



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET

6/2/00

To: Ann O'Leary

Here is a copy of OPM's
final regulation on use of
sick leave to care for
family members.

Joe Lacey
5-4741

Revised pages from
OPM 5/14/00
JH

Publication date _____

6325-01

file: OPM 12-week
Sick Leave
Rule

OFFICE OF PERSONNEL MANAGEMENT

5 CFR PART 630

RIN: 3206-AI76

Sick Leave for Family Care Purposes

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management is issuing final regulations to expand the use of sick leave for family care purposes. Under the final regulations, an employee may use a total of up to 12 weeks of accrued sick leave each year to care for a family member with a serious health condition. This benefit broadens the options available for employees to meet their family responsibilities.

EFFECTIVE DATE: [Insert date 7 days after date of publication in the Federal Register].

FOR FURTHER INFORMATION CONTACT: Sharon Herzberg, (202) 606-2858, FAX (202) 606-0824, or email to payleave@opm.gov.

SUPPLEMENTARY INFORMATION:

On May 24, 1999, President Clinton issued a memorandum directing the Office of Personnel Management (OPM) to expand the use of paid sick leave for family care purposes. On February 9, 2000, OPM issued proposed regulations consistent with the President's goal of eliminating "a significant barrier to caring for a family member with a serious health condition."

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The regulations proposed to permit full-time employees to use a total of up to 12 administrative workweeks of accrued sick leave each leave year to care for a family member with a serious health condition. The definition of "family member" includes the following relatives of the employee: (a) spouse and parents thereof; (b) children, including adopted children, and spouses thereof; (c) parents; (d) brothers and sisters, and spouses thereof; and (e) any individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship. "Serious health condition" has the same meaning as found in OPM's regulations at 5 CFR 630.1202 for administering the Family and Medical Leave Act of 1993 (FMLA).

The 45-day comment period ended on March 27, 2000. OPM received 151 comments, 134 from individuals, 14 from agencies, 2 from employee associations, and 1 from a labor organization. The comments were overwhelmingly positive. The labor organization stated that these changes were long awaited and quite welcome. Many of the commenters who supported the adoption of the new regulations mentioned a previous experience dealing with a family member with a long-term or terminal illness and expressed gratitude that other employees would now have an opportunity to use their accrued sick leave in similar situations. Others mentioned current family medical situations that have caused them to exhaust their annual leave and the currently available 13 days of sick leave for family care. One commenter stated that if the employee were the one who was sick or injured, using up to 12 weeks of sick leave would be a non-issue and that the use of sick leave should remain a non-issue when an employee's family member requires the employee's care for an extended period.

One commenter stated that the proposed change would reassure employees that efforts to conserve sick leave are beneficial. Another individual noted that employees with sufficient

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amounts of sick leave to make use of the new program obviously have not been abusing their sick leave and are dedicated employees. One commenter pointed out that since family health crises occur only a few times in our lives, this time off would not adversely affect an agency's long-term goals. An employee association commented that employees and family members stationed overseas often must be evacuated for medical conditions and that the new regulations would allow an employee to accompany a family member for what may turn out to be a protracted course of treatment.

Nine commenters opposed the concept of allowing Federal employees to use additional sick leave for family care purposes. Two agencies expressed concern that the regulations as proposed would give employees more flexibility in the use of sick leave than a literal reading of the President's memorandum of May 24, 1999, would indicate.

The President intended to make the expanded use of sick leave available to employees to use to care for all family members with a serious health condition. Limiting this benefit to caring for a spouse, son or daughter, or parent with a serious health condition would impose a significant hardship on employees who need to care for additional, but equally important, loved ones in their time of need. For example, the expanded use of sick leave would

permit an employee to care for a grandchild who is suffering from leukemia or to care for an adult child receiving kidney dialysis or in the final stages of a terminal disease.

Seven agencies were concerned that the proposed regulations would permit an employee to use 12 weeks of sick leave each year to care for a family member with a serious health condition and then use an additional 12 weeks of leave without pay under the FMLA to care for a spouse, son or daughter, or parent with a serious health condition. The agencies stated that 24 weeks of leave would be a tremendous hardship on a manager's ability to manage the work of the organization. One agency expressed the belief that the current sick leave provisions and FMLA entitlements provide sufficient flexibility to employees. Another agency concluded that while being able to meet the mission of the agency while balancing work and family needs of employees is of utmost importance, managers have expressed concern that this expanded entitlement to time off may diminish an organization's ability to efficiently and effectively accomplish the mission of the agency.

OPM believes only a small number of employees would have a need and/or be able to use significant amounts of paid and unpaid leave to care for a family member with a serious health condition. Based on our experience with the current sick leave program, we believe less than 0.5 percent of the Federal workforce with 5 or more years of Federal service would actually use the maximum 12 weeks of sick leave. Federal employees accrue 13 days of sick leave each year. Although it is possible for an employee not to use any sick leave for 5 years so that he or she would accumulate 65 days (more than 12 weeks) of sick leave to use for family care purposes,

this is highly unlikely. It is possible that an employee could be entitled to a maximum of 12 weeks of sick leave for family care and 12 weeks of unpaid leave under the FMLA to care for a spouse, son or daughter, or parent with a serious health condition. However, we believe it is highly unlikely that many employees would take more than 12 weeks off for family care purposes. In OPM's June 1997 "Report to Congress on the Family Friendly Leave Act," we found that less than one-half of one percent of the Federal workforce used even the full 13 days of sick leave that was available for family care purposes at that time. In addition, the purpose for which the sick leave may be used--i.e., a serious health condition--will limit the circumstances in which employees can use sick leave under the new policy. We believe this expanded entitlement will provide the greatest benefit to employees who would otherwise be forced to use leave without pay under the FMLA to care for their family members. The expanded use of sick leave will permit these and other employees facing similar situations to maintain an income for part or all of the time they must be absent from work.

In addition, the expanded use of sick leave for family care purposes will provide many benefits. Agencies will retain valuable employees and benefit from reduced costs (including training costs) to replace employees forced to separate from Federal service because of family responsibilities. Employees will have greater incentive to conserve their sick leave, which will be available for future personal and family medical needs. There will be less need for employees to obtain donated leave through the voluntary leave transfer and leave bank programs, since a potential leave recipient faced with a family medical emergency will be required to use up to 12 weeks of his or her own sick leave before receiving any donated annual leave from other Federal employees.

Entitlement to Sick Leave

Two commenters questioned whether the granting of sick leave to care for a family member with a serious health condition would be done at the discretion of the agency. An employee is entitled to sick leave for family care, just as he or she is entitled to sick leave for his or her own incapacitation. If the employee complies with the agency's notification and medical evidence/certification requirements, the agency must grant sick leave.

The labor organization requested clarification of an employee's appeal rights if his or her request for sick leave is denied. If an employee believes he or she has been unjustly denied the use of sick leave for family care purposes, he or she may file a grievance under applicable agency administrative procedures or negotiated grievance procedures. Agency personnel offices can provide information to employees concerning the administration of the grievance procedures. In addition, OPM has authority to settle claims involving Federal employees' compensation and leave. OPM's regulations at 5 CFR part 178 provide procedures for filing written claims. However, 5 CFR 178.101(b) states that OPM's authority does not apply to claims concerning matters that are subject to negotiated grievance procedures under collective bargaining agreements.

One commenter was concerned that part-time employees might not be included in this new initiative. However, the regulations make clear that both part-time employees and employees on uncommon tours of duty are entitled to pro-rated amounts of sick leave for family care purposes based on the number of hours in their regularly scheduled workweek. A Federal firefighter questioned whether leave accrual and use was truly proportional for employees on

uncommon tours. Employees on uncommon tours earn and use leave in direct proportion to the leave-earning rate of a full-time employee who accrues and uses leave on the basis of an 80-hour biweekly tour of duty. An agency must charge one hour (or appropriate fraction thereof) of leave for each hour (or appropriate fraction thereof) of absence from the uncommon tour of duty.

Another individual questioned whether an employee is entitled to sick leave when “caring” for a family member who is hospitalized. OPM has always maintained that care of a family member includes psychological comfort as well as physical care, including being with the family member during a hospital stay or while being examined in a doctor’s office. In response to this comment and frequent questions we have received on this subject, we are revising § 630.401 of the final regulations to make clear that an employee may use sick leave to attend to a family member who is receiving medical, dental, or optical examination or treatment. In addition, we have added a new paragraph (c) to § 630.403 to permit agencies to require a statement from an employee concerning a family member’s need for psychological comfort and/or physical care. The statement from the health care provider must certify that (1) the family member requires psychological comfort and/or physical care, (2) the family member would benefit from the employee’s care or presence, and (3) the employee is needed to care for the family member for a specified period of time.

Three commenters felt that 12 weeks was too long a time for employees to be away from their jobs. In contrast, one commenter felt that 12 weeks was not enough time and that an employee should be entitled to use all of his or her sick leave for family care purposes. We do not believe allowing employees to use more than 13 days of their own sick leave each year for family care purposes will greatly increase absenteeism. Many employees who must care for

family members currently do so by using leave without pay under the FMLA. The final regulations will allow these employees to maintain an income and better balance their work and family responsibilities. We also believe the entitlement to use 12 weeks of sick leave to care for a family member with a serious health condition will meet the needs of most employees.

Definition of “Family Member”

Several commenters were pleased that the regulations use the same definition of “family member” that is used in the current regulations on sick leave for family care purposes. However, some individuals requested that OPM be more specific as to who is covered by the phrase “any individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship.” Three commenters specifically questioned whether grandparents are covered by the definition, and another requested that stepchildren also be included. The intent of the regulation is to be family-friendly and to provide a benefit that goes beyond the traditional nuclear family. We believe a grandparent or a stepchild clearly is covered by the definition of “family member.” An agency is responsible for interpreting the definition to ensure that all employees are treated fairly and consistently.

Definition of “Serious Health Condition”

Most individuals and agencies supported the use of the definition of “serious health condition” that is found in the FMLA regulations at § 630.1202. However, one agency expressed the belief that the term “catastrophic illness” implies a level of devastation to health and finances that would warrant the provisions included in the proposed regulations, while the term “serious health condition” does not. One commenter expressed appreciation for the regulations and hoped they would assist parents of “special needs” children in meeting their responsibilities. If the

child's condition qualifies as a "serious health condition" under the definition at § 630.1202, a parent would be entitled to use sick leave on an intermittent basis to care for the child when other services are not available. However, this new entitlement does not permit an employee to use sick leave for routine childcare or to care for children with minor childhood ailments. The definition of "serious health condition" at § 630.1202 includes a list of what is not considered a serious health condition. An agency may require certification from a healthcare provider that the child has a qualifying medical condition before granting sick leave.

An individual urged OPM to include severe mental illness, including schizophrenia, bipolar disorder (manic depression), and other traumatic mental conditions requiring hospitalization or constant care as a "serious health condition." The definition of "serious health condition" at § 630.1202 includes a "mental condition" that requires inpatient care or continuing treatment by a health care provider. All of the conditions enumerated by the commentor are covered by this definition.

Several commenters questioned whether childbirth and its recuperation would qualify as a "serious health condition" under § 630.1202. Some commenters interpreted the reference to pregnancy and childbirth in § 630.401(3)(i) to mean that the amount of sick leave that can be used to care for a family member during and after childbirth is limited to 13 days. An individual requested that we consider deleting the reference to childbirth at § 630.401(3)(i) and specifically include childbirth and recovery in the definition of "serious health condition" in § 630.1202. We agree that such a change would make clear that childbirth and recovery are considered serious health conditions, since they generally result in a period of incapacitation that exceeds 13 days. Therefore, we have removed the specific reference to pregnancy and childbirth from

§ 630.401(a)(3)(i). The final regulations provide that an agency must grant sick leave to an employee who provides care for a family member who is incapacitated by a medical or mental condition or who receives medical, dental, or optical examination or treatment. In addition, we have amended the definition of “serious health condition” in § 630.1202(1)(ii)(B) of the FMLA regulations to include childbirth as a serious health condition.

Commenters questioned how much sick leave a new mother would be able to use and whether family members such as her husband or parent would be entitled to use sick leave to care for her. A new mother will continue to be entitled to use sick leave for the period of incapacitation certified by the health care provider following the birth--generally about 6 weeks. Her husband or parent would be entitled to use sick leave to care for her during that entire period of incapacitation. In the case of both the new mother and her caregiver, the entitlement to use sick leave is limited to the period of incapacitation of the new mother. We encourage agencies to request documentation as to the period of incapacitation for any serious health condition.

Bonding with a Child

We received many comments from individuals who mistakenly believe new mothers and fathers will be able to use 12 weeks of sick leave following childbirth for bonding with the newborn child. Other commenters requested that OPM change the regulations to permit this. Care for a family member with a “serious health condition” does not include care for a healthy newborn child. Once the new mother’s period of incapacitation ends, there is no further entitlement to use sick leave to “care for a family member with a serious health condition.”

Both parents would continue to be entitled to use up to 13 days of sick leave each year to care for the child when he or she is ill or to take the child to medical appointments.

Two commenters objected that the regulations do not allow adoptive parents at least 6 weeks of sick leave for bonding purposes, pointing to the 6 weeks of sick leave that birth parents will be able to use. Adoptive parents may request sick leave for adoption-related purposes, including, but not limited to, appointments with adoption agencies, social workers, and attorneys; court proceedings; required travel; and for any periods during which an adoptive parent is ordered or required by the adoption agency or by a court to be absent from work to care for the adopted child. There is no limitation on the amount of sick leave that may be used for these purposes. Agencies may require employees to provide evidence that is administratively acceptable to the agency in support of a request for sick leave for adoption-related purposes. In addition, adoptive parents are entitled to use up to 13 days of sick leave each year to care for the child when he or she is ill or to take the child to medical appointments.

As stated above, sick leave is granted to birth parents only for the period of the mother's incapacitation. The birth parents must use annual leave and/or leave without pay for absences from work beyond the mother's period of incapacitation--e.g., for care of the newborn, bonding with the child, and other child care responsibilities. There is no provision in law or regulation that permits the use of sick leave by birth parents or adoptive parents who voluntarily choose to be absent from work to bond with a birth or adopted child.

Interaction with Current Use of Sick Leave for Family Care Purposes

Several commenters asked how the new entitlement to 480 hours of sick leave to care for a family member with a serious health condition interacts with the current entitlement to use

13 days of sick leave each year for general family care and bereavement purposes. One agency urged OPM to consider making these two separate entitlements and permitting employees to use both 13 days of sick leave for general family care and bereavement purposes and 12 weeks (480 hours) of sick leave to care for a family member with a serious health condition each year. The agency felt this approach would simplify administration and reduce confusion about the two entitlements. The agency also felt that tracking sick leave in more than one category is burdensome to the manager and confusing to the employee. Similarly, an individual suggested that there be two entitlements, but that the use of sick leave to care for a family member with a serious health condition be limited to 10 weeks. Another agency recommended that OPM extend the amount of sick leave an employee may use for all family care purposes, instead of introducing a new entitlement.

The intent of the expanded sick leave regulations is to permit employees who are faced with caring for a family member with a serious health condition to use more than 13 days of sick leave. If an employee has previously used 13 days of sick leave in a leave year for family care purposes, the 13 days must be subtracted from the 12-week entitlement. If an employee has previously used 12 weeks of sick leave in a leave year to care for a family member with a serious health condition, he or she would not be entitled to an additional 13 days of sick leave for family care or bereavement purposes. We have revised § 630.401 to make clear that an employee is entitled to a maximum of 12 weeks of sick leave for all family care purposes.

Interaction with Family and Medical Leave

Several commenters questioned how the broadened use of sick leave for family care purposes would work with the use of leave without pay under the Family and Medical Leave Act

(FMLA). One commenter expressed the belief that an employee already has an entitlement to use 12 weeks of sick leave under the FMLA to care for a spouse, son or daughter, or parent with a serious health condition. An individual was concerned that 12 weeks of sick leave for family care plus 12 weeks of leave without pay under the FMLA would result in an employee being absent from work for up to 6 months.

The FMLA provides most employees with an entitlement to use a total of up to 12 weeks of leave without pay during any 12-month period for certain family and medical needs. An employee may choose to substitute sick leave for FMLA leave without pay consistent with current law and regulations for using sick leave. (See § 630.1205(b)(1).) Until now, employees who invoked their entitlement to FMLA leave were limited to substituting up to 13 days of sick leave for FMLA leave without pay each year to care for a spouse, son or daughter, or parent with a serious health condition. Under the final regulations, an employee is entitled to substitute up to 12 weeks of sick leave each year for FMLA leave without pay if he or she is caring for a spouse, son or daughter, or parent with a serious health condition. Or, an employee may use up to 12 weeks of sick leave each year to care for a family member with a serious health condition and then invoke his or her entitlement to 12 weeks of FMLA leave without pay to care for his or her spouse, son or daughter, or parent with a serious health condition.

Another individual suggested that the regulations limit an employee to 12 weeks of sick leave in any 12-month period, similar to the requirements under the FMLA. However, the new entitlement is a broadening of the current regulations, not a change in the entitlements under the FMLA. Limiting the use of sick leave for family care by leave year is consistent with the current

sick leave regulations and will provide for simpler administration of the current sick leave program.

Interaction with the Leave Transfer and Leave Bank Programs

One commenter asked how the expanded use of sick leave for family care will affect an employee's opportunity to receive donated annual leave from the agency's leave transfer and/or leave bank program. The commenter expressed the belief that an employee who has a substantial sick leave balance, but has used all the sick leave he or she is entitled to use for family care purposes, would be disqualified from the leave transfer program because he or she still had available paid sick leave. An employee may receive donated annual leave from other Federal employees if he or she is affected by a personal or family medical emergency and has exhausted his or her available paid annual and sick leave. Once an employee has exhausted his or her entitlement to 12 weeks of sick leave for family care purposes, the employee has exhausted all of his or her available paid sick leave.

We believe the expanded use of sick leave for family care purposes will reduce the need for obtaining donated annual leave through the leave transfer and leave bank programs. Currently, an employee who is caring for a family member with a medical emergency may have significant amounts of accumulated sick leave that he or she cannot use because the employee has already used his or her entitlement to 13 days of sick leave for family care purposes. As a result, such employees are using other employees' annual leave even though they have substantial amounts of sick leave available in their own sick leave accounts. We believe it makes sense to require employees to use their own annual and sick leave before receiving donated annual leave. In addition, we revised § 630.405(c) to require an employee who is using donated

annual leave on the effective date of these regulations to use the sick leave available under § 630.401(a)(3) for family care purposes before he or she can continue to use donated annual leave.

Requirement to Maintain a Balance of 80 Hours of Sick Leave

Two commenters questioned the need to require employees to maintain an 80-hour sick leave balance when using more than 5 days of sick leave for any family care purpose. Another individual expressed the belief that the amount of sick leave that must be held in reserve should increase as the number of hours used for family care purposes increases—e.g., for each 30-day increment above the basic 13-day entitlement, an employee should have to maintain an additional 20 hours of sick leave (above the 80-hour requirement).

The original intent of the 80-hour requirement was to ensure that Federal employees would have sufficient leave for their own medical needs at the end of a family member's medical emergency. With the possibility that an employee will be caring for a family member for an extended period, it is even more important that he or she have a reserve of sick leave for his or her own use to cover absences due to a personal illness. OPM believes 80 hours of sick leave is a sufficient reserve and that to require larger reserve balances from employees who seek to use greater amounts of sick leave for family care purposes would not be equitable.

A commenter was under the mistaken impression that an agency could advance sick leave if an employee's sick leave balance falls below the 80-hour threshold. Advancing more than the first 5 days (40 hours) of sick leave circumvents the intent of the regulation. We have had many questions about the 80-hour required balance and the restriction on the advance of more than 5 days of sick leave for family care purposes. We are taking this opportunity to revise

§ 630.401 to clarify the requirement for an 80-hour balance and the restriction on advancing sick leave for family care purposes.

Medical Certification

An agency recommended that the medical certification required by the FMLA to care for a spouse, son or daughter, or parent with a serious health condition also be required when an employee requests sick leave to care for a family member with a serious health condition. One individual urged that OPM write the regulations so that this entitlement cannot be used for anything less than a serious health condition. Another believes that requiring administratively acceptable evidence of a serious health condition or a doctor's confirmation will ensure that requests for sick leave are legitimate. A third commenter warns that unless medical certification is required, the expanded amounts of sick leave will be used for minor illnesses. Another asked OPM to make clear that an agency may request medical documentation as to the incapacitation of the family member, while another commenter felt that OPM should establish specific amounts of sick leave that may be used for specific types of serious health conditions. In contrast, however, one individual expressed the belief that "administratively acceptable evidence" is too broad a term and questioned who will determine what constitutes acceptable documentation. Another suggests that a doctor's statement should be required only after 5 days of absence from work and that a receipt for a doctor's visit should be sufficient medical documentation.

We urge each agency to request medical certification to document that a serious health condition exists. In addition, obtaining medical documentation will ensure that the appropriate amount of sick leave is granted. We do not believe Governmentwide guidelines can be established assigning specified amounts of sick leave for certain health conditions. Individual

circumstances differ, and individuals will require varying amounts of time off for treatment and recuperation. A certification from the health care provider will determine the length of the incapacitation for each individual and, therefore, the duration of the serious health condition. Agencies may wish to modify the Department of Labor's Family and Medical Leave medical certification form to document the existence and probable duration of a serious health condition, or they may wish to establish their own medical certification form. Each agency has the authority to determine what constitutes "administratively acceptable evidence" for any use of sick leave and to request such documentation whenever it feels necessary.

One agency approved of OPM's proposal to permit agencies to limit the amount of time given to an employee to produce acceptable documentation, feeling it would help to ensure that the new entitlement is used only as intended. We agree and are adopting as final the revisions at § 630.403(b). We believe agencies should establish time limits for employees to provide required documentation of a medical or mental condition. This will ensure that sick leave is being used properly and will guarantee that all employees receive equal treatment.

Reporting Requirements

Two individuals questioned what new reporting requirements might be involved in the administration of this new entitlement. One agency recommended that OPM require agencies to report back in 1 year on the extent to which the new sick leave provisions are being used. When OPM published the original regulations on sick leave for family care purposes in December 1994, we added § 630.408 to require agencies to maintain records to provide data to us on the use of sick leave for family care purposes. We requested the data for OPM's June 1997 "Report to Congress on the 'Federal Employees Family Friendly Leave Act,' Public Law 103-388." We no

longer believe the reporting requirements are necessary and plan to propose removal of them from the regulations later this year. Nevertheless, our regulations continue to require that agencies maintain internal records on the amount of sick leave used each leave year for family care or bereavement purposes to ensure that employees do not exceed the limitations in 5 CFR 630.401(b) and (c).

Additional Use of Sick Leave

Three individuals suggested that OPM establish programs to pay employees for unused sick leave. They felt this would encourage employees to conserve their sick leave, particularly in the case of employees covered by the Federal Employees Retirement System (FERS), since they do not receive credit at retirement for unused sick leave. This proposal would require legislative action. In addition, OPM believes the ability to use up to 12 weeks of sick leave for family care purposes will be an additional incentive for employees to conserve their sick leave for future needs. Since the Government has no short-term disability insurance program, it is important that employees conserve sick leave to cover their own periods of illness, as well as their family care needs.

An individual suggested broadening the leave transfer program to allow employees to donate their unused sick leave to other employees. Section 6334(a) of title 5, United States Code, permits Federal employees to donate or contribute annual leave, but not sick leave, to another employee who has a personal or family medical emergency. Therefore, this proposal would require legislative action. In addition, the ability of employees to use larger amounts of sick leave for family care purposes should ease the demand for donated leave, making greater amounts of donated annual leave available to those employees who have exhausted other

amounts of donated annual leave available to those employees who have exhausted other available paid leave.

Other Comments

A commenter expressed concern that agencies would look upon employees who use large amounts of sick leave to care for a family member as “leave abusers.” We believe agencies are aware that the use of approved sick leave is not leave abuse and is not a basis for an adverse action. An agency may request medical certification for the use of sick leave, but if proper certification is provided, the leave must be approved .

Another commenter argued that the availability of 12 weeks of paid leave for Federal employees will place the entire burden of family care on the shoulders of Federal employees. The commenter felt the Government should pressure private industry to expand its family leave policies to relieve the burden on Federal employees who are caretakers. OPM hopes this program will become a model for non-Federal employers by demonstrating ways to help employees balance their work and family responsibilities.

A number of agencies and individuals requested that OPM publish a table or matrix of leave programs that provides a basic overview of when and under what circumstances employees are entitled to leave under each of the various leave programs. The labor organization recommended that a special effort be made to provide training and resources to help agency personnel offices answer managers’ and employees’ questions concerning these regulations and their interactions with various family-friendly leave programs in the Government. OPM currently offers leave workshops to assist agencies and employees in understanding and administering the Government’s family-friendly leave programs. Dates for future workshops are

available on OPM's website at www.opm.gov. In addition, we have developed, and will continue to develop, fact sheets and matrix tables on the various Federal leave programs. These materials are available on OPM's website at www.opm.gov\oca\leave. In the near future, we will issue additional guidance and a series of examples on how to apply the different leave provisions.

Two commenters thought the Government should grant new mothers paid maternity leave in addition to their accrued sick leave. They pointed to companies in the private sector that offer this type of paid leave benefit. Many private sector companies provide employees with a limited amount of sick leave each year (which may or may not accumulate for use in succeeding years) and short-term disability insurance that may be used for maternity purposes. Generally, short-term disability insurance programs replace only a portion--typically 60 to 70 percent--of an employee's income while disabled and provide coverage for a maximum of 6 months. Like some of the other ideas raised by other commenters, legislative action would be required to establish such a program. We believe the Government's generous sick leave and annual leave system, in conjunction with advanced sick and annual leave, the leave transfer and leave bank programs, flexible work schedules, flexiplace, unpaid leave under the Family and Medical Leave Act of 1993, and compensatory time off enable the vast majority of Federal employees to meet their personal and family medical needs.

One agency commented that the leave provisions alone are confusing in themselves and that the variations and interworkings of these programs have become even more complicated and cumbersome. Several agencies recommended that OPM take the initiative to review Federal leave programs and combine and streamline where possible, including pursuing legislative

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change if necessary. In an effort to provide agencies with more flexibility in the way employees are compensated and to simplify compensation administration, OPM has embarked on a strategic compensation initiative. The goal of the initiative is to develop legislation to improve the Federal compensation system. This initiative will include recommendations for improving and simplifying paid time off programs.

Effective Date of Regulations

Three commenters requested that OPM make the final regulations effective retroactively—on the date of President Clinton's memorandum (May 24, 1999), at the beginning of this fiscal year (October 1, 1999), or at the beginning of this calendar year (January 1, 2000). The labor organization recommended that every effort be made to ensure the changes are implemented immediately, since employees continue to suffer under the current limitation of 13 days of sick leave each year for family care purposes. However, an agency requested delaying the effective date of the final regulations to permit additional time for reprogramming its payroll and accounting system to accommodate the expanded use of sick leave for family care purposes.

Because the implementation of a new sick leave policy requires changes in OPM's Governmentwide sick leave regulations, we must follow the procedural requirements of the Administrative Procedure Act (APA). The APA generally calls for a 30-day delay in the effective date of any regulatory change following the publication of final regulations. The issuance of retroactive regulations is neither the preferred nor usual method for rulemaking. Retroactivity in rulemaking is permissible where Congress has expressly authorized it in law, but that is not the case here. To enable employees to use this expanded benefit immediately, we are

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modifying the requirement to delay the effective date of the final regulations so that they can become effective 7 days after the date of publication in the Federal Register.

Waiver of Delay in Effective Date

Pursuant to 5 U.S.C. 553(d)(3), I find that good cause exists to make this rule effective in less than 30 days. We continue to receive inquiries from employees, agency officials, and other interested parties who are experiencing a family medical emergency and need additional paid time off. To accommodate the pressing need for this benefit, we are making these regulations effective 7 days after the date of publication.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they will affect only Federal agencies and employees.

E.O. 12866, Regulatory Review

The Office of Management and Budget has reviewed this rule in accordance with Executive Order 12866.

Family Assessment Certification

I certify that these regulations would strengthen the stability of the family, help families meet their responsibilities, and increase the disposable income of families in accordance with section 654 of the Treasury and General Government Appropriations Act, 1999, as contained in section 101(h) of Public Law 105-277, the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999.

List of Subjects in 5 CFR Part 630

Government employees.

U.S. Office of Personnel Management



Janice R. Lachance
Director

Accordingly, OPM is amending part 630 of title 5 of the Code of Federal Regulations as follows:

PART 630--ABSENCE AND LEAVE

1. The authority citation for part 630 continues to read as follows:

AUTHORITY: 5 U.S.C. 6311; § 630.301 also issued under Pub. L. 103-356, 108 Stat. 3410; § 630.303 also issued under 5 U.S.C. 6133(a); §§ 630.306 and 630.308 also issued under 5 U.S.C. 6304(d)(3), Pub. L. 102-484, 106 Stat. 2722, and Pub. L. 103-337, 108 Stat. 2663; subpart D also issued under Pub. L. 103-329, 108 Stat. 2423; § 630.501 and subpart F also issued under E.O. 11228, 30 FR 7739, 3 CFR, 1974 Comp., p. 163; subpart G also issued under 5 U.S.C. 6305; subpart H also issued under 5 U.S.C. 6326; subpart I also issued under 5 U.S.C. 6332, Pub. L. 100-566, 102 Stat. 2834, and Pub. L. 103-103, 107 Stat. 1022; subpart J also issued under 5 U.S.C. 6362, Pub. L. 100-566, and Pub. L. 103-103; subpart K also issued

under Pub. L. 105-18, 111 Stat. 158; subpart L also issued under 5 U.S.C. 6387 and Pub. L. 103-3, 107 Stat. 23; and subpart M also issued under 5 U.S.C. 6391 and Pub. L. 102-25, 105 Stat. 92.

Subpart B--Definitions and General Provisions for Annual and Sick Leave

2. In § 630.201(b), a new definition of serious health condition is added in alphabetical order to read as follows:

§ 630.201 Definitions.

* * * * *

Serious health condition has the meaning given that term in § 630.1202.

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Subpart D--Sick Leave

3. In § 630.401, the introductions to paragraph (a) and paragraphs (a)(3) and (b) are revised; paragraphs (c) through (f) are redesignated as paragraphs (e) through (h), respectively; new paragraphs (c) and (d) are added; and in newly designated paragraph (e), “(c)” is removed and “(d)” is added in its place wherever it appears, to read as follows:

§ 630.401 Grant of sick leave.

(a) Subject to paragraphs (b) through (f) of this section, an agency must grant sick leave to an employee when the employee--

* * * * *

(3)(i) 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; or

(ii) Provides care for a family member with a serious health condition.

* * * * *

(b) The amount of sick leave granted to an employee during any leave year for the purposes described in paragraphs (a)(3)(i) and (4) of this section may not exceed a total of 104 hours (or, in the case of a part-time employee or an employee with an uncommon tour of duty, the number of hours of sick leave normally accrued by that employee during a leave year).

(c)(1) An employee who is caring for a family member with a serious health condition under paragraph (a)(3)(ii) of this section may use not more than a total of up to 480 hours of sick leave (or, in the case of a part-time employee or an employee with an uncommon tour of duty, an amount of sick leave equal to 12 times the average number of hours in his or her scheduled tour of duty each week) during a leave year, subject to the limitation found in paragraph (c)(2) of this section.

(2) If, at the time an employee uses sick leave to care for a family member with a serious health condition under paragraph (c)(1) of this section, he or she has used any portion of the sick leave authorized under paragraph (b) of this section during that leave year, the agency must subtract that amount from the maximum number of hours authorized under paragraph (c)(1) of this section to determine the total amount of sick leave that may be used during the remainder of the leave year to care for a family member with a serious health condition. If the employee previously has used the maximum amount of sick leave permitted under paragraph (c)(1) of this section in a leave year, he or she is not entitled to use additional sick leave under paragraph (b).

(3) A full-time employee may use not more than a total of 480 hours of sick leave (or, in the case of a part-time employee or an employee with an uncommon tour of duty, an amount of

sick leave equal to 12 times the average number of hours in his or her scheduled tour of duty each week) for all family care purposes under paragraphs (a)(3) and (4) of this section.

(d) For family care purposes as described in paragraphs (a)(3) and (4) of this section--

(1) A full-time employee may use a total of up to 40 hours (or, in the case of a part-time employee or an employee with an uncommon tour of duty, the average number of hours in his or her regularly scheduled administrative workweek) of accrued and accumulated sick leave without further regard to his or her sick leave balance.

(2) A full-time employee may use more than 40 hours of his or her accrued and accumulated sick leave up to the maximum provided by paragraphs (b) and (c)(1) of this section only if he or she maintains a sick leave balance of at least 80 hours (or, in the case of a part-time employee or an employee with an uncommon tour of duty, two times the average number of hours in his or her regularly scheduled administrative workweek). An employee must maintain this balance during any period of time during which the employee is using more than his or her basic entitlement to sick leave under paragraph (d)(1) of this section.

(3) An agency may advance only the initial 40 hours of sick leave under paragraph (d)(1) of this section, or a proportional amount for an employee with a part-time or uncommon tour of duty. An agency may not advance sick leave for the purpose of meeting the requirement to retain a minimum sick leave balance under paragraph (d)(2) of this section or, if the employee has the required minimum sick leave balance, for using additional sick leave as provided in paragraphs (b) and (c) of this section.

* * * * *

4. Section § 630.403 is revised to read as follows:

§ 630.403 Supporting Evidence.

(a) An agency may grant sick leave only when supported by administratively acceptable evidence. Regardless of the duration of the absence, an agency may consider an employee's certification as to the reason for his or her absence as administratively acceptable evidence. For an absence in excess of 3 workdays, or for a lesser period when determined necessary, the agency may also require a medical certificate or other administratively acceptable evidence as to the reason for an absence for any of the purposes described in § 630.401(a).

(b) An agency may establish a uniformly applied policy that requires employees to provide administratively acceptable evidence or medical certification for a request for sick leave within a specified time period. An employee who does not provide the required evidence or medical certification within the specified time period is not entitled to sick leave.

(c) An agency may require an employee requesting sick leave to care for a family member under § 630.401(a)(3)(ii) 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--

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

§ 630.405 Use of sick leave during annual leave or to become eligible for donated leave.

5. In § 630.405, paragraph (a) is amended by removing “(e)” and adding in its place “(f),” by removing the last sentence in paragraph (b), and by revising paragraph (c) to read as follows:

* * * * *

(c) In the case of an employee already in a shared leave status (i.e., using donated annual leave) on [Insert date of publication in the Federal Register] under the voluntary leave transfer or leave bank programs established under subchapters III and IV of chapter 63 of title 5, United States Code, any sick leave available to care for a family member under § 630.401 must be used before continuing to use transferred annual leave or annual leave withdrawn from a leave bank.

Subpart L—Family and Medical Leave

§ 630.1202 Definitions.

6. In § 630.1202, paragraph (1)(ii)(B) of the definition of serious health condition is revised to read as follows:

* * * * *

Serious health condition. (1) * * *

(ii) * * *

(B) Any period of incapacity due to pregnancy or childbirth, or for prenatal care, even if the affected individual does not receive active treatment from a health care provider during the period of incapacity or the period of incapacity does not last more than 3 consecutive calendar days.

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