dispute resolution or counseling.
- (g) Conferences or conventions.
- (h) Taking a bar exam.
- (i) Employee assistance program counseling.
- (j) Responding to an Adverse Action

The Office of the General Counsel of the Administrative Office of the U.S. Courts (AO) advises that, consistent with Comptroller General decisions, courts and FPDOs should authorize no more than three to five workdays of excused absence for an employee to respond to an adverse action that specifically involves termination or suspension.

(k) Volunteer Activities

Absence for volunteer activities should be limited to situations that comply with the [Codes of Conduct for Judicial Employees \(Guide, Vol. 2A, Ch. 3\)](#) or the [Codes of Conduct for Federal Public Defender Employees \(Guide, Vol. 2A, Ch. 4\)](#), are not specifically prohibited by law, and satisfy one or more of the following criteria: The activity (1) is directly related to the court or FPDO's mission; (2) is officially sponsored or sanctioned by the court or FPDO; (3) will clearly enhance the professional development or skills of the employee in his or her current position; or (4) is brief and has been determined to be in the interest of the court or FPDO. Ultimately, it is the responsibility of each court or FPDO to balance support for employee volunteer activities with the need to ensure that work requirements are fulfilled and that court or FPDO operations are conducted efficiently and effectively.

(l) Disaster Relief and Recovery

An employee may be excused from duty without loss of pay to assist with disaster relief and recovery if requested by a federal agency or disaster relief organization to assist in emergency law enforcement, relief, and clean-up efforts in affected communities authorized by federal, state, or other officials having jurisdiction, if an employee's participation in such activities has been approved by his or her employing court or FPDO. An employee must provide documentation to his or her employing court or FPDO of the agency request and time participating in voluntary service (certified by the supervisor or other appropriate agency official). This policy does not apply to judiciary employee members of the National Guard or Reserves who are called up to assist in disaster relief and recovery efforts, since they are entitled to military leave under [5 U.S.C. § 6323\(b\)](#).

(m) An employee may be excused from duty upon return from active duty performed in conjunction with specific military operations. For an example, **see:** [Director's memo, Nov. 28, 2003, The President's Memorandum on the Return of Activated Military Members to Federal Civilian Employment](#).

(n) Workplace Injury

If an employee is unable to complete his or her scheduled workday on the day of a workplace injury, the time loss is considered an excused absence. **Note:** Under the Office of Workers' Compensation Program for federal employees, the Continuation of Pay (COP) period begins with the first day the employee loses time from work after the date of injury provided that it begins within 45 days of the injury unless the injury occurs before the beginning of the work day. If the injury occurs before the work shift begins, the date of injury may be charged as the first day of the 45-day period of COP. **See:** [20 CFR 10.215](#).

(o) Military funeral

An employee may use up to three days of excused absence to make arrangements for, or to attend the funeral of, or memorial service for, an immediate relative who died as a result of wounds, disease, or injury incurred while serving as a member of the armed forces in a combat zone. "Immediate relative" 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 was the equivalent of a family relationship. For a more detailed definition of "immediate relative," **see:** [5 CFR 630.803](#).

§ 920.40.40 Inappropriate Use of Excused Absence

Granting excused absence for purposes that are entirely personal to the employee (e.g., on an employee's birthday or anniversary date of employment, or for shopping) or in situations that are covered by existing leave provisions (e.g., absence for a funeral except as defined in [§ 920.40.30\(o\)](#)) is inappropriate. Courts and FPDOs may grant time-off awards to employees for job performance or special acts or service, which they may use (at their discretion subject to supervisory approval) for such personal purposes. Any such award must be granted in accordance with a court's or FPDO's formal employee recognition program. **See:** [Guide, Vol. 12, Ch. 8 \(Performance and Awards\)](#) for court policy, or [Appx. 9A \(Time-Off Awards in Federal Public Defender Organizations\)](#) for FPDO policy.

§ 920.45 Family and Medical Leave Act

§ 920.45.10 Definitions	
Covered Active Duty	<p>(1) Duty during the deployment of a member of a regular component of the Armed Forces to a foreign country; or</p> <p>(2) 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>(1) 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>(2) 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 § 920.45.30(a) , and also the next of kin (nearest blood relative) only for the care of a service member under § 920.45.30(b) .
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 § 920.75.10 .
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 in <i>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</p>

§ 920.45.10 Definitions	
	under the FMLA. See: OPM memorandum, Aug. 31, 2010, Interpretation of "Son or Daughter" Under the Family and Medical Leave Act.
Spouse	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.
Veteran	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).

§ 920.45.20 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.

§ 920.45.30 FMLA Entitlement

- (a) Covered employees are entitled to a total of up to 12 workweeks of unpaid leave during any 12-month period for the following purposes:
- (1) The birth of a son or daughter of the employee and the care of such son or daughter;
 - (2) The placement of a son or daughter with the employee for adoption or foster care;
 - (3) The care of a spouse, son or daughter, or parent of the employee who has a serious health condition; and/or
 - (4) A serious health condition of the employee that makes the employee unable to perform the essential functions of his or her position.
 - (5) 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.](#)

(b) 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.

- (1) 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.
- (2) 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.

§ 920.45.40 Use

(a) Leave Period

(1) 12 Workweeks of FMLA Leave

- (A) The 12-month period referred to in [§ 920.45.30\(a\)](#) 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.)

- (B) 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\(e\)](#).
- (C) 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.

(2) 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 [§ 920.45.30\(b\)](#), an employee is entitled to a combined total of 26 administrative workweeks of basic FMLA leave under [§ 920.45.30\(a\)](#) and FMLA leave to care for a service member with a serious injury or illness under [§ 920.45.30\(b\)](#). 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. **See:** [5 U.S.C. § 6382\(a\)\(4\)](#).

(b) 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.

- (1) Only with agreement between the employee and the leave-approving official in the following cases:
 - (A) For the birth and/or care of a son or daughter of the employee, or
 - (B) The placement of a son or daughter with the employee for adoption or foster care;

- (2) When medically necessary for:
 - (A) The care of a spouse, son, daughter, or parent of an employee who has a serious health condition;
 - (B) A serious health condition of the employee that makes the employee unable to perform the essential functions of his or her position; or
 - (C) 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
- (3) 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 [§ 920.45.40](#), 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.

- (c) 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.

§ 920.45.50 Substitution of or Combination with Annual or Sick Leave

- (a) 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 [§ 920.75](#). 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:** [§ 920.75.20\(d\)](#).

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 [§ 920.45.30\(b\)](#). 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.

- (b) 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:** [§ 920.20.30](#). Use of any sick leave is subject to the conditions and requirements stated in [§ 920.75](#).
- (c) Compensatory time off may not be substituted for FMLA.
- (d) 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 630.909\(d\)](#).

§ 920.45.60 Job Benefits and Protection

- (a) 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.
- (b) 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.
- (c) 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.

§ 920.45.70 Notification and Medical Certification

- (a) Court or FPDO managers are responsible for informing employees of the entitlements and responsibilities under the FMLA, including employee obligations.
- (b) 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.
- (c) 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.
- (d) 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.

- (1) 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:

- (A) The date the serious health condition commenced;

- (B) 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;
 - (C) The appropriate medical facts within the knowledge of the health care provider regarding the serious health condition, including a general statement as to the incapacitation, examination, or treatment that may be required by a health care provider.
- (2) When medical certification is required in the case of an employee's serious health condition, the medical certification must also include:
- (A) 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
 - (B) 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.
- (3) 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:
- (A) A statement from the health care provider that the spouse, son, daughter, or parent of the employee requires psychological comfort and/or physical care; needs assistance for basic medical, hygienic, nutritional, safety, or transportation needs or in making arrangements to meet such needs; and would benefit from the employee's care or presence; and

- (B) A statement from the employee on the care he or she will provide and an estimate of the amount of time needed to care for his or her spouse, son, daughter, or parent.
- (4) 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 [§ 920.45.70\(d\)](#).
 - (A) 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.
 - (B) 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.
- (5) 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.
- (6) Time Limit for Providing Medical Certification to Support a Request for FMLA Leave
 - (A) 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.
 - (B) An employee must provide the written medical certification required by [§ 920.45.70\(d\)](#), 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.

- (C) 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.

(e) 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).

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

- (1) 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:
 - (A) The court or FPDO must have a uniformly applied policy for similarly situated employees (i.e., same occupation or same serious health condition);
 - (B) The court or FPDO must pay the expenses for obtaining the written medical certification;

- (C) The employee must be notified of the requirement before leave commences, or to the extent practicable in emergency medical situations; and
- (D) 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.

- (2) 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 \(i\)](#).

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

(g) Security and Confidentiality of FMLA Medical Records

The security and confidentiality of any written medical certification documents required under § 920.45.70 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 \(Certification of Health Care Provider for Family Member's Serious Health Condition\)](#).

§ 920.45.80 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.

§ 920.50 Funeral for Military or Law Enforcement

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.

§ 920.55 Home Leave

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

§ 920.60 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

(1) LWOP is not an entitlement (i.e., it is granted at management's discretion by the supervisory level designated by a court or FPDO) except for unpaid leave authorized under:

- (A) the Family and Medical Leave Act (**see:** [§ 920.45](#));
- (B) the Uniformed Services Employment and Reemployment Rights Act of 1994 (**see:** [5 CFR 353.106](#)); and
- (C) Executive Order 5396, July 17, 1930, which provides that disabled veterans are entitled to LWOP for necessary medical treatment.

(2) 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 benefit to the government in granting such leave or the serious needs of the employee in obtaining such leave 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:

- (A) Increased job ability;
- (B) Protection or improvement of the employee's health;
- (C) Retention of a desirable employee; and/or
- (D) 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

When 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).

§ 920.65 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 22 workdays per calendar year (prorated for a part-time employee) who is a member of a reserve component of the Armed Forces, as described in [10 U.S.C. § 10101](#), or the National Guard, as described in [32 U.S.C. § 101](#); **and**
- (A) performs, for the purpose of providing military aid to enforce the law or for the purpose of providing assistance to civil authorities in the protection or saving of life or property or the prevention of injury:
- (i) Federal service under [10 U.S.C. § 331](#), [332](#), [333](#), or [12406](#), or other provision of law, as applicable, or
 - (ii) full-time military service for his or her State, the District of Columbia, the Commonwealth of Puerto Rico, or a territory of the United States; or
- (B) performs 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\(a\)\(13\)](#).

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 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](#), [12304a](#), [12305](#), or [12406](#); [10 U.S.C. chapter 15](#); [14 U.S.C. § 712](#); 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.
- (4) Use of paid military leave places the employee in a paid leave status entitling the employee to accrue leave for that period, even if the use of such paid leave interrupts a period of LWOP for military purposes.

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\(1\)](#).

§ 920.70 Requiring or Offering a Medical Examination

- (a) A court or FPDO may **require** an employee to provide medical certification from a health care provider that the employee is fit to perform the essential functions of his or her position under one of the following conditions:
 - (1) In certain circumstances when sick leave is substituted under FMLA leave (**see:** [§ 920.45.70\(f\)](#)); or
 - (2) 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\(b\)\(3\)](#)).

- (b) 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.

- (c) 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** 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 that may require agency action. **See:** [5 CFR 339.302](#).

- (d) When a court **offers** a medical examination, it must inform the employee in writing of its reasons for doing so and the consequences of failure to cooperate.

§ 920.75 Sick Leave

§ 920.75.10 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 due to 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

§ 920.75.10 Definitions	
	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 .

§ 920.75.20 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.)

(a) [Personal Use](#)

When an employee:

- (1) Receives medical, dental, or optical examination or treatment;
- (2) Is incapacitated for the performance of his or her duties by physical or mental illness, injury, pregnancy, or childbirth; or
- (3) 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 [§ 920.75.10](#)).

(b) 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; attending 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 (including under FMLA). A court or FPDO may request administratively acceptable evidence for absences related to adoption.

(c) General Family Care and Bereavement

When an employee:

- (1) 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;
- (2) 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 [§ 920.75.10](#)); or
- (3) 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).

(d) 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.

(e) 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).

§ 920.75.30 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.

§ 920.75.40 Accumulation

- (a) 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.
- (b) 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](#).

- (1) CSRS and CSRS Offset

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

- (2) FERS

- The credit of unused sick leave towards an annuity calculation is phased in for employees enrolled in the FERS. 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 \(B\)](#).

- (c) 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](#).

§ 920.75.50 Requesting and Approval

- (a) An employee must request advanced 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.

- (b) 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), which may be grounds for disciplinary action.
- (c) 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).
- (d) 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 [§ 920.75.20](#), for an absence in excess of three workdays, or for a lesser period when the court or FPDO determines it is necessary.
 - (1) 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.

(2) 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:

- (A) the family member requires psychological comfort and/or physical care;
 - (B) the family member would benefit from the employee's care or presence; and
 - (C) the employee is needed to care for the family member for a specified period of time.
- (e) Denial of a sick leave request should be considered by a leave-approving official only in the absence of conditions described in [§ 920.75.20](#).
- (f) 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.
- (g) 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.

§ 920.75.60 Advancing

- (a) 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):
- (1) Who is incapacitated for the performance of his or her duties by physical or mental illness, injury, pregnancy, or childbirth;
 - (2) For the serious health condition of the employee or a family member;

- (3) 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;
 - (4) For purposes relating to the adoption of a child; or
 - (5) 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\(a\)\(3\)](#).
- (b) 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):
 - (1) When he or she receives medical, dental, or optical examination or treatment;
 - (2) 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;
 - (3) 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
 - (4) To make arrangements necessitated by the death of a family member or to attend the funeral of a family member.
- (c) 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).
- (d) 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.
- (e) 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).

- (f) 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.
- (g) 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.

§ 920.80 Voluntary Leave Transfer Program (Medical)

§ 920.80.10 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).

- (a) 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\(b\)\(2\)](#)).
- (b) 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](#).
- (c) Medical emergency may include pregnancy and childbirth.

§ 920.80.20 Leave Recipient

(a) 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:

- (1) the reasons leave donations are needed;
- (2) 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;
- (3) 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
- (4) any additional information that may be required by the potential leave recipient's employing court or FPDO.

(b) Approval

- (1) 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\(b\)\(3\)](#) and [\(b\)\(4\)](#)), 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\(c\)](#).
- (2) 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.
- (3) Publication of Leave Donation Request

- (A) 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 email) should be posted only within the court or FPDO, except for certain conditions listed below under § 920.80.20(b)(4) (Transfer of Leave Between Courts or FPDOs or Other Federal Agencies).
 - (B) 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.
- (4) 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:
- (A) 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;
 - (B) 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
 - (C) 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.
- (5) Donated Leave While Awaiting Approval for Disability Retirement
- (A) 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](#).

- (B) 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.
- (c) Use of Leave Donations
- (1) A leave recipient may use annual leave donations only for the medical emergency for which the donation was approved.
 - (2) 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.
 - (3) 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 a part-time or intermittent basis. For information on accruing regular annual and sick leave while working on a part-time or intermittent basis, **see:** [§ 920.80.40\(c\)](#).
 - (4) 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.
 - (5) 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 \(OPM 630-C\).](#)

(d) Limits

- (1) 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:** [§ 920.80.60](#).
- (2) Annual leave donations may accumulate without regard to the 240-hour limitation on annual leave.
- (3) Donated annual leave is subject to all of the conditions and requirements on the approval and use of annual leave. **See:** [§ 920.20](#) 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.

§ 920.80.30 Leave Donor

- (a) 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.
- (b) 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.
 - (1) 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.

- (2) 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.
- (c) 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.
- (d) 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.
- (e) A leave recipient's employing court or FPDO may not transfer annual leave to a leave donor's immediate supervisor.

§ 920.80.40 Regular Annual and Sick Leave

- (a) 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).
- (b) 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.

- (c) 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.

§ 920.80.50 Termination of Medical Emergency

- (a) The medical emergency affecting a leave recipient will terminate:
 - (1) when the leave recipient's federal service is terminated;
 - (2) 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;
 - (3) 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
 - (4) 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.
- (b) 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.
- (c) 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.

§ 920.80.60 Restoration of Transferred Annual Leave

- (a) Any annual leave donations remaining when the medical emergency terminates must be restored (returned) back to the donors, prorated as follows:
 - (1) Divide the number of remaining/unused hours by the total number of hours donated.

- (2) For each donor, multiply that ratio by the number of hours donated.
 - (3) Round the result obtained to the nearest whole hour.
 - (4) 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.
- (b) 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.
 - (c) At the election of the leave donor, unused leave donations are restored (returned) to the leave donor by:
 - (1) Crediting the restored annual leave to the leave donor's annual leave account in the current leave year;
 - (2) 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
 - (3) Donating such leave in whole or in part to another leave recipient.
 - (d) 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.
 - (e) 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.

§ 920.80.70 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.

§ 920.80.80 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.

§ 920.85 [Reserved]

§ 930 Time and Attendance Reporting

§ 930.10 Overview

§ 930.10.10 Purpose

This policy is designed 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.

§ 930.15 Establishing Time and Attendance Systems

Each court or FPDO must establish a time and attendance system (manual or automated) that, at a minimum:

- (a) Ensures that complete and accurate records are maintained of employee time and attendance and leave accrual, usage, and accumulation, consistent with this policy;
- (b) 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);

- (c) Identifies employees who are responsible for assisting with the recording of time and attendance (time administrators);
- (d) 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));
- (e) 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;
- (f) Provides for internal controls to ensure that local processes are working reliably;
- (g) Supports the preparation and certification of a [Record of Leave Data \(Form SF 1150\)](#) for:
 - (1) The lump-sum payment for accumulated annual leave at separation from employment;
 - (2) Transfer of accumulated sick and/or annual leave upon an employee's transfer within the judiciary or to another federal agency; and/or
 - (3) Crediting sick leave for retirement under the CSRS or FERS.

§ 930.20 Roles and Responsibilities

§ 930.20.10 Time Approvers

- (a) A time approver is a manager or supervisor, usually the immediate supervisor, responsible for and most knowledgeable about an employee's attendance and leave.
- (b) 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.
 - (1) For **chambers staff**, a judge may provide a PCO with:
 - (A) a biweekly report of leave and attendance, or

- (B) an annual certification memorandum (**see:** [Appx. 9B \(Sample Certification Memorandum\)](#)) that:
 - (i) states that an employee “is entitled to be paid for his/her established work schedule every two weeks unless I notify you otherwise;” and
 - (ii) if the employee is covered under leave provisions, also states: “I, or my designee, will notify you of any approved leave in writing no later than the last day of the affected pay period.”
- (2) For a **circuit executive, a federal public defender, or a court unit executive**, a chief judge or his or her designee may provide a PCO with:
 - (A) a biweekly report of leave and attendance, or
 - (B) an annual certification memorandum stating that a circuit executive, a federal public defender, or a court unit executive “is entitled to be paid for his/her established work schedule every two weeks unless I notify you otherwise. I will notify you of any approved leave in writing no later than the last day of the affected pay period.”
- (c) Serving as a time approver is subject to the following conditions:
 - (1) No individual may approve his or her own timesheet, or the timesheet of the official to whom he/she reports.
 - (2) 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.
 - (3) If the time approver for an employee is not in the supervisory chain, the delegation of time approver responsibility must be in writing, including any limitation on the duration of the delegation.

§ 930.20.20 Time Administrators

- (a) Administrators enroll employees in the applicable time and attendance system (manual or automated), maintain employee schedules, assist employees/time approvers in the recording and correction of timesheets, maintain and adjust leave balances, generate [SF 1150 forms](#) for approval by the appointing officer or designee, and run reports.

- (b) Court or FPDO processes will ensure that the leave balances of the primary time administrator are maintained or verified by another individual (e.g., an alternate time administrator or the supervisor of the primary time administrator).

§ 930.20.30 Employees

Consistent with court or FPDO systems and procedures, employees may be responsible for submitting a timesheet confirming leave or unpaid hours taken, compensatory time hours earned or used, and the number of hours worked. In lieu of employee timesheet submissions, court or FPDOs may elect to have the time administrator or time approver perform this function.

§ 930.20.40 Payroll Certifying Officer (PCO)

- (a) PCOs are responsible for certifying the payroll for all biweekly employees in the applicable court or FPDO(s).
- (b) PCOs certify a payroll by verifying the number of paid hours employees should receive for a pay period, based on data provided by time approvers. PCOs should designate alternates for payroll certification.

§ 930.20.50 Administrative Office

The AO will:

- (a) Provide policy and procedural guidance on the maintenance of time and attendance records.
- (b) Audit time and attendance records for compliance with this policy and GAO requirements.
- (c) Provide orientation and training resources for time approvers, time administrators and employees regarding time and attendance administration and internal control procedures.
- (d) Review [SF 1150 forms](#) for employees separating or transferring, and address any questions or concerns with the office that generated the SF 1150.
- (e) Process lump-sum payments for accumulated annual leave, transfers of leave to other agencies, and accumulated sick leave for retirement credit under the CSRS or FERS.
- (f) Obtain [SF 1150 forms](#) for employees transferring or being reinstated to the judiciary.

§ 930.25 Records Maintenance and Retention

Court or FPDO systems must ensure that records are developed and retained consistent with the following requirements.

§ 930.25.10 Biweekly Time and Attendance Record

The following information must be available for each employee:

- (a) Employee name and identifying number (social security numbers, if used, should be protected and secured);
- (b) Pay period or dates;
- (c) Aggregate number of hours worked for a pay period;
- (d) Dates and number of hours of leave, by type;
- (e) Dates and number of hours of compensatory time earned or used;
- (f) Dates and number of telecommuting hours;
- (g) Dates and number of hours of unpaid time;
- (h) Dates and number of hours of excused absence/administrative leave; and
- (i) Evidence of approval by a time approver.

§ 930.25.20 Leave Records

Local systems and procedures must ensure that:

- (a) Leave balances are updated each pay period to reflect current leave accrual, use, and accumulation.
- (b) Leave balances are corrected promptly when errors are identified.
- (c) Forfeited annual leave is restored only with proper authorization, and restored leave is maintained properly in set-aside accounts with appropriate expiration dates, consistent with [5 CFR 630, subpart C \(Annual Leave\)](#).
- (d) Compensatory time off is recorded only in compliance with a written court or FPDO policy.
- (e) Voluntary leave transfer accounts and set-aside accounts for leave earned by a voluntary leave transfer recipient are maintained.

- (f) Any advanced leave is debited properly from earned leave.
- (g) Employee leave balances are correctly recorded on an [SF 1150 form](#) upon separation or transfer.

§ 930.25.30 Voluntary Leave Transfer Program Records

The following additional information is required by [5 CFR 630.913](#) to be maintained on voluntary leave transfer programs:

- (a) The number of applications approved for medical emergencies affecting employees and the number affecting their family members.
- (b) The pay level of each leave recipient and leave donor, the gender of each leave recipient, and the total amount of transferred annual leave used by each leave recipient.

§ 930.25.40 Format of Leave Records

Courts or FPDOs may use automated systems (e.g., HRMIS Leave Tracking) to maintain accounts of time worked, leave used, and leave balances. Courts or FPDOs may also use other systems or forms that provide the necessary data.

§ 930.25.50 Record Retention and Security

- (a) Employee timesheets, in either a paper or an automated format, must be retained for a period of six years or until audited by the AO, whichever comes later. Leave requests and approvals should be retained for 1 year. **See:** [Guide, Vol. 10, Appx. 6A \(Records Disposition Schedule 1\)](#). Since time and attendance files include sensitive personal information (e.g., social security numbers), data will be protected from unauthorized disclosure and disposed of appropriately.
- (b) For automated leave systems, security measures must be put in place in conformance with GAO Report, [Human Resources and Payroll Systems Requirements Checklist for Reviewing Systems Under the Federal Financial Management Improvement Act, GAO/AIMD-00-21.2.3, March 2000](#).

§ 930.30 Notification to AO-HRO

- (a) For each biweekly pay period, the PCO or designee will notify the AO-HRO-CHRD Payroll Services Branch of the number of unpaid hours for each employee with a regular tour of duty. For intermittent employees, the court or FPDO must report the number of paid hours that should be included in the biweekly pay calculation.

- (b) Payroll actions are processed based on the date received. Reports received by AO-HRO by the payroll processing cutoff date will be processed within the pay period — or otherwise will be processed during the following pay period.
- (c) Because intermittent employees do not have established regular tours of duty, hours actually worked by an intermittent employee must be reported to AO-HRO on or before each payroll cut-off date.

§ 930.35 Preparation of Standard Form 1150

- (a) When an employee under [subchapter I of 5 U.S.C. chapter 63](#) separates or transfers from the judiciary or between court units, the employing court unit or FPDO must submit [Form SF 1150](#) to AO-HRO to authorize any of the following actions:
 - (1) Sick and/or annual leave transfer (e.g., to another court unit or FPDO or an executive or legislative branch agency);
 - (2) Lump-sum payment for accumulated annual leave at separation from federal employment; or
 - (3) Retirement calculation including sick leave credited under the CSRS or FERS.
- (b) [Form SF 1150](#) must be signed by the appointing officer to certify that the leave balances are accurate, and that all monies due are proper and accurate. This authority may not be delegated, although an appointing officer may designate another official to sign on his or her behalf.

§ 930.40 Internal Controls

§ 930.40.10 Court or FPDO Responsibility

Each court or FPDO must establish internal controls to provide reasonable assurance that key procedures are effective and that data integrity is maintained. At least once a year, the court or FPDO internal controls should be reviewed to ensure that they are reliable and that they meet the need for time and attendance/leave data integrity. For internal controls requirements, see: [Guide, Vol. 11, Ch. 5](#).

§ 930.40.20 Examples of Internal Control Practices

Possible internal control practices include:

- (a) Periodic reminders to time approvers, time administrators, and employees of the importance and accountability of their roles in the time and attendance system; and

- (b) Reconciliation reviews between approved employee leave/time requests and employee timesheets as certified or approved by the time approver.

§ 930.40.30 Mandatory Internal Control Practices

For all courts or FPDOs, local internal controls must include the following practices:

- (a) If the time and attendance system is manual, reconciliation of a random sample of employee leave balances with time and attendance records at least once a year, preferably in conjunction with each court unit's program for annual reviews of internal controls.
- (b) Review each pay period of the PCO Report, a list produced by the Human Resources Management Information System of all employees within a unit and the number of hours of work authorized for normal pay.
- (c) Identification and explanation of all exceptions as follows:
 - (1) Cases where the employee is receiving pay for more than 80 hours (e.g., the employee is due pay for hours from a previous pay period);
 - (2) Cases where the employee should be paid for fewer hours than the "Actual Paid" figure shown on the PCO Report (e.g., the employee has some number of nonpaid hours that were not reported to AO-HRO in time to be included in the payroll processing cycle, or the employee separated during the pay period); and
 - (3) Cases where the employee separated prior to the start of the pay period, and should receive no pay for the pay period.
- (d) Notification to the AO-HRO Payroll Service Branch if there are any discrepancies between the pay for an employee reflected in the PCO Report and the proper pay that is due to the employee.
- (e) Signature or certification by the PCO of the PCO Report (as modified with any required explanations).
- (f) Retention of the PCO Report for six years or until audited, whichever comes later.

§ 940 Compensatory Time

§ 940.10 Overview

§ 940.10.10 Purpose

This section sets guidelines for courts that choose to establish compensatory time policies.

§ 940.10.20 Authority

- (a) In 1996, the Judicial Conference mandated certain elements for inclusion in the policies of those court units which choose to use compensatory time ([JCUS-MAR 96](#), p. 28).
- (b) In March 2008, the Conference amended the compensatory time policy to allow courts to provide compensatory time when employees are required to travel outside of their normal work schedules, to reduce the minimum compensatory time increment from one hour to 15 minutes, and to extend the period for using compensatory time from six months to one year ([JCUS-MAR 08](#), pp. 21-22).
- (c) In September 2009, the Conference agreed to amend the compensatory time policy requirement that compensatory time must be used before any accrued annual leave is used, and to permit exceptions on a case-by-case basis, as approved by the chief judge or unit executive, as appropriate, or his or her designee ([JCUS-SEP 09](#), pp. 21-22).

§ 940.10.30 Applicability

The requirements established by this section do not apply to FPDOS.

§ 940.15 Local Decision

Each court is required to determine which court units (including chambers staff) may use compensatory time. Before authorizing any compensatory time, each approved court unit choosing to use compensatory time must adopt a formal written compensatory time policy that must abide by the guidelines detailed in § 940.20.

§ 940.20 Guidelines for Court Compensatory Time Policies

Each court or court unit policy must:

- (a) Be in writing and clearly state that the policy is not subject to the provisions of the [Fair Labor Standards Act \(FLSA\) of 1938](#), as amended, nor to the premium pay provisions found in [Title 5 of the U.S. Code](#).

- (b) State that compensatory time is available to all court or court unit employees, or list categories of employees (e.g., court unit executives) who are excluded from the policy, as determined by the court or by an authorized court unit executive.
- (c) State that compensatory time may be earned only for work ordered or approved by the court unit executive or designee in advance of the extra time being worked.
- (d) State that compensatory time may be credited only for hours worked in excess of an employee's normal daily work schedule or in excess of the normal administrative work schedule of 80 hours per pay period (inclusive of approved sick or annual leave taken), or when the employee is required to work on a holiday.
- (e) State whether compensatory time may be granted for authorized travel away from an employee's official duty station. If a court or court unit policy permits such compensatory time for travel, the policy must include the following conditions:
 - (1) Compensatory time may be earned only for time in "travel status" (i.e., time an employee spends actually traveling or during normal travel waiting periods, including, for example, airport waiting periods before or between flights).
 - (2) Extended waiting periods and personal time, for example, when an employee is free to leave an airport for personal leisure, or to rest or sleep, go out to dinner, or otherwise use the time for his or her own purposes, are not credited as time in travel status.
 - (3) On a regular workday, if an employee travels from home to a temporary duty station outside the travel limits of the employee's official duty station, the employee's normal commuting time is not credited as time in travel status and must be deducted.
 - (4) Time in travel status is based on the mode and route of travel selected by the court. If an employee selects an alternative mode of travel, or an alternative route, compensatory time may be credited only for the time required by the mode and route selected by the court. For example, if an employee elects to drive rather than fly, compensatory time is earned only for the flight time (although an exception may be made in the case of a reasonable accommodation for a disability).
 - (5) An employee does not earn compensatory time for travel when he or she chooses to commute to home and back during a temporary

duty assignment, unless the court decides that compensatory time should be credited based on savings to the court from reduced lodging costs.

- (f) State that only one hour of compensatory time may be earned for each hour of approved additional time worked, and that compensatory time will be accrued, recorded, and used in 15-minute or larger increments. (**Note:** Standard rounding procedures should be used to convert fractional units of time to whole increments.)
- (g) State that compensatory time must be used within one year of being accrued or automatically forfeited. (**Note:** Local policy may impose a shorter usable period and may also place a limit on the maximum number of hours that may be accrued.)
- (h) State that employees must generally use accumulated compensatory time before using any accrued annual leave that may be available to them, although a chief judge, unit executive, or designee may approve exceptions on a case-by-case basis.
- (i) State that the use of earned compensatory time requires the approval of the leave approving official in the same manner as annual leave.
- (j) State that payment of monetary compensation for unused compensatory time is prohibited.
- (k) State the manner in which records of accrual and disposition of compensatory time are handled, and provide that records are subject to the same internal controls as other time, attendance, and leave records.
- (l) State that religious compensatory time may be granted under § 940.25.

§ 940.25 Religious Compensatory Time

Under a religious compensatory time policy, an employee whose personal religious beliefs require abstention from work during certain recurring or occasional periods of time may elect to use compensatory time for time spent in meeting those religious requirements. The court or court unit policy should either state that all employees are covered, or list the categories of employees who are excluded.

(a) Approval Requirement

To the extent that such schedule modifications do not interfere with the efficient accomplishment of an organization's mission, the court unit executive or designee must afford an employee the opportunity to earn compensatory time on an hour-for-hour basis and must grant

compensatory time off for religious observances when requested. The employee may earn this compensatory time before or after the grant of compensatory time off.

(b) Time Period

A grant of advanced compensatory time off should be repaid by the equal amount of compensatory time earned within a reasonable amount of time.

(c) Payment Prohibition

Monetary compensation for unused religious compensatory time is prohibited.

(d) Independent Religious Compensatory Time Policy

Independent of the decision made under [§ 940.15](#), a court or court unit may choose to implement a religious compensatory time policy — even if it does not implement a broader compensatory time policy for other purposes.