

***Questions and Answers on Basic Leave Issues***  
**U.S. Office of Personnel Management**  
**Employee Relations Division**  
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1. Can an agency require employees to submit written leave requests?

*Yes. Each agency must establish procedures for its time and attendance record keeping system. The procedures should describe the requirement for a written request for leave, with provisions for how leave should be requested in emergency situations where it is not possible to schedule leave in advance. Agencies should inform employees that failure to follow the procedures for requesting leave may result in a denial of the leave request, and ultimately to an adverse action based on the resulting absence without leave (AWOL) and failure to follow established leave procedures.*

2. What should an agency do in a situation where it charges AWOL but later determines that requested leave (sick, annual or leave without pay (LWOP)) should have been granted (e.g., the employee submits medical documentation for sick leave several weeks after the leave request was denied)?

*As long as the employee has sufficient leave to cover the absence, the agency may substitute approved leave for AWOL. The appropriate authority in the agency should make the determination that the absence was improperly charged as AWOL.*

3. When is an agency required to grant sick leave?

*An agency must grant sick leave under conditions provided in 5 CFR 630.401, including:*

- when the employee receives emergency medical, dental, or optical examination or treatment;*
- when the employee is incapacitated for the performance of duties by physical or mental illness, injury, pregnancy, or childbirth;*
- 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.*

*In addition, an agency must grant up to 5 days of sick leave a year:*

- when the employee provides care for a family member (defined at (5 CFR 630.201(b)) as a result of physical or mental illness, injury, pregnancy, childbirth or emergency medical, dental, or optical examination or treatment; or*
- when the employee makes arrangements necessitated by the death of a family member or attends the funeral of a family member.*

*The agency must grant up to an additional 8 days of sick leave a year for these family care and bereavement purposes as long as the employee maintains a balance of at least 80 hours in his or her sick leave account.*

*NOTE: On February 9, 2000, OPM issued proposed regulations to expand the use of sick leave for family care purposes in response to President Clinton's 1999 directive. Under the proposed regulations, a full-time employee would be able to use a total of up to 12 weeks of sick leave each year to care for a family member with a serious health condition. A part-time employee would be able to use an amount of sick leave totaling 12 times the average number of hours in the employee's regularly scheduled administrative workweek. A copy of the proposed regulations is available on OPM's website (<http://www.opm.gov>)*

4. Must an agency advance leave?

*The decision to grant advance annual and sick leave is left to the discretion of the agency. There are limits on the amounts of leave that can be advanced. For the purposes of using sick leave for family care or bereavement, agencies may advance up to 40 hours of sick leave. Agencies may not advance sick leave so that an employee may meet the requirement to maintain a balance of 80 hours of sick leave in his or her account or to use additional sick leave for these purposes. The agency should not advance leave when there is little or no likelihood that the employee will return to work. In addition, any indebtedness resulting from advance leave is forgiven when an employee retires on disability.*

5. Are there restrictions on an agency's discretion to approve or disapprove leave?

***Sick Leave*** - *Assuming that agency procedures are followed, sick leave is almost always approved. However, an agency can deny sick leave for nonemergency medical, dental, or optical purposes (even with acceptable medical documentation) when it needs the employee's services. The agency can also deny emergency or nonemergency sick leave when the employee does not follow leave procedures and provide appropriate documentation. However, based on third party decisions, if an employee later provides appropriate documentation demonstrating medical incapacitation during the absence, an agency's charge of AWOL will be not be sustained, if challenged. See question 7 for additional information*

***Annual Leave*** - *Agencies have wide latitude in approving or disapproving requests for annual leave. An agency's determination regarding annual leave requests revolves around an assessment of the work needs of the office. Planning effectively to allow employees to use accrued annual leave is an essential part of good management.*

***Leave Without Pay*** - *An agency can generally deny a request for LWOP at its own discretion (with limited exceptions) even if the employee has good reason for requesting it. An agency must grant an employee's request for LWOP: when an employee, who otherwise qualifies for participation, invokes his or her entitlement to absence under the Family and Medical Leave Act; when a claim is pending with the Office of Workers' Compensation*

*Program (OWCP); during any period when the employee is in receipt of OWCP benefits; when an employee is a disabled veteran receiving medical treatment; and when an employee is a reservist and must be absent from work to attend military training.*

6. Can an agency take action based on approved leave?

*No action can be taken based on the use of accrued sick leave since the use of this leave is an entitlement, assuming the employee follows agency procedures. The general rule is that an adverse action cannot be based on annual leave that the agency has approved, mainly because the agency usually has the discretion to approve or disapprove leave. An agency may base an adverse action on excessive unscheduled LWOP only if all three of the following criteria are met:*

- *The employee's excessive absences are uncontrollable and not the fault of the employee. Approval or disapproval of the leave would be immaterial since the absences will continue.*
- *The absences have continued beyond a reasonable period of time, and the agency needs the employee's services on a regular, full-time or part-time basis.*
- *The agency warns the employee that an adverse action might be initiated unless the employee becomes available for work on a regular, full-time or part-time basis.*

*These cases are rare and there is limited case law to review. See the handout on adverse actions involving leave for a discussion of this case law.*

7. If the agency must grant leave (for example, the employee provides medical documentation after the agency's deadline) but the employee has failed to follow proper procedures, can the agency take action?

*Yes. In **Wilkinson v. Air Force**, 68 M.S.P.R. 4 (1995), the appellant was removed for failure to request leave according to established procedures. The Board held that agencies may discipline employees for failure to follow established procedures, so long as the employee is on notice of the agency's requirements. This holding applies even when the agency eventually approves the leave in question or in cases where the Board determines on review that the agency's denial of a leave request was unreasonable. Looking to **Fleming v. U.S.P.S.**, 30 M.S.P.R. 302 (1986), the Board noted that an employer is "doubly burdened" by an unscheduled absence--once for the loss of productivity and again for the lost opportunity to plan for the absence. The Board sustained the removal.*

8. What kind of medical documentation is appropriate when an employee requests sick leave?

*Agencies usually consider the employee's personal certification, i.e., a signature on a leave slip, a phone call when ill, etc., to be sufficient. When an employee has no leave to use, agencies often require more formal procedures for requesting LWOP or advanced leave. Depending upon the length of the absence, agencies may request a greater amount of documentation to validate the need for the absence. Finally, if a problem with excessive*

*absenteeism is developing, agencies typically have policies for leave restriction letters or memos. These letters set out the reasons for requiring more information; identify acceptable documentation; explain when documentation must be provided; and include time limits that will enable the employee to obtain approval of subsequent emergency and nonemergency leave requests, and the consequences of not doing so.*

#### Leave - Family and Medical Leave Act

9. Must an agency grant FMLA?

*An employee who meets the criteria and requirements specified in the Act and its implementing regulations at 5 CFR 630.1201-1211 is entitled to leave under the law.*

10. What are an employee's appeal rights under the Family and Medical Leave Act (FMLA)?

*If an employee believes an agency has not fully complied with the rights and requirements provided by Title II of FMLA and the OPM's implementing regulations at 5 CFR 630.1201 through 630.1211, the employee may file a grievance under applicable agency administrative procedures or negotiated grievance procedures.*

11. Does the invocation of FMLA delay the processing of an adverse action?

*No. As long as the action taken (or proposed to be taken) by the agency is based on a particular set of circumstances and charges unrelated to FMLA, the agency can proceed with the action.*

12. In a situation involving a long-term absence that prompts the agency to propose removal for medical inability or inability to maintain a regular schedule, would entitlement to FMLA prevent the agency from proceeding with the removal?

*No. The invocation and granting of FMLA leave would not alter the agency's charges.*

13. Must an agency notify an employee of his or her right to invoke FMLA if the employee's leave request appears to fall within the coverage of FMLA?

*The regulations (5 CFR 630.1203(g)) state that an agency "shall inform its employees of their entitlements and responsibilities under this subpart,...". OPM guidance to agencies has been that this notification could take the form of an all-employee bulletin as long as the agency can demonstrate that such a process provided adequate notification to all of its employees. Agencies should note, however, that in recent decisions, the Merit Systems Protection Board has ruled that this notification obligation includes the responsibility to carefully consider any request that could be covered under FMLA and to notify the employee of his or her potential entitlement to FMLA. Several cases have been remanded to allow for additional testimony and evidence on the subject of agency notification.*