

**FAMILY AND MEDICAL LEAVE PROGRAM**

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**FAMILY AND MEDICAL LEAVE PROGRAM**

**PART ONE--BASIC PROVISIONS**

I. **PURPOSE**

This directive:

A. Implements the provisions of Public Law 103-3, Public Law 103-388, (### and Office of Personnel Management final regulations for the Family and Medical Leave Program. Final regulations were effective January 6, 1997.

B. Provides information on leave entitlement and participation in the Family and Medical Leave Program.

C. Describes responsibilities and procedures to request and use nonpaid and paid leave under the Family and Medical Leave Program.

\* \* \*

II. **CANCELLATION**

This directive cancels FSIS Directive 4630.6 Revision 1, dated 1/30/96.

\* \* \*

III. **REASON FOR REISSUANCE**

This directive is reissued to:

A. Clarify responsibilities and procedures to request and use nonpaid and paid leave under the Family and Medical Leave Program.

B. Provide new and revised terms and definitions.

IV. **REFERENCES**

FSIS Directive 4300.1, Reassignment of Food Inspectors in Work Reduction Situations ### 12/29/97)

FSIS Directive 4630.2, Leave  
FSIS Directive 4630.5, Voluntary Leave Transfer Program  
FSIS Directive 4771.1, Administrative Grievance System  
FSIS Directive 4810.1, Injury Compensation

5 CFR 630, Absence and Leave  
Public Law 103-3, Family and Medical Leave Act of 1993  
Public Law 103-388, Federal Employees' Family Friendly Leave Act

V. **ABBREVIATIONS AND FORMS**

The following will be used in their shortened form in this directive:

AL                    Annual Leave

|                        |   |
|------------------------|---|
| AWOL                   | Absent Without Leave                          |
| FEHB                   | Federal Employees Health Benefits             |
| FMLA                   | Family and Medical Leave Act                  |
| FMLV                   | Family and Medical Leave                      |
| (###FPC                | Financial Processing Center ### 12/29/97) LTP |
| Leave Transfer Program |   |
| LWOP                   | Leave Without Pay                             |
| OWCP                   | Office of Workers' Compensation Programs      |
| SPO                    | Servicing Personnel Office                    |
| T&A                    | Time and Attendance Report                    |
| TC                     | Transaction Code                              |
| WGI                    | Within Grade Increase                         |

Form AD-717, Audit for Leave Year 19\_\_  
 SF-52, Request for Personnel Action  
 SF-71, Application for Leave ### 12/29/97)

## VI. FMLA PROVISIONS AND APPLICABILITY

A. The FMLA entitles employees with at least 12 months of Federal Civilian Service, to the following:

1. An employee may use up to 12 administrative workweeks of nonpaid leave (LWOP) within one 12-month period for certain family and personal health conditions. The employee may choose to substitute paid leave for LWOP for FMLV absences (see Part Two, paragraph IV.). Use of paid leave must be consistent with current leave policies and guidelines for the particular category of leave requested. The FMLA does **not** replace or change leave policies and procedures established by the Office of Personnel Management and Departmental regulations or described in FSIS Directive 4630.2.

(### 2. While an employee (either bargaining unit or non-bargaining unit) is off work using FMLV, the duties and responsibilities of his/her position may be covered temporarily by other means. However, the employee may not be replaced permanently as a result of using FMLV. The employee returns **whenever possible** to the **same** position, in the **same** location, held before using leave.

3. When an employee (bargaining unit only) returns to work after using leave under the FMLA and there is a production decrease or a plant has closed, consistent with current reduction procedures outlined in FSIS Directive 4300.1, the following policy applies:

a. If it is not possible to return the employee to the same position held before the leave usage because of production reasons, the employee is reassigned to an equivalent vacant position in the **same** commuting area if such a vacancy exists. (**EXAMPLE:** If a processing inspector, GS-1863-09, assigned to Bob's Sausage Plant in Chicago, Illinois, is ready to return to work after using leave under FMLP and the

plant is closed, the inspector would be reassigned to a vacant GS- 1863-09 position in another plant located in the Chicago commuting area, if such vacancy exists.)

b. In the rare instance that no equivalent vacant position exists in the employee's commuting area, through normal reduction procedures, a localized workforce reduction is conducted to determine where to reassign the employee. The employee may be placed in the **same** commuting area or assigned in a different commuting area. (**EXAMPLE:** If the processing inspector mentioned in the example of subparagraph a. is ready to return to work after using leave under FMLP, and there is no vacancy equivalent to the inspector's previous job in the Chicago commuting area due to production reasons, the district manager asks POB to prepare a retention roster for a workforce reduction of the Chicago commuting area. If this inspector has higher retention standing over other employees in Chicago, the individual is reassigned to the position occupied by the employee with the lowest retention standing. The employee with the lowest retention standing is given reassignment options identified in FSIS Directive 4300.1. ### 12/29/97)

B. The FMLA consists of two Titles with slightly different provisions.

1. Title I applies to temporary, intermittent, and political appointee Federal employees.

2. Title II applies to permanent full-time and part-time Federal employees.

## VII. DEFINITIONS

A. **Compensatory Time Off.** A method of overtime compensation in lieu of cash payment in which overtime hours worked are credited to an employee for future use as compensatory leave. "Overtime" work credited as compensatory time must meet the statutory or regulatory criteria for compensable overtime. (### In this directive, the use of compensatory time applies only to nonbargaining unit employees.

B. **Donated Leave.** Accrued annual leave given by employees to other employees who are participating in, and have been approved as leave recipients under, the Voluntary LTP. Donated leave is also called transferred annual leave.

C. **Equivalent Position.** A position identical to another position in occupational series; standard job (SJ) number; level of duties, responsibilities, and authority; base salary; employment benefits; work schedule; type of appointment; and opportunity to obtain training and receive recognition and awards.

D. **Essential Functions.** The fundamental job duties of the employee's position.

E. **Family and Medical Leave.** Entitlement to LWOP for Federal employees with at least 12 months of Federal service for certain health conditions.

F. **Family Member.** Parents; spouses (including common-law marriage in States recognizing such marriages) and their parents; children (including adopted) and their spouses; brothers and sisters and their spouses; and any other individual related by blood or affinity whose close association with the employee is **equivalent** to a family relationship.

G. **Foster Care Placement.** The official removal of a child from parental custody by the State, and 24-hour responsibility of the child given to a foster parent(s). This does **not** include unofficial or temporary arrangements of a child, even if custody is given to relatives. Placement must be sanctioned by a State authority.

H. **Incapacity.** Inability to work, attend school, or perform other regular daily activities because of a serious health condition or treatment for or recovery from a serious health condition.

I. **Leave Without Pay.** A temporary nonpay status and absence from duty that is requested and approved in advance. (The permissive nature of LWOP distinguishes it from AWOL.)

J. **Parent.** A biological or foster parent, a parent by legal guardianship, or an individual who stands or stood **in loco parentis** (the person has or had full day-to-day responsibility for the care and financial support of the employee as a child). This does **not** include "parents-in-law."

K. **Serious Health Condition.** An incapacitating injury, illness, impairment, or physical/mental condition requiring inpatient care in a hospital or medical facility, **OR** a chronic or long-term condition requiring multiple treatments by a health care provider (**EXAMPLES:** heart attack, most cancers, stroke, severe respiratory disorders, spinal injury, prenatal care, childbirth recovery, asthma, diabetes, kidney dialysis and chemotherapy).

L. **Spouse.** A husband or wife pursuant to a marriage which is a legal union between one man and one woman, including common law marriages between one man and one woman in states where it is recognized.###  
12/29/97)

#### VIII. **EMPLOYEE'S RIGHT TO PARTICIPATE**

A. An employee may not directly or indirectly intimidate, threaten, or coerce any other employee to try to interfere with the right to use FMLV.

B. A supervisor may not prevent an employee from requesting FMLV.

If a supervisor disagrees with the employee's request, the request and documentation along with the supervisor's comments must be submitted, through appropriate channels, to the SPO for consideration.

C. An employee who is not approved for FMLV may appeal the decision through the Administrative Grievance System (see FSIS Directive 4771.1) or the bargaining unit's negotiated grievance procedure, as appropriate.

## **PART TWO--LEAVE ENTITLEMENT AND PARTICIPATION**

### **I. FMLV ELIGIBILITY REQUIREMENTS**

An employee must:

A. Have a permanent, temporary, or intermittent appointment **and** have completed **at least** 12 months of cumulative Federal Civilian Service. The **temporary** or **intermittent** employee **also** must have worked at least 1,250 hours during the year preceding the FMLV start date.

(###B. Be incapacitated or directly affected by one or more of the following family and/or medical conditions requiring an absence from duty of 4 or more consecutive calendar days:

1. Birth, adoption, or State-authorized foster care placement of a child. The employee's absence must be within the first year of birth or placement of the child.

2. Need to provide primary care for a family member who has a serious health condition.

3. A serious health condition that prevents the employee from performing the essential functions of the position.

C. Request that leave be taken under the FMLA.### 12/29/97)

### **II. CALCULATING ENTITLEMENT**

The number of hours in the employee's scheduled workweek determines the amount of FMLV to which the employee is entitled. The **maximum** entitlement is based on a 40-hour workweek and calculated by converting the 12 weeks to hours.

A. **A full-time employee** may use 480 hours of FMLV within a 12-month period (a 40-hour workweek times 12 weeks equals 480 hours of FMLV).

B. **A part-time employee** or an employee with an uncommon tour of duty may use FMLV, within a 12-month period, in the amount equal to the average number of hours worked per workweek times 12 weeks. Use the preceding 6 pay periods to calculate the average number of hours worked per workweek. (**EXAMPLE:** A part-time employee with a workweek of 32 hours may use 384 hours of FMLV; i.e., a 32-hour workweek times 12 weeks equals 384

hours.)

### III. USE OF FMLV

#### A. Twelve-Month FMLV Period.

1. An employee must use the 12-week entitlement within any continuous 12-month period beginning on the date the employee first takes requested FMLV and ending 12 months later. Any portion of the entitlement that is not taken within the 12-month period is forfeited.

2. Entitlement periods may not overlap. A new entitlement period may begin **after** the previous 12-month period ends **and** the employee requests additional FMLV.

(### 3. An employee may **not** request entitlement to FMLV retroactively for any previous absences of work.

B. **Sporadic Use of FMLV.** The 12-week entitlement may be taken on a sporadic or intermittent basis over a 12-month period **only when:**

1. Reasonable effort is made to schedule medical treatments to avoid disrupting official business.

\* \* \*

2. All other FMLV requirements are met.

### IV. USE OF PAID LEAVE IN LIEU OF LWOP

A. An employee who accrues leave may **elect** to use accrued or advanced paid leave in lieu of LWOP. The employee must request the paid leave **in** advance of the FMLV absence.

B. An employee may **not** retroactively substitute paid leave for LWOP previously taken as FMLV.### 12/29/97)

C. Paid leave requested under this Program counts toward the maximum 12-week entitlement--it is **not** in addition to the 12 weeks.

**EXAMPLE:** A full-time employee is entitled to 480 hours of paid or nonpaid FMLV in a 12-month period. The employee plans to use 80 hours annual leave for FMLV. The remaining amount of FMLV that can be taken is 400 hours (i.e., **480 hours** of paid or nonpaid FMLV **minus 80** hours of annual leave used for FMLV equals **400** hours of FMLV remaining).

D. An employee may use the following types of paid leave for FMLV:

1. Accrued or advanced annual leave.

2. Accrued or advanced sick leave.

(###\* \* \*

3. Restored annual leave.

4. Donated annual leave.

E. Accrued compensatory time off and credit hours earned under a flexible work schedule may be requested in addition to the period of FMLV, but may not be substituted for LWOP absences.### 12/29/97)

F. Use of any type of paid leave for FMLV must be **consistent with** the established policies and procedures for that type of leave. (**EXAMPLE:** With prior supervisory approval, annual leave may be used for FMLV absences for both personal and family-related serious health conditions.) Accrued sick leave may also be used for FMLV absences for both personal and family-related serious health conditions. Advanced annual and/or sick leave, if approved, may be taken for FMLV absences.

1. **Use of Sick Leave for Personal Illnesses.** Up to 480 hours (or a pro rata amount for part-time employees) of sick leave may be used for FMLV absences for **personal** illnesses.

2. **Use of Sick Leave for Family Illnesses.** The number of hours of sick leave that may be used for **family** illnesses depends on the employee's type of appointment; accrued sick leave balance; and whether or not the employee used sick leave for family and bereavement purposes during the leave year.

a. **A full-time employee who has not** used any accrued or advanced sick leave for family and bereavement purposes during the leave year, **and** has:

(1) **At least 184 hours** of accrued sick leave, may use **up to 104 hours** of sick leave for a family illness. **EXAMPLE:** A full-time employee with 200 hours of accrued sick leave, may use 104 hours of sick leave toward the 480 hours of FMLV for a serious family health condition. The remaining FMLV hours may be taken as LWOP or another type of paid leave (**EXAMPLE:** accrued annual leave).

(2) **183 hours or less** of accrued sick leave, may use **up to 40 hours** of sick leave for a family illness. The employee may use other types of leave for the remaining FMLV hours.

(3) **No hours of accrued** sick leave, may be advanced, if approved, **up to 40 hours** of sick leave for a family illness. The employee may use other types of leave for the remaining FMLV hours.

b. **A part-time employee who has not** used any accrued or advanced sick leave for family and bereavement purposes during the leave year, **and** has:

(1) **At least twice** the number of hours of accrued sick leave as the number of hours in his or her basic workweek, may use the number of hours of sick leave earned in one leave year for a family illness. **EXAMPLE:** An employee who works a 32-hour workweek, and has 100 hours of accrued sick leave, may use up to 83 hours of sick leave (the amount of sick leave that would accrue during the leave year) for FMLV absences.

(2) **Less than twice** the number of hours of accrued sick leave as the number of hours in his or her basic workweek, may use **only** the number of sick leave hours that equals his or her number of workweek hours for a family illness. **EXAMPLES:**

(a) An employee who works 32 hours per workweek, and has 60 hours of accrued sick leave may use only the number of hours of sick leave that equals his or her workweek hours (32 hours).

(b) An employee who works 32 hours per workweek, has 60 hours of accrued sick leave, **and** has used 10 hours of sick leave for family and bereavement purposes earlier in the leave year, may only use 22 hours of sick leave for a family illness. The employee could use other types of leave for the remaining FMLV hours.

c. **Intermittent Employee.** Intermittent employees may not use sick leave for FMLV absences.

## V. PROCEDURES FOR REQUESTING AND USING FMLV

### A. Employee.

1. **Requests FMLV in writing** on an SF-71 and **attaches** the following documents to the SF-71:

(### a. A brief statement requesting leave under the FMLA, reason for request, timeframes for FMLV, and the dates that any type of paid leave will be used during the specified FMLV period.### 12/29/97)

b. The attending physician's statement addressing the employee's:

(1) Prognosis and expected duration (including specific dates) and the approximate date of return to work.

(2) Requirement, if applicable, to receive periodic medical treatments requiring leave to be taken intermittently. (**EXAMPLES:** Physical therapy, chemotherapy, and dialysis.) **NOTE:** The FMLA and the provisions of this directive exclude coverage of **routine** physical examinations such as occasional checkups or examinations, and blood tests, **except** when needed for one or more condition(s) listed in Subparagraph I. B.

(3) Requirement, if applicable, to provide care for a family member with a serious health condition. The statement must indicate the family member's medical condition and the period of time the employee is obliged to provide care.

2. **Submits** the SF-71 **30 days in advance** through appropriate supervisory channels. When 30 days' notice is not practicable, such as in an emergency situation, notifies the supervisor of the need for leave as soon as possible.

(### 3. **Makes arrangements** with the district office or program ### 12/29/97) administrative officer to continue or terminate health insurance premiums if the request is for **31 days or more of LWOP, and** paid leave will **not** be used for the absence.

**B. Supervisor.**

1. **Informs** employees of FMLV entitlement and provides appropriate guidance and forms, as requested.

2. **Completes** the documentation to request FMLV on behalf of the employee only **if the employee cannot** do so and agrees that the supervisor may act as designee.

3. **Evaluates** requests and takes the appropriate action(s) for (### **one** of the following: \* \* \*

a. **Headquarters Employees Requesting:**

(1) **30 Days or Less of LWOP and Any Paid Leave.**

(a) **Concur.** Approves the request and informs the timekeeper. Reviews each T&A to ensure proper use of LWOP and paid leave for FMLV absences.

(b) **Nonconcur.** Attaches a statement to the request indicating the reason(s) for nonconcurrence and sends it through supervisory channels to: Washington Servicing Personnel Office, PD, 3161 South Building, 1400 Independence Avenue, SW, Washington, DC 20250.

(2) **31 Days or More of LWOP.**

(a) **Concur.** Recommends approval and sends the request to the appropriate division or staff director for approval. Submits an SF-52 and supporting documentation to the SPO address listed in Subparagraph (1) (b) for **approved** FMLV requests.

(b) **Nonconcur.** Attaches a statement to the request indicating the reason(s) for nonconcurrence and sends it through supervisory channels to the SPO listed in Subparagraph (1) (b) for approval

or disapproval.

(c) **SF-52.** Submits an SF-52 to the SPO address in Subparagraph (1) (b) when the employee returns to work from LWOP.

b. **Field Employees Requesting:**

(1) **Paid Leave.**

(a) **Concur.** Approves the request and informs the appropriate district office and the FPC. Sends the SF-71 and request to the district office. Reviews each T&A to ensure proper use of the LWOP and paid leave for FMLV absences.

(b) **Nonconcur.** Attaches a statement to the request indicating the reasons for nonconcurrence and sends it to the appropriate district office for approval or disapproval.

(2) **LWOP.**

(a) **Concur.** Recommends approval or disapproval of the request. Sends request and SF-71 to appropriate district manager for approval or disapproval.

(b) **Nonconcur.** Attaches a statement to the request indicating reasons for nonconcurrence and sends it to the appropriate district manager for evaluation.

c. **District Manager.**

1. Approves or disapproves paid leave requests not concurred by supervisors.

2. Approves or disapproves LWOP requests and if approved for **31 days or more** of LWOP, submits an **SF-52** and supporting documentation to: POB, Butler Square West, Suite 420C, 100 North Sixth Street, Minneapolis, MN 55403-1564.

3. Submits an SF-52 to the designated SPO when the employee returns to work from LWOP.

d. **Headquarters Timekeepers and FPC.### 12/29/97)**

1. **Annotate** the T&A's for an employee using FMLV. Use appropriate TC's for LWOP and paid leave. Annotate T&A's as follows:

a. If LWOP is used, enter TC-71 for "regular" LWOP. Note in the Remarks Section: "**X** hrs LWOP for FMLV."

(### b. If accrued or advanced annual or sick leave \* \* \* is used, enter the appropriate TC. (**EXAMPLE: TC-61** for annual leave.) Note

in the Remarks Section: "X hrs AL for FMLV."

c. If donated annual leave is used, contact the SPO to verify the number of donated hours available.

2. **Use an AD-717** to keep an ongoing record of LWOP hours and paid leave hours taken each pay period as FMLV and the 12-month timeframe in which the leave must be taken. (**NOTE:** District offices may use other procedures for internal tracking and approval of leave. However, if alternative procedures are used, local and council union presidents should be consulted.)

**E. SPO's.**

1. **Review and evaluate** FMLV requests that were recommended for disapproval by program division directors and staff directors.

2. **Assist** district offices, administrative officers, and ### (12/29/97) employees with arrangements for health insurance coverage for employees when needed.

3. **Ensure** that use of FMLV is consistent with current regulations governing other employee benefit programs. (**EXAMPLES:** Disability retirement, Voluntary LTP, and OWCP.)

4. **Process** the SF-52 and supporting documentation with the FMLV requests.

5. **Provide** dates and hours of FMLV taken to other agencies when an employee transfers. When gaining an employee who has used FMLV, the SPO's should receive the FMLV information from the transferring agency.

**F. Classification and Organization Branch, Personnel Division.**

1. **Develops** Agency policies and procedures for FMLV.

2. **Maintains** and disseminates Agency guidance on FMLV to employees.

3. **Responds** to reporting requirements established by the Office of Personnel, USDA.

**VI. RELATIONSHIP TO OTHER EMPLOYEE BENEFITS**

A. **LWOP.** FMLV is similar to LWOP because it is approved, nonpaid leave for which annual and sick leave do not accrue in pay periods where 80 hours (or multiples of 80 hours) accumulate. (See FSIS Directive 4630.2.) If FMLV is taken as LWOP:

1. **Both immediately before and after a holiday,** the employee

is not entitled to pay (i.e., paid holiday leave) for that holiday.

2. **For 31 calendar days or more**, time in service toward meeting the 3-year requirement for career tenure also extends by that same number of calendar days.

3. **In excess of 80 hours**, the WGI waiting period is delayed. Use of LWOP in excess increments of **80 hours** delays the WGI for employees in Steps 1, 2, and 3; in excess increments of **160 hours** for employees in Steps 4, 5, and 6; and in excess increments of **240 hours** for employees in Steps 7, 8, and 9.

B. **Sick Leave.** FMLV nonpaid leave is a separate entitlement from accrued sick leave. FMLV is a guaranteed entitlement to LWOP for which employees may substitute accrued sick leave, when appropriate (see Subparagraph IV. F.). FMLV is **not** an entitlement to sick leave.

C. **Voluntary LTP.** An employee may participate in the LTP while using FMLV provided the employee:

1. Meets the qualifications for **both** FMLV and the LTP.

2. Submits the appropriate documentation for both programs.

3. Does not use donated annual leave for portions of FMLV that were replaced with paid leave (i.e., annual or sick leave, \* \* \* or restored annual leave).

D. **FEHB Program.** An employee may continue health care coverage under the FEHB while using FMLV if the employee:

1. Makes arrangements with the SPO to pay the employee's portion of the premiums either during the nonpay status or after returning to work through payroll deductions. FSIS continues to pay the Government portion of the premiums for up to 364 days of LWOP.

2. Is not absent beyond the 364-day LWOP limitation. The employee's enrollment **terminates** on the 365th day of LWOP.

E. **Disability Retirement.** An employee who has applied for, or who plans to apply for, disability retirement because of a medical condition is eligible for FMLV. The following apply:

1. All other FMLV requirements must be met.

2. The employee is **ineligible** to use FMLV **upon approval** of disability retirement.

3. The beginning date of annuity could be affected if paid leave is applied to periods of FMLV.

F. **Workers' Compensation.** An employee may use FMLV after applying for workers' compensation, due to a work-related injury or illness, **only** when:

(###\* \* \*

1. The employee has not and will not receive workers' compensation for the period of FMLV taken as paid leave.

2. All other FMLV eligibility and documentation requirements (### 12/29/97) are met.

Alberta C. Frost  
Deputy Administrator  
Office of Management