

Time and Leave Handbook



IRS

Department of the Treasury

Internal Revenue Service

www.irs.ustreas.gov

Document 11103 (9-1999)

Catalog Number 27297B

Time and Leave Handbook Table of Contents

| | |
|---|-----|
| Disclosure | 1 |
| Hours of Duty | 2 |
| Tours of Duty | 5 |
| Overtime | 13 |
| Compensatory Time | 24 |
| Night Differential | 34 |
| Holiday Duty | 36 |
| Sunday Duty | 37 |
| Federal Wage System Employees | 39 |
| Fair Labor Standards Act - FLSA | 40 |
| Leave Administration | 50 |
| Absence of Disabled Veterans | 60 |
| Involuntary Leave | 61 |
| Transfer and Recredit of Leave | 61 |
| Annual Leave | 61 |
| Forfeiture and Restoration of Annual Leave | 67 |
| Home Leave | 73 |
| Sick Leave | 75 |
| Absence as a Result of Family Responsibilities | 82 |
| Leave Without Pay | 85 |
| Absence Without Leave | 88 |
| Military Leave | 89 |
| Court Leave and Official Duty for Court Services | 98 |
| Holidays | 104 |
| Religious Holidays | 110 |
| Excused Absences | 113 |
| Rest Periods | 114 |
| Medical Leave | 114 |
| Absences for Relocation Purposes | 117 |
| Absence for Voting or Registration | 118 |
| Conventions, Conferences and Tax Forums | 119 |
| Relations with Employee Organizations | 119 |
| Examinations | 119 |
| Brief Periods of Absence and Tardiness | 121 |
| Draft Registration | 121 |
| Funerals (Military) | 122 |
| Crime Provision | 122 |
| Closing of Offices | 122 |
| Participation in Civil Defense Activities | 126 |
| Emergency Rescue or Protective Work | 126 |
| Attendance at Employee Organization Training Sessions | 126 |
| Participation in Credit Union and Employee Association Activities | 127 |
| Leave Flexibilities Available for Family Care Purposes | 127 |
| Federal Employees Family Friendly Leave Act (FFLA) | 127 |
| Family and Medical Leave Act of 1993 | 128 |
| Federal Leave Sharing Program | 128 |
| Family Medical Leave Act (FMLA) | 129 |
| Expanded Family and Medical Leave | 145 |
| IRS Leave Sharing Program | 147 |
| Federal Employee's Compensation Act | 148 |

Time and Leave Handbook
EXHIBITS

| | |
|--|-----|
| EXHIBIT 1 - Work Performed While Traveling Away From Official Duty Station As "Hours of Work" Under FLSA | 158 |
| EXHIBIT 2 - Travel As A Passenger On A One-Day Assignment Away From Official Duty Station As "Hours Of Work" Under FLSA | 159 |
| EXHIBIT 3 - Home To Work Travel As "Hours of Work" Under FLSA | 160 |
| EXHIBIT 4 - Travel Within The Limits Of The Official Duty Station As "Hours Of Work" Under FLSA | 161 |
| EXHIBIT 5 - Travel As A Driver Of A Passenger Vehicle To A Temporary Duty Station As "Hours Of Work" Under FLSA | 162 |
| EXHIBIT 6 - Travel as a Driver that keeps an Employee Away from Official Duty Station Overnight | 163 |
| EXHIBIT 7 - COMPTROLLER DECISIONS - OVERTIME UNDER THE FLSA | 164 |
| EXHIBIT 8 - Employee Absences For Court or Court-Related Services | 165 |
| EXHIBIT 9 - FORM 9610 - RECORD OF APPROVED LEAVE- FAMILY and MEDICAL LEAVE | 166 |
| EXHIBIT 10 - FORM 9611 - APPLICATION FOR LEAVE UNDER THE FAMILY AND MEDICAL LEAVE ACT | 167 |
| EXHIBIT 11 - FORM WH380 - CERTIFICATION OF PHYSICIAN OR PRACTITIONER | 169 |

DISCLOSURE

(1) Time and Attendance Representatives (such as timekeepers, roster keepers, and "leads" who input time in Single Entry Time Reporting (SETR)) and managers must be particularly aware of their responsibilities in complying with Disclosure regulations. The T/A Records and certification forms are systems of records and must not be divulged indiscriminately. Managers may see and be given information only of those employees they supervise. Time and Attendance Representatives may see and be given information only of those employees they have been assigned responsibility for. Employees may see and be given information only concerning their own records. No employee must see or have access to attendance and leave information about other employees.

(2) T/A Records - The records must not be left in plain view where any employee can have access to Social Security Numbers and attendance and leave data of other employees. When time and leave representatives visit work areas, they should ensure the records are adequately protected.

(3) When employees are reassigned or transfer to a new geographical location serviced by a different Transactional Processing Center (TPC), all duplicate Time and Attendance Records, and supporting documentation for the past six years must be forwarded to the new TPC.

(4) Time and Attendance Records (and Rosters) and other supporting documentation are to be retained in locally designated for six years after the end of the leave year, when they may be disposed of in accordance with IRM 1(15)59-31, Records Control Schedule 301, General Records Schedule 2. The following supporting documents must be associated with the appropriate T/A Record and maintained with that Record in the designated files for six years after the end of the leave year. (See Section on Restored Forfeited Leave for further instruction)

- (a) Medical statements
- (b) Military Orders
- (c) Court Orders
- (d) Certificates of Attendance (military leave and Court leave)
- (e) Copies of memorandums for Restoration of Forfeited Annual Leave. (Only if prescribed by local instruction. See Section on Restored Forfeited Annual Leave for further instruction.)

(5) The six-year retention requirement means a historical file of T/A data on each employee must be retained locally in a designated area for six years after the end of the leave year. In order to facilitate records disposal, it is recommended that the current leave year plus six be retained. This approach will allow disposal of one year's records at the beginning of each leave year.

HOURS OF DUTY

General

Scope

(1) This Chapter provides information and instructions concerning tours of duty; administratively uncontrollable overtime, night, Sunday, and holiday duty; and compensatory time for Internal Revenue Service employees paid under the provisions of the Classification Act of 1949, as amended.

(2) The pay provisions of this Chapter do not apply to prevailing rate (wage) employees. Pay issues related to these employees may be found in the 5 CFR 532. Unless stated specifically, the leave provisions of this Handbook do apply to prevailing rate (wage) employees.

Legal Basis

The Federal Employees Pay Act of 1945, as amended, establishes a basic administrative workweek for full-time employees and compensation rates for overtime, night, Sunday, and holiday pay for Classification Act employees. Basic implementing regulations are contained in Parts 550 and 610, Code of Federal Regulations (CFR) for Title 5.

Definitions

Administrative Workweek

An administrative workweek is a period of seven consecutive calendar days designated in advance by proper authority.

Basic Workweek

For full-time employees, the basic workweek is 40 hours which may not extend over more than six of any seven consecutive days.

Regularly Scheduled Administrative Workweek

For full-time employees a regularly scheduled administrative workweek means the period within an administrative workweek during which such employees are regularly scheduled to work. For part-time employees, it means the officially prescribed days and hours within an administrative workweek during which these employees are required to be on duty regularly. The days and hours within the employee's regularly scheduled workweek, during which he/she is required to be on duty, may also be referred to as the

employee's "basic work requirement". Employees are expected to fulfill their basic work requirement (each hour, day, workweek, or pay period) through the completion of assigned work and/or approved leave status.

Tour of Duty

A tour of duty means the hours of a day (a daily tour of duty) and the days of an administrative workweek (a weekly tour of duty) that constitute an employee's regularly scheduled administrative workweek.

Full-Time Employees

Full-time employees are those regularly scheduled to work for 40 hours in a week on the days specified in the basic workweek.

Part-Time Employees

(1) Part-time employees are regularly scheduled to work less than 40 hours in an administrative workweek. There are two groups of part-time employees:

(a) Employees subject to the Part - Time Career Act (PTCA). These were appointed on or after April 8, 1979, and served under an excepted or competitive service appointment in tenure group I or II under a regularly scheduled part-time work schedule of 16-32 hours per week.

(b) Employees not subject to the Part - Time Career Act. These include:

1. Employees who were appointed or converted to part-time work schedules to meet work or mission requirements; and when possible, to assist the employee in meeting short or long term family needs.

2. Seasonal employees with a part-time work schedule.

Intermittent Employees

(1) Intermittent employees have no assigned work schedule and no prescheduled tour of duty, except that agencies may regularly schedule intermittent employees' work for a maximum of two pay periods without altering their conditions of employment or work schedule of record. This means that intermittent employment is appropriate when the nature of the work makes it impractical to schedule an employee to work at some time during each week in a pay period. Hours worked must not exceed 8 hours a day. Any hours worked over 8 per day must be compensated as OT. Hours worked for intermittent employees may be posted to the T&A record in 15-minute increments.

(2) In addition, if an intermittent employee's scheduled workday is terminated by management as a

direct result of events beyond the control of both management and the employee, the intermittent employee is entitled to administrative leave for the time remaining in the workday.

(3) CG Decision B-233656, dated June 19, 1989, provides the following: Intermittent employees who were furloughed for 3 1/4 hours due to an emergency shutdown of the office (waterline break) claim compensation for the period during which the shutdown occurred. Evidence shows that the employees were at work and had ample work to complete a normal workday. Under these circumstances, the agency may grant them administrative leave and may compensate them in same manner as all other employees who were sent home.

(4) In order to determine the number of hours to be charged to administrative leave, the employee's "normal workday" must be established. This may be determined by computing an average number of hours worked on prior days to perform the same work; or the number of hours scheduled to be worked by the intermittent employee on the day in which the administrative dismissal occurs.

(5) Intermittent employees are entitled to overtime compensation for hours worked in excess of 40 hours in a week or in excess of 8 hours in a day.

Seasonal Employees

(1) Seasonal employees are those who are employed for one or more seasons each year and retained on the rolls in nonpay status between seasons. Seasonal employees are released to nonpay status and recalled to duty in accordance with pre-established conditions of employment.

(2) Any of the above work schedules (full-time, part-time, intermittent) can be appropriate with Seasonal employment.

Rate of Basic Compensation

(1) Rate of basic compensation means the rate of compensation fixed by law or administrative action before any deductions and exclusive of additional compensation of any kind.

(2) For retirement purposes, (CSRS and FERS) basic compensation includes premium pay for standby duty. For law enforcement officer's retirement purposes, basic compensation includes premium pay for Availability Pay and Administratively Uncontrollable Overtime (AUO).

(3) For Federal Employees Group Life Insurance (FEGLI) purposes, basic compensation includes premium pay for standby duty. For law enforcement officers'

FEGLI, basic compensation includes premium pay for AUO and Availability Pay.

Premium Pay

Premium pay is additional compensation for overtime, night, Sunday, or holiday work and standby duty.

Regularly Scheduled Work

Regularly scheduled work is work scheduled in advance of the administrative workweek and generally refers to regularly scheduled overtime work. Although a manager recognizes the need to perform "overtime work" in advance of the administrative workweek, such overtime work is not compensable as regularly scheduled overtime until an employee is actually assigned to perform that same overtime work. The scheduling of employees to perform regularly scheduled overtime work is important since compensatory time may be worked in lieu of pay for irregular or occasional overtime work only.

Irregular or Occasional Work

Irregular or occasional work is work that has not been scheduled in advance of the administrative workweek and generally refers to irregular or occasional overtime work. Employees may receive compensatory time in lieu of pay for irregular or occasional overtime work.

Regularly Scheduled Overtime (or Regular Overtime)

Overtime scheduled in advance of the administrative workweek.

Tours of Duty -- Administrative Authority

See Delegation Order No. 39 (as revised).

Establishing and Recording Tours of Duty

(1) Establishment of Tours of Duty--The officials identified in Delegation Order No. 39 (as revised) or their designees, shall establish tours of duty for employees under their jurisdiction.

(2) Specification of Regular Overtime--If applicable, the tour shall specify, by calendar day and number of hours a day, any period of regularly scheduled overtime. It is Service's required practice to schedule regularly scheduled overtime in increments of 15 minutes.

(3) Recording Tours of Duty of Seasonal and Part-time Employees--

(a) Part-time (less than 72 hours a pay period) employees--A remark similar to the following is to be placed on the appointment SF-50 of a part-time employee: "Tour of duty 8:15 a.m. to 12:15 p.m., Monday through Friday." An increase or decrease in hours are to be recorded on SF-50's. However, if the clock times of a part-time daily tour is the only change (e.g., 8:15 a.m. to 12:15 p.m. 4-hour daily tour is being changed to 10:15 a.m. to 2:15 p.m.), it is only necessary to place a remark on the employee's, Time and Attendance Record (Form 9447 or other locally approved Form) as follows: Duty hours changed: 10:15 a.m.--2:15 p.m., Monday through Friday."

(b) It is necessary that tours of duty be recorded in these cases to establish leave accrual and premium pay eligibility.

(4) Standard Tours of Duty--The standard basic workweek throughout the Service will consist of five consecutive 8-hour workdays, Monday through Friday, in each administrative workweek.

(5) Deviations from Standard Tours of Duty--

(a) Tours necessitated by operating conditions--When it is determined that the organization would be seriously handicapped in carrying out its function or that costs would be substantially increased by adherence to the normal basic workweek, tours of duty may be scheduled to include hours of duty on Saturdays and Sundays or during one or more evenings a week, or both; and on fewer than five days but not more than six days of the administrative workweek. If feasible, such tours should provide for the same hours of work for each day, and for two consecutive days off in each administrative workweek. A responsible official should explain the necessity for the deviation in tour to the affected employees. Employees who have religious convictions against working on a given day of the week (such as Saturday or Sunday) should be assigned tours of duty not including that day, if practicable. Deviations from the standard tour of duty will be held to a minimum to meet situations such as the following:

1. unusual work requirements created by filing periods;
2. extended assignments of Special Agents to assist United States Attorneys in preparation for trial;
3. performance of investigative work during night hours on a regularly scheduled basis;
4. examination of taxpayers' books when such examination cannot be made during normal business hours;
5. assignment of Revenue Officers to the canvassing of night clubs or cabarets;
6. shift assignments to ensure best possible utilization of automatic data processing

equipment.

(b) In considering requests for assignments to prime shift bargaining unit vacancies in Service Centers, the Martinsburg and Detroit Computing Centers, managers should be guided by local or nationally negotiated agreements.

(c) Tours involving indefinite hours--In unusual circumstances, when it is impracticable to prescribe a regular schedule of definite hours for each workday (for example, in some investigative or computer activities), the first 40 hours of duty performed within a period of not over 6 days of the administrative workweek may be established as the basic workweek. In such cases, additional hours of officially ordered or approved duty within the administrative workweek are overtime work.

(d) Tours for educational purposes--

1. Public Law 89--478, enacted June 29, 1966, amended the Federal Employees Pay Act of 1945 to provide that special tours of duty (of not less than 40 hours a week) may be established, at the agency's discretion, to enable employees to take courses in nearby colleges, universities, or other educational institutions at their own expense. The courses need not be essential nor directly related to the work of the agency, but should equip the employee for more effective work in the agency.

2. The rescheduling of the workweek for educational purposes is not to result in additional cost to the Government. The law stipulates that premium pay is not to be paid solely because an employee's special tour for educational purposes results in his/her working on a day or a time of day for which premium pay is otherwise authorized. However, if the employee, in order to attend school, volunteers for, and therefore is assigned to a regularly scheduled tour for which night differential will be paid, he/she will receive premium pay because the rescheduling was not solely for his/her benefit.

3. Comptroller General Decision B-160465, dated March 9, 1967, rules that employees for whom special tours are established for educational purposes are entitled to overtime pay for work in excess of 8 hours in a day (or in excess of daily work schedule if on compressed work schedule with 9 or 10 hour days).

4. In view of the intent of Public Law 89-478 that special tours for educational purposes are not to result in additional cost to the Government and Comptroller General Decision B-160465 provides: (a) a daily tour of duty established for educational purposes may not exceed 8 hours; and (b) a daily tour of 8 hours or less may be established for educational purposes with the tour being arranged within the day to best suit the purposes of all concerned. If the Monday through Friday tours total less than 40 hours, the remaining

number of hours necessary to complete the 40 hour weekly tour should be scheduled on Saturday. Such Saturday tour, of course, also may not exceed 8 hours.

5. The Service desires to be liberal in varying the workweek for educational purposes provided the rearrangement does not appreciably interfere with the accomplishment of the work to be done.

6. If an uncommon tour of duty is established for educational purposes (e.g., a tour which consists of an uneven number of hours per day, such as 7 1/2 or 6 3/4 hours) sick leave, annual leave and LWOP may be charged in quarter hour increments if absent for the entire day. If employee is absent for part of the day leave will be charged in one hour increments.

(e) Flexible tours for Criminal Investigators

1. Since lawbreakers and suspects do not follow a regular schedule, Criminal Investigators are required to adapt their working hours accordingly. Because of this, a flexible tour of duty has been established which can be applied to criminal investigative personnel at the discretion of officials authorized to establish tours of duty. The tour is intended only for those positions in which irregular and unscheduled duty hours are the rule rather than the exception. It is not to be prescribed if an investigator's assignments can be accomplished by authorizing occasional overtime duty. These tours of duty should not be confused with Alternative Work Schedules which are requested by the employee and established for his/her benefit in offices with approved AWS programs.

2. The basic workweek for Criminal Investigators consists of five 8hour days, Monday through Friday. A flexible tour of duty is defined as those hours worked during the normal workday of the office (for example, 8:30 a.m. to 5:00 p.m.; 8:00 a.m. to 4:30 p.m.; etc.) plus such additional hours worked, either prior or subsequent thereto, as are necessary to bring the total number of hours worked to eight.

3. The flexible tour of duty provides investigative personnel considerable latitude in determining when they will work. Personnel assigned to such a tour of duty are, therefore, expected to use good judgment in determining their work hours. Supervisory personnel are responsible for ensuring that each Criminal Investigator effectively utilizes his/her time.

4. The Time and Attendance Record, of each employee for whom the flexible tour is prescribed must account for at least 8 hours on each day of the weekly tour; i.e., Monday through Friday. Usually, Criminal Investigators work 8 or more hours a day. However, when an employee works less than 8 hours a day because of illness, medical appointments, personal business, vacation, etc., he/she must request sufficient leave to bring the day's total to 8 hours. Specific hours of absence for any leave charged for less

than a full 8-hour day must be noted on the Time and Attendance Record.

(f) Documentation -- As required by Delegation Order No. 39 (as revised), the reasons for establishing deviating tours of duty should be carefully documented and made a matter of record.

(6) Notice to Employees of Tours of Duty

(a) Establishment of tours--All tours of duty established by authorized officials will be announced in written notices identifying the calendar days and the hours of each day constituting each tour. Every employee to whom the new tour applies is to be given a copy of the notice at least one pay period in advance of the first pay period of the tour. In the event that unusual circumstances render such early notification impracticable, this provision may be relaxed but the affected employees must be informed far enough in advance so that they will have time to report to work at the beginning of business on the first tour of duty.

(b) Changes in tours -- Ordinarily, employees will be notified of changes in tours of duty in the same manner as provided for notifications establishing tours. All changes in tours must be documented. Employees will be notified as soon as possible about prospective changes in tours; this notice should be in writing whenever practicable. Managers must be particularly careful to document and notify employees about changes that may affect entitlement to premium pay. Adverse action or Reduction-in-Force procedures may be applied to certain changes in tour of duty, particularly those involving a decrease in hours worked. In addition, changes in tours of duty may give rise to a notification or bargaining obligation with the union.

Alternative Work Schedule Program (AWS)

(1) Under authority granted by the Federal Employees Flexible and Compressed Work Schedule Act of 1982, the IRS and other Federal agencies have established the Alternative Work Schedule (AWS) Program. Within IRS there are three Alternative Work Schedules available for employees.

(2) Flexitour with Credit Hours --

(a) A work schedule that includes a basic work requirement of five (5) workdays of eight (8) hours each in each administrative workweek of the biweekly pay period and the ability of employees to work, with managerial approval additional hours (credit hours); the credit hours earned may be used at the election of the employee and with managerial approval, to vary the length of a workday or workweek. (Credit hours for travel may only be authorized for travel time that meets all necessary criteria to be considered as "hours of work" or "hours of employment".)

(b) Under the flexitour work schedule, the employee works an established eight (8) hour daily tour of duty for five (5) days each week of the pay period. This will total 40 hours worked each week and 80 hours worked each pay period. With flexitour work schedules, the employee may earn, and be granted for use, credit hours. Credit hours means any hours worked under this which are in excess of an employee's basic work requirement (8 hours per day, 40 hours per week, and 80 hours per pay period) and which are worked at the election of the employee, with managerial approval. Credit hours earned can be subsequently used at the election of the employee and with managerial approval to vary the length of a work day or work week.

(c) The employee's initials must be obtained on all absences on credit hours taken (CRT). Supervisory approval for credit hours taken and credit hours worked (CRW) must be provided by signature on the T/A record or T/A roster.

(d) Credit hours may be taken only after they have been earned and with supervisory. In addition, credit hours may be taken without regard to available balances of other forms of paid leave. However, the employee and supervisor should be aware of the possibility of forfeiting compensatory time or annual leave.

(e) Credit hours can be earned or taken in one hour increments only. If the employee works one credit hour in the morning and one credit hour in the evening, a total of two credit hours worked will be entered on the T/A record.

(f) Credit hours may not be earned for time spent in travel status. Travel outside the normal tour of duty is only compensable if it qualifies as hours of work, and then only overtime may be granted. See 5CFR 550.112 (Overtime Pay Provisions), and 5CFR 551.422 to determine if the travel meets the criteria for hours of work.

(f) A full-time or part-time employee will be allowed to earn a maximum of two credit hours per day. If management, through local decision, has provided that credit hours may be worked on non-workdays, this option will be available to employees of that office. Generally, credit hours cannot be worked on an official holiday unless such hours are worked outside of the employee's regularly scheduled tour of duty. If worked outside the tour of duty on a holiday, the maximum is also two (2) hours. NOTE: Credit hours may be worked on a holiday during regular duty hours only if stipulated in locally negotiated agreements. Time and Attendance Representatives should verify as to whether or not the local agreement permits employees to work credit hours on a holiday.

(g) A full-time employee on a flexitour may carry over no more than 24 credit hours from one pay period to the next.

(h) Number 7 must be entered in the compressed work schedule block.

(i) A part-time employee on a flexitour may carry over no more than 1/4 of the hours in his/her biweekly tour of duty.

(j) Post Credit Hours Worked (CRW).

(1) Credit hours worked are posted to the T/A record in one hour increments only.

(2) A clock time is not required for credit hours worked.

(3) The total credit hours worked for the pay period are recorded on the T&A Record.

(k) Posting credit hours taken (CRT).

(1) Credit hours taken are posted to the T/A record in one hour increments only.

(2) Clock times must be recorded for all credit hours taken.

(3) The total of credit hours taken for the pay period is recorded on the T/A record.

(l) Payment for unused credit hours.

(1) An employee on flexitour who permanently changes to another AWS or tour of duty, or separates, or transfers from the IRS, must be paid for any remaining balance of credit hours not to exceed 24 hours.

(2) Such payments will be paid at the employee's current basic rate of pay.

(3) Payment for credit hours under such conditions will be initiated by the Time and Leave representative through submission of the proper notification. This is currently accomplished with an AD-343 through NFC.

(4) The form should be completed with the following information:

- a. Employee's name
- b. Employee's SSN
- c. The number of credit hours to be paid
- d. The employee's current basic rate of pay
- e. The reason the payment must be made
- f. Signature or certification from the locally authorized official.

5/4-9 and 4/10 Compressed Work Schedules

(1) A full-time employee under the 5/4-9 compressed work schedule will be scheduled

to work eight 9 hour days, one 8 hour day and have one additional day off each pay period to complete the basic work requirement of 80 hours for the pay period.

(a) A full-time employee under the 4/10 compressed work schedule will be scheduled to work four 10 hour days, each week of the pay period, and have one additional day off each week of the pay period to complete the basic work requirement of 80 hours.

(b) Tours of duty, i.e. arrival and departure times and the regular non-workday are to be fixed by management in collaboration with employees. The regularly scheduled off day for employees on compressed schedule must remain fixed and should never be temporarily changed to coincide with other off days (such as holidays) to provide the employee with extended period of paid absence or "long weekends". Permanent changes to the compressed work schedule can be accomplished each quarter. However, management has the discretion to approve temporary changes in the work schedule as long as it does not conflict with the guidance listed above.

(c) The amount of excused absence to be granted in a given situation shall be based on the employee's established compressed work schedule in effect for the period of the excused absence.

(d) Number 5 must be entered in the compressed work schedule block for 5/4-9 and number 3 for 4/10.

(e) The employee's tour of duty must be documented and made a matter of record. The schedule must be documented on the T/A record. It may also be documented on the T/A roster. Tours of duty must be noted on the T/A record when the tour of duty involves night differential or Sunday premium pay.

(f) Employees on compressed work schedules are not permitted to use or work credit hours. Employees who convert from a Flexitour with Credit hours to a 5/4-9 or 4/10 work schedule may not use the credit hours that may remain to their credit following the conversion. If credit hours remain as an available balance following conversion to a 5/4-9 or 4/10 compressed work schedule, the balance of credit hours must be closed out and payment for such hours initiated.

(g) Although the above schedules are authorized for application throughout the Service, each schedule's availability within individual offices is dependent upon local management decision and/or negotiated agreements. Such decisions/determinations or agreement should be a matter of record within each office.

Daylight Saving Time

The Internal Revenue Service observes daylight saving time in those localities where it is in effect. An employee working on a shift when daylight saving time goes into effect will be credited with the actual number of hours worked on that shift. The hour lost as a result of the change will be charged to annual leave, sick leave, or leave without pay, whichever is applicable. An employee

working on a shift when standard time goes into effect will be credited with the number of hours he/she is actually on duty. The employee will be paid for an hour of overtime or be given an hour of compensatory time worked if applicable.

Overtime Duty

(1) The guidance in this Section on overtime duty is divided in two sections; the first section discusses overtime rules for IRS employees who are covered by 5 USC 5542 and 5 CFR 550.111. These employees are NOT covered by the Fair Labor Standards Act (FLSA) and, accordingly, will be referred to as "exempt" employees - exempt from FLSA coverage. Guidance on overtime duty performed by employees covered by the FLSA is provided in the second section. Employees covered by the FLSA are referred to as "non-exempt" employees. (NOTE: These designations under the FLSA have no direct relationship to union status designations; i.e., bargaining unit and non-bargaining unit positions.)

(A) Regulatory Provisions -- FLSA EXEMPT EMPLOYEES

(1) Except as provided by paragraphs (d) and (f) of this section, overtime work means work in excess of 8 hours (OR in excess of daily tour or duty for employees with compressed work schedules under the AWS program) in a day or in excess of 40 (OR established workweek total under AWS program) in an administrative workweek that is officially ordered or approved and performed by an employee.

(a) Hours of work in excess of eight in a day are not included in computing hours of work in excess of 40 hours in an administrative workweek.

(b) Except as otherwise provided in this section, the Service shall pay for overtime work at the rates provided in 5 CFR 550.113.

(c) Overtime work in excess of any included in a regularly scheduled administrative workweek may be ordered or approved only in writing by an officer or employee to whom this authority has been specifically delegated. (See Delegation Order No. 39).

(2) For an employee for whom the first 40 hours of duty in an administrative workweek is his basic workweek under 5 CFR 610.111(b), overtime work means work in excess of 40 hours in an administrative workweek that is officially ordered or approved and performed by an employee.

(3) Pay for overtime work will be limited to the salary of a GS-10 step 1. However, if an employee's basic workweek includes a daily tour of duty of more than 8 hours and his/her hourly

rate of basic pay exceeds the hourly rate of overtime pay provided by 5 CFR 550.113, the employee shall be paid at his/her basic rate of pay for each hour of his/her daily tour of duty within his/her basic workweek. (i.e., AWS employees)

(4) Criminal Investigators --

For any criminal investigator receiving availability pay under 5 CFR 550.181, overtime work means work that is scheduled in advance of the administrative workweek; and

(a) in excess of 10 hours on a day containing hours that are part of such investigator's basic 40-hour workweek.

(b) or on a day not containing hours that are part of such investigator's basic 40 hour workweek.

(c) Any work that would be overtime work under this Section but for paragraph (f)1, above shall be compensated by availability pay under 5 CFR 550.181.

(5) Overtime for Employees on AWS

(a) Employees on flexitour with credit hours are entitled to overtime for hours worked in excess of 8 paid hours a day or 40 paid hours in the administrative work week. An employee may work 8 hours one day, work 2 credit hours, and work overtime for 2 hours for a total of 12 hours worked in that day.

(b) A part-time employee on flexitour with credit hours is entitled to earn both overtime and credit hours on the same day or within the same workweek. Overtime is paid for hours worked in excess of 8 hours per work day or over 40 hours in a work week.

(c) Employees on a 5/4-9 compressed work schedule are entitled to overtime for hours worked in excess of 9 paid hours a day (or in excess of 8 hours on the day in which the basic work requirement is 8 hours) and in excess of 80 paid hours per bi-weekly pay period. Due to the fact that the basic work requirement is different for each week of the pay period, they will not be entitled to overtime for hours paid in excess of 40 in the administrative workweek.

(d) A full-time employee on the same 5/4-9 AWS as in (4) above works overtime on their Aoff day@. The employee then takes LWOP all day on the second Thursday of the pay period. The overtime hours worked would be converted to regular time because the employee did not meet the 80 regular hours worked for the pay period and would not be entitled to overtime.

(e) A full-time employee on 4/10 AWS is entitled to overtime for all hours in excess of 10 hours paid per day or 40 hours paid in the work week. If the employee works a 12-hour day, he/she would be entitled to 2 hours of overtime.

(6) Examples of Overtime Hours Computation

(a) LWOP - Leave Without Pay

1. For a period of leave without pay in an employee's basic workweek, an equal period of service performed outside the basic workweek, but in the same administrative workweek, shall be substituted and paid for at the rate applicable to his basic workweek before any remaining period of service may be paid for at the overtime rate on the basis of exceeding 40 hours in a workweek.

2. For a period of LWOP in an employee's daily tour of duty, an equal period of service performed outside the daily tour, but in the same workday, shall be substituted and paid for at the rate applicable to his/her daily tour of duty before any remaining period of service may be paid for at the overtime rate on the basis of exceeding 8 hours in a workday.

(b) Leave With Pay - An employee's absence from duty on authorized leave with pay during the time when he would otherwise have been required to be on duty during a basic workweek (including authorized absence on a legal holiday, on compensatory time off, or credit hours) is deemed employment and does not reduce the amount of overtime pay to which the employee is entitled during an administrative workweek. Leave of absence with pay is charged only for an absence that occurs during a basic workweek.

(c) Principal Activities - Time spent in principal activities are the activities that an employee is employed to perform. They are the activities that an employee performs during his/her regularly scheduled administrative workweek (including regular overtime work) and activities performed by an employee during periods of irregular or occasional overtime work authorized under 5 CFR 550.111. Overtime work in principal activities shall be credited in quarter hour increments.

(d) Time Spent in Preshift or Postshift Activities - A preshift activity is a preparatory activity that an employee performs prior to the commencement of his or her principal activities. A postshift activity is a concluding activity that an employee performs after the completion of his/her principal activities. Such activities are not principal activities. If an activity is closely related to an employee's principal activities, and is indispensable to the performance of the principal activities, and that the total time spent in that activity is more than 10 minutes per daily tour of duty, management shall credit all of the time spent in that activity, including the 10 minutes, as hours of work. If the time spent in a preshift or postshift activity is compensable as hours of work, management must schedule the time period for the employee to perform that activity during his/her regular work schedule or as overtime.

(e) Call-back Overtime Work - Irregular or occasional overtime work performed by an employee on a day when work was not scheduled for him/her, or for which he/she is required to return to his/her place of employment, is deemed at least 2 hours in duration for the purpose of premium pay, either in money or compensatory time off.

(4) Limitation on Overtime Pay

(a) Except as provided in (b) below, the amount of overtime is subject to the limitation in 5 USC 5547, that premium pay (pay for overtime, night, Sunday, holiday, and standby duty) may be paid only to the extent that it will not cause an employee's total earnings in any pay period to exceed the maximum scheduled pay rate for Grade GS-15. The limitation on pay also applies to compensatory time off which may be authorized in lieu of cash. (25 Comp.Gen. 750; 37 Comp. Gen. 362.)

(b) The above stated maximum limitation on an employee's aggregate rate of pay does not apply to overtime pay due an non-exempt employee under the overtime pay provisions of the FLSA.

(c) An employee entitled to overtime pay under the overtime pay provisions of the Fair Labor Standards Act (FLSA) and overtime pay under 5 USC 5547, or under any other authority, shall be paid under whichever authority provides the greater overtime entitlement in the workweek. This overtime pay shall be paid in addition to all pay, other than overtime pay, to which the employee is entitled under 5 USC 5547, or any other authority.

(5) Guidelines

(a) Officials authorized to order or approve overtime work will be guided by the general principle that overtime, whether on a paid or compensatory time off basis, shall be ordered or approved only when necessary to accomplish work that cannot be deferred; to eliminate backlogs; or to prevent foreseeable emergency work situations.

(b) However, the general attitude of restraint toward overtime should not be the basis for requesting, directly or indirectly, that employees perform voluntary overtime work without pay or compensatory time off. A supervisor's expressed or implied indication that employees not "volunteering" for overtime will be indifavor, will not be condoned. A practice of this kind, which may appear to be justifiable in the mind of the supervisor as being in the interest of the Service, certainly is not good management and is in direct conflict with the intent of law.

(c) Paying an employee overtime in the same pay period in which the employee has had authorized leave without pay, used compensatory time, or a legal holiday falls, is permitted, although during such period authorizing officials should keep paid overtime to a minimum.

(6) Ordering or Approving Overtime Duty

(a) Overtime duty must be ordered or approved in writing by the official having this authority whether or not the duty is on a paid or compensatory time off basis. Form 2787, Authorization and Report of Overtime Worked, is provided for this purpose. Overtime is to be recorded on the employee's Time and Attendance Record, as well as on the Form 2787.

(b) The word "approved" means administrative action after the fact (22 Comp. Gen 745; id. 895). With respect to overtime work, this means that work performed in excess of a regular tour of duty without being ordered may be approved as overtime work after it has been performed. This has particular application to situations where employees are more or less working "on their own." The ordering or authorizing of overtime in advance of its performance is preferred so that responsible officials will be assured of not creating an obligation in excess of available funds. Only when the obtaining of advance authorization is impossible or impractical should approval after the fact be allowed.

(c) If the overtime is not regularly scheduled, the employee is not entitled to night differential. Failure of the supervisor to preschedule and document overtime will result in non-entitlement to night differential.

(d) Irregular or occasional overtime work performed by employees on a day when work was not scheduled for them, or for which they are required to return to their place of employment for any amount of time, is deemed at least 2 hours in duration for purposes of overtime pay either in money or compensatory time off.

(e) Employees on military or court leave on a day which they regularly work overtime are entitled to overtime compensation for that day, provided, of course, they meet the basic requirement for overtime worked. Overtime hours should be posted in the usual manner along with the military or court leave.

(7) Overtime Compensation

(a) For each employee whose rate of compensation does not exceed the minimum rate of GS-10, the overtime hourly rate is one and one-half times the employee's hourly rate of compensation.

(b) For each employee whose rate of basic compensation exceeds the rate of GS-10 step 1, the overtime hourly rate is limited to one and one-half times the hourly rate of basic compensation at the rate of GS-10 step 1. (However, non-exempt employees covered by the FSLA are not subject to this limitation).

(c) An employee is compensated for overtime work performed on a Sunday or a holiday at the same rate as for overtime work performed on another day.

(d) Regularly scheduled overtime must be paid for in cash. (26 Comp. Gen. 750.) It is Service policy to schedule regular overtime in increments of 15 minutes. Regularly scheduled overtime is overtime that is scheduled in advance of the administrative workweek. Such overtime generally becomes a part of the employee's basic work requirement. The employee is ordered and scheduled to work the overtime and failure to do so would adversely affect his/her performance rating. Accordingly, the scheduling of regularly scheduled overtime must not be considered complete until the employee is officially advised of the day and hours to be worked. If this is not accomplished in advance of the employee's workweek, the overtime should be considered irregular or occasional.

(e) 5 U.S.C. 5543, states that employees whose salaries are equivalent or below a GS 10 step 1 may request either overtime pay or compensatory time off for irregular or occasional overtime duty. In addition, management may limit FLSA exempt employees whose salaries are equivalent to or greater than a GS 10 step 2 to compensatory off instead of overtime pay. This authority to require compensatory time in lieu of overtime pay may not be applied to FLSA nonexempt employees at any grade; or to wage grade (prevailing rate) employees whether nonexempt or exempt. FLSA nonexempt employees can elect to receive compensatory time.

(f) Any approved irregular overtime work performed shall be recorded, accumulated, and credited for each employee in minimum periods of 15 minutes and multiples thereof for each workday on which overtime work is performed. Any such work of less than a 15 minute interval will not be aggregated for pay purposes but odd minutes will be rounded to the nearest quarter hour on a workday basis.

(g) Intermittent employees (not having a regularly scheduled tour of duty) are entitled to overtime compensation for hours worked in excess of 40 hours in a week or in excess of 8 in a day.

(h) 5 U.S.C. 4109, provides that an employee who is selected and assigned for training, by, in, or through Government facilities or non-Government facilities under authority of the law, may not be paid overtime, holiday, or night differential pay during such training. 5 CFR 410.602(b) provides several limited exceptions to this prohibition.

(8) Premium Pay for Hours of Overtime Duty Which Cannot Be Controlled Administratively (AUO).

The regulations and instructions relative to the payment of additional compensation to employees occupying positions in which the hours of duty cannot be controlled administratively and which require overtime, night, and holiday duty are set forth in 5 CFR 550.151 and 550.141. Historically, the only employees eligible for premium pay for administratively uncontrollable overtime (AUO) in the IRS has been criminal investigators (GS-1811). However, in accordance with 5 CFR 550.163(e), premium pay under 5 CFR 550.151 (AUO) may not be paid to a criminal investigator receiving availability pay under 5 CFR 550.181. There are employees eligible for AUO such as revenue agents.

(9) Law Enforcement Availability Pay (LEAP)

Each criminal investigator meeting the definition in 5 CFR 550.103, and the conditions and requirements of 5 U.S.C. 5545a and the regulations in 5 CFR 550.181 through 550.187, shall receive availability pay to ensure the availability of criminal investigators (GS-1811) for unscheduled duty in excess of the 40-hour workweek based on the needs of the Service. LEAP requires that a criminal investigator be available to work, or work, a minimum of 2 hours per day on unscheduled duty.

An criminal investigator will not be entitled to receive LEAP for any period of leave, training, or travel in excess of 4 hours per day.

(10) Telephone Work Outside of Regular Duty Hours

The Internal Revenue Service compensates employees who are required to remain available outside of regular work hours to respond to telephonic questions about their work, under the following circumstances:

(a) The Service will place the fewest possible restrictions on employees who are required to be available outside of their regular work hours to respond to telephonic questions about their work. Whenever possible, management will utilize options such as allowing employees to periodically check in by telephone; allowing employees to be mobile within range of a beeper; allowing employees to leave a phone number where they can be reached if they do not remain at home during the period for which they must be available, etc.

(b) The Service will compensate employees for one or an uninterrupted series of telephone calls of at least 15 minutes' duration:

1. when the employee has been formally advised by appropriate authority that she/he is required to be available outside of regular working hours to attend to official matters,
2. when management initiates the contact (if the employee is required to periodically check in by telephone, this is considered a contact initiated by management), and
3. when the discussion concerns actual work, rather than tangential issues such as leave plans.

Overtime Entitlement

(1) Daily Overtime Hours

(a) Hours of work in excess of 8 hours in a day (which is NOT AUO) are considered to be overtime hours under the FLSA regardless of the total number of hours of work in the workweek. For nonexempt employees with a normal 5-day workweek, 8 hours/day, "8" hours is the daily overtime standard. (See (2) below for employees on compressed work schedules.)

1. For example: an employee who works 10 hours on the first day of the workweek and is on leave without pay (LWOP) for the remainder of the workweek is entitled to 2 hours of overtime pay under the FLSA even though the he/she has worked a total of only 10 hours in the workweek.

(b) Hours of work subject to the 8-hour daily overtime standard include all work performed by an employee that has been officially ordered or approved, call-back overtime (see below), and time spent in a travel status away from the official duty station that is hours of work. In addition, for employees receiving annual premium pay for standby duty, irregular or occasional hours of work outside the regularly scheduled tour of duty are subject to the 8-hour daily overtime standard. For employees receiving annual premium pay for AUO work, only regularly scheduled hours of work are subject to the 8-hour daily overtime standard.

(c) Hours of work NOT subject to the 8-hour daily overtime standard (not deemed to be overtime hours) --but ARE subject to the 40 hour per week overtime standard--include hours of work for which an employee receives annual premium pay for regularly scheduled standby duty, administratively uncontrollable overtime (AUO), suffered or permitted overtime work, travel away from the official duty station to a controllable event during corresponding hours, and (for wage system/prevaling rate employees only) hours within the confines of the post of duty in a standby or on-call status.

(d) Overtime hours in excess of 8 in a day are NOT counted toward hours in excess of the applicable overtime standard for the week. This is referred to as the "prohibition against double counting". Example: Travel time that meets the criteria for hours of work, may not be counted towards the 42 3/4 hour weekly overtime standard for law enforcement employees AND, at the same time, be counted towards the 8 hour daily overtime standard. The subject overtime hours must be applied towards the fulfillment of only one overtime standard for the week or pay period. For law enforcement employees, unless the travel time is regularly scheduled overtime, the subject hours must be reported towards the weekly overtime standard.

(e) Fractional Hours of Work

1. Under the FLSA, a nonexempt employee must be compensated for every minute of work performed during his/her regularly scheduled administrative workweek, including regularly scheduled overtime (overtime that is scheduled in advance of the administrative workweek). Within the IRS, managers must take steps to ensure that overtime, whether regularly scheduled, irregular, or occasional, is worked and reported in 15 minute increments. However, any regularly scheduled overtime that is worked in excess of 15 minutes should be rounded UP to 1/2 hour. A quarter of an hour is the largest fraction of an hour to be used for crediting irregular or occasional overtime work under the FLSA. When irregular or occasional overtime work is performed in other than full 15 minute increments, odd minutes must be rounded UP or DOWN to the nearest quarter hour.

(2) Overtime for Employees on Flexible Work Schedules and Compressed Work Schedules

(a) For an employee on a flexible work schedule, hours of work in excess of 8 in a day that are officially ordered in advance are considered overtime hours under the FLSA. Similarly, hours of work in excess of the applicable overtime standard for the week that are officially ordered in advance are overtime hours under the FLSA. When an employee on a flexible work schedule voluntarily works credit hours, those additional hours are not included in computing hours of work in excess of 8 in a day or 40 in the week.

(b) For employees on a compressed work schedule, only hours of work in excess of the specified hours in a day that constitute the compressed schedule will be considered to be overtime hours under the FLSA. Only those hours in excess of the compressed work schedule will be overtime hours on the basis of exceeding the applicable overtime standard for the week.

(3) Hours in a Paid Nonwork Status

Hours in a paid nonwork status are considered to be hours of work under the FLSA. Examples of paid nonwork status include annual, sick, court, military leave and excused absence, pay for a holiday on which no work is performed, compensatory time off, continuation of pay (COP), and credit hours under flexible work schedules (when taken).

(4) Call-back Overtime Work

When an employee performs unscheduled overtime work on a day when work was not scheduled, or for which he/she is required to return to his/her place of employment, the employee is credited with:

1. 2 hours of work under the FLSA, or
2. the actual number of hours worked, whichever is greater.

(5) Regular Rate and Overtime Pay

(a) The computation of overtime pay for a nonexempt employee under the FLSA is much more complex and varies significantly from the overtime pay computation for exempt employees under Title 5. While the complete computation process will not be provided herein, a description of the "regular rate", which is a key factor in the pay computation, will assist managers in gaining a basic understanding of the concept under which overtime under the FLSA is calculated. This description of the regular rate is provided as follows:

1. Under the FLSA an employee who does not perform fire protection or law enforcement activities is entitled to be paid one and one-half times his/her hourly "regular rate" of pay for all hours that exceeds 40 hours in a workweek. In addition, FEPCA (5 CFR 551.401(f) authorizes a NONEXEMPT employee to be compensated for all hours of work that exceed 8 hours in a day that meet the hours of work criteria set forth in 5 CFR 410.602 (Training), 5 CFR 532.503 (Federal Wage System) and 5 CFR 550.112 (General Schedule) as appropriate. Employees will not be given credit for hours worked under both sets of criteria, i.e., exceeding both 8 hours in a day and 40 hours in a week.

(a) Specifically, under the FLSA, the workweek is a fixed and recurring period of 168 hours, 7 consecutive 24 hour periods. The FLSA workweek is not required to coincide with the calendar week but may begin on any day and at any hour of the day.

2. Employees who perform fire protection or law enforcement activities and who are covered by the provisions of FLSA (i.e., are NONEXEMPT), section 7(k) of the FLSA establishes separate overtime standards for a specified work period. (29 USC 207(k), 5 CFR 551.541)

(a) The work period is established by each agency and shall not be more than 28 days nor less than 7 days. For example, the Treasury Department establishes the 14 days that coincide with the regular biweekly pay period as the specified work period.

(b) The separate standards were established for the employees because Congress was aware that the work schedules of fire protection and law enforcement employees vary from the schedules of other employees. This difference required some adjustment to the usual rules for determining overtime.

(c) The separate standards for overtime are based on a survey of hours non-federal fire protection and law enforcement employees normally work. The standard has changed/reduced over the years. (When FLSA coverage was first extended to federal fire protection and law

enforcement employees in 1975, the standard was 240 in a work period of 28 days.) Currently, the standards are all hours that exceed:

(1) 171 hours in a 28 day period (85 1/2 hours in a 14 day period or 42 3/4 hours in a 7 day period) for employees engaged in law enforcement activities; and,

(2) 212 hours in a 28 day period (106 hours in 14 days or 53 hours in 7 days) for employees engaged in fire protection work.

(d) In determining whether or not the employee's hours exceed these standards, all the time the employee is on duty (i.e., the whole tour of duty) shall be included.

Employees on Flexible or Compressed Work Schedules -

Employees working on Flexible Work Schedules (under 5 USC 6122 through 6126) will have hours or work that are officially ordered or approved in advance that exceed 8 hours in a day or exceed the weekly overtime standard for the week credited as overtime hours. Additional hours voluntarily worked, including credit hours, are not counted as overtime for those on flexible schedules.

Employees working on Compressed Work Schedules (under 5 USC 6127 and 6128) will have hours of work in excess of the daily or weekly compressed work schedules credited as overtime hours if they also exceed the daily or applicable weekly overtime standard.

2. In order to determine the hourly regular rate for the employee, the total remuneration paid to the employee in the workweek must be divided by the total number of hours of work in the work week. Accordingly, a nonexempt employee's "regular rate" under the FLSA can vary from one pay period to the next depending upon the total earnings or remuneration. This concept is quite different from the standard calculation of overtime pay under Title 5 (for exempt employees) which is based upon a fixed overtime hourly rate. Total remuneration includes the following:

- Base pay
- Night Differential
- Sunday premium pay
- Premium pay for AUO
- Cost of living allowance
- Post Differential
- Environmental differentials
- Hazardous duty pay
- Geographic adjustments
- Retention allowances
- Representation allowance (UN)

Total remuneration does not include payments for the following:

- Payments rewarding service that is not measured by or based on hours of work, production or efficiency, e.g., cash awards under an incentive awards program;
- Reimbursements for travel expenses or other similar expenses that are not related to hours of work;
- Recruitment and relocation bonuses;
- Clothing and uniform allowances;
- Any other payments which are not for actual hour of employment (retirement annuities)

Compensatory Time

(1) Upon the request of a nonexempt employee, compensatory time off may be granted from a scheduled tour of duty instead of payment under the FLSA for an equal amount of time spent in irregular or occasional overtime work--i.e., overtime work that is not scheduled in advance of the employee's workweek.

(2) Within the IRS, and in accordance with regulations established by the Department of the Treasury, compensatory time may not be earned in excess of 80 hours at any time. In addition, compensatory time must be used within 12 pay periods after it is earned. However, for nonexempt employees only, if either of the established limitations are exceeded (not used within 12 pay periods or compensatory time earnings in excess of 80 hours) the employee **MUST** be paid for the overtime work at the FLSA overtime rate at which it was earned.

(3) Upon request, compensatory time off may be granted to an employee on a flexible work schedule instead of payment under the FLSA for an equal amount of time spent in overtime work, without regard to whether the overtime work was irregular or occasional in nature.

(4) Compensatory time off for nonexempt employees may be granted **ONLY** upon the request of the employee. **There is no legal authority for a manager to require that a nonexempt employee take compensatory time off in lieu of overtime pay.**

(5) Wage grade employees (prevailing rate) are entitled to earn and use compensatory time.

Inclusion of FLSA Overtime Pay in Lump-Sum Payments for Annual Leave for Employees on Uncommon Tour of Duty

Lump sum payments for accumulated and accrued annual leave should include all FLSA overtime pay for overtime hours that are regularly scheduled during an employee's established uncommon tour of duty (as defined in 5 CFR 630.201) if such uncommon tour of duty was in effect for the employee immediately prior to the date the employee become eligible for a lump-sum payment. This rule does not apply to employees who are exempt from the FLSA. For purposes of this provision and as stipulated in 5 CFR 630.201, an uncommon tour of duty is a tour of duty that exceeds 80 hours of work in a biweekly pay period, including hours of actual work plus hours in a standby status for which the employee is compensated by annual premium pay under 5 U.S.C. 5545(c)(1) and Part 550 of the CFR.

Comptroller General (CG) Decisions on Overtime Pay Under the FLSA -Suggested Reading

See Exhibit 7 for a list of CG Decisions, by subject matter, on the payment of overtime pay under the FLSA. A review of these decisions will provide additional guidance on specific subjects and the CG's interpretation of existing overtime provisions of the FLSA. Review of these decisions will greatly enhance the reader's understanding of the Fair Labor Standards Act.

Travel Time

Scope

This provides information and guidance concerning the scheduling of official travel and the conditions under which travel outside regular working hours is considered overtime. An employee may not earn credit hours for travel because travel in connection with Government work is not voluntary in nature. In other words, travel itself does not meet the definition of credit hours in 5 U.S.C. 6121(4), which provides that credit hours are hours within a flexible work schedule in excess of the employee's basic work requirement which the employee elects to work so as to vary the length of a workweek or a workday. If travel time creates overtime hours of work, the employee must be compensated by payment of overtime pay or under the rules for granting or requiring compensatory time off.

Legal and Regulatory Basis

(1) 5 CFR 550.112 (e) & (g), 610.123, and 551.422 describe the statutory and regulatory provisions concerning the scheduling of travel and overtime compensation for travel.

(2) It was Congressional intent that whenever practicable an employee's travel should be scheduled within his/her regularly scheduled working hours. It was recognized that situations will develop when the employee will be required to travel away from his/her official duty station outside his/her regularly scheduled work hours. When such travel is performed under the conditions set out below, it is compensable as "hours of employment" or "hours of work". When such travel is not performed under those conditions, it is not "hours of employment" or "hours of work" for pay purposes and the reasons for requiring the travel must be recorded and made available to the employee(s) involved, upon request.

General

The Service's policy concerning the scheduling of work assignments, training courses and other official activities is that all Service activities are to be scheduled to permit travel within regular working hours.

Responsibilities of Scheduling Officials

(1) Revenue Service officials who control or schedule work assignments, training courses, meetings, conferences, field visits, transfers, and details, etc., are responsible for:

(a) Arranging the events, to the maximum extent practicable, so that employees can travel to and from them during their regular working hours.

(b) Determining when it is essential to schedule an event so that travel in connection with it will be required outside regular working hours.

(c) Recording the reasons why employees are required to travel away from their official duty stations outside regular working hours without overtime compensation (or compensatory time off or credit hours). Upon their request, such employees are to be furnished with a statement of the reasons.

Travel Outside the Official Duty Station

(1) Time in travel status away from the official duty station of an employee is considered hours of employment (work) only when the travel:

(a) is within his/her regularly scheduled workweek, including regular overtime work; or

(b) is required to drive a vehicle or perform other work while traveling; or

(c) is incident to travel that involves the performance of work while traveling; or

(d) is carried out under such arduous and unusual conditions that the travel is inseparable from work; or

(e) results from an event which could not be scheduled or controlled administratively.

(2) Fair Labor Standards Act --For employees covered by the Fair Labor Standards Act (FLSA nonexempt) the items listed above also apply. However, for FLSA nonexempt employees only, the following situations are considered hours of employment (work):

(a) travel as a passenger on a one-day assignment away (outside 40 mile radius) from the official duty station;

(b) travel as a passenger on an overnight assignment away from the official duty station (outside 40 mile radius) during hours on nonworkdays that correspond to the employee's regular working hours.

(c) An employee who travels from home before the regular workday begins and returns home at the end of the workday is engaged in normal "home to work" travel; such travel is not hours of work. When an employee travels directly from home to a temporary duty location outside the limits of his or her official duty station, the time the employee would have spent in normal home to work travel shall be deducted from hours of work as specified in (1)(b) and (2)(a), above.

(d) An employee who is offered one mode of transportation and who is permitted to use an alternative mode of transportation, or an employee who travels at a time other than that selected by management, shall be credited with the lesser of:

1. The actual travel time which is hours of work for one of the above reasons; or
2. The estimated travel time which would have been considered hours of work for one of the above reasons had the employee used the mode of transportation offered by management, or traveled at the time selected by management.

(e) Specific, detailed instructions on overtime pay entitlement (including non travel situations) for employees covered by the Fair Labor Standards Act (FLSA).

(3) An employee's official duty station is defined as his/her designated post of duty, the limits of which are the corporate limits of the city or town in which the employee is stationed; but if not stationed in an incorporated city or town, the official duty station is the reservation, station, or established area, or, in the case of large reservations, the established subdivision thereof, having definite boundaries within which the designated post of duty is located. (This definition derives from the Standardized Government Travel Regulations.) For IRS purposes, the official duty station is defined as a 40-mile radius around the permanent duty location. See IRM 1763, Chapter 300 (Travel Handbook). See also, 5 CFR 550.112 and 551.422.

(4) Although travel time may meet the conditions for being considered overtime, it is not compensable as overtime unless it is officially ordered or approved. (See "Suffered and Permitted" overtime under the FLSA for exceptions). Thus, to be compensable as overtime, the appropriate official must require the employee to travel outside his/her regularly scheduled working hours under one (or more) of the qualifying conditions, or, after such travel is performed, he/she must approve it as overtime. If appropriate, compensatory time off may be authorized in lieu of overtime pay.

(5) "Time in travel status," for overtime purposes, is the time actually spent in traveling between an employee's official duty station and his/her point of destination (outside his/her official duty

station), or between two temporary duty points, and for usual waiting time which interrupts such travel.

(6) Time in travel status begins at the time the traveler leaves his/her home, office, or other point of departure and ends when he/she returns to home or office at the conclusion of the trip.

(7) When an employee for personal reasons, such as an aversion to flying, does not use the mode of transportation selected by the official ordering the travel, or for his/her own convenience travels by an indirect route or interrupts travel, the employee will be considered to be in a travel status only for the estimated time which would be spent in traveling to the point of destination by the mode of transportation selected by the official ordering the travel.

Conditions Under Which Travel Away From the Official Duty Station are Hours of Work

(1) Travel within the regularly scheduled workweek, including regular overtime--However, in no case will an employee's administrative workweek or tour of duty be changed for the purpose of authorizing payment for travel time.

(2) Travel Involving the Performance of Work While Traveling--Generally, within the meaning of the statute and OPM regulations, work while traveling is considered work for overtime purposes if it can only be performed while traveling (employees who are required to drive a vehicle or perform other work while traveling). However, when a supervisor requires an employee to perform work while traveling, the actual time spent performing the work is considered work even though it is the kind of work that would ordinarily be performed at the employee's place of business. In other words, is the activity performed while traveling the same kind of activity for which overtime would be authorized at the office? Was the activity (performed while traveling) directed or approved by the supervisor as overtime? Thus, if these criteria and any others relating to overtime work at the office could be applied equally to activities performed while traveling, such travel time could be considered "work" for overtime purposes.

(3) Travel Which "is Incident to Travel that Involves the Performance of Work While Traveling"--This provision will rarely if ever, apply to the Revenue Service situation. An employee generally will be in this situation when he/she is on a "deadhead" trip, either traveling to a destination to board a means of transportation upon which he/she will be performing work while traveling, or, having performed work while traveling, returning to his/her official duty station. An example of travel of this type is a truck driver deadheading to a point of pickup of a truck to be driven to another destination.

(4) Travel Which is Carried out Under Such Arduous Conditions That the Travel is Inseparable from Work--Travel under arduous conditions would include travel over unusually adverse terrain, during severe weather conditions, or to remote barely accessible facilities by foot, horseback, or a truck. Travel by automobile over a hard surfaced road, either as driver or passenger, when no unusually adverse weather conditions are encountered, or travel by air or rail would not normally constitute travel under arduous conditions. In addition, the time of travel (whether to be performed during day or night) or distance traveled is not ordinarily for consideration in determining whether the travel is performed under arduous conditions. A distinction should also be made between arduous conditions and hazardous conditions, keeping in mind that the latter may contribute to the former (see 28 Comp. Gen. 546; 41 id. 82).

(5) Travel Which Results from an Event Which Could Not be Scheduled Or Controlled Administratively. (A & B apply to FLSA exempt employees only) FLSA non-exempt employees required to travel on an overnight assignment away from official duty stations during hours on non workdays that correspond to the employee's regular working hours are considered to be hours worked.

(a) The phrase "could not be scheduled or controlled administratively" refers to the ability of an Executive Department, agency, or Bureau to control the "event" which necessitates the employee's travel. The control is assumed to be the agency's whether the agency has sole control or the control is achieved through a group of agencies acting in concert, such as a training program or conference sponsored by a group of Federal agencies, or sponsored by one in the interest of all, or through several agencies participating in an activity of mutual concern, such as an agency hearing or a combined activity.

(b) For example, the Revenue Service finds it is essential to schedule a training course to start at the beginning of business, Monday morning. Employees travel there away from their official duty stations outside normal work hours. Since the IRS controls the hours of training, the course is an event which can be scheduled or controlled administratively; and employees who attend the course will not be entitled to overtime pay (or compensatory time off, or credit hours) for the time spent traveling to the training location irrespective of whether employed by the Revenue Service or another Federal agency.

(c) On the other hand, travel is considered hours of work when it results from unforeseen circumstances or from an event which is scheduled or controlled by someone or some organization outside the Executive Branch of the Government (See Unpublished Comptroller General Decision B-163654, dated April 19, 1968), and there is an immediate official necessity in connection with the event requiring travel to be performed outside an employee's regular duty hours (CG B-198385, B-198386, B-198400). An example would be when an employee was required to travel on very short notice to correct problems resulting from a computer failure. It is important to note that in order to meet this condition the travel must result from an event that

could not be scheduled or controlled administratively, not merely be delayed by an uncontrollable event such as inclement weather or the mechanical failure of a vehicle.

(d) An office may know in advance of an "event" but have no control over its occurrence as in the case of an office being notified weeks in advance of a court case requiring an employee to appear. Travel to that event will not be compensable as hours of work unless there is an immediate official necessity in connection with the event requiring travel to be performed outside an employee's regular duty hours. Return travel from an unscheduled uncontrollable event to the employee's official duty station is also compensable as hours of work.

(e) Travel that is scheduled merely to comply with what is commonly known as the "two day per diem rule" (i.e., if travel is advanced or delayed for two days to permit it to occur during regular working hours, per diem is not payable), is not compensable as hours of work.

(f) If for policy reasons (e.g., a service to the public) an employee is required to remain at a worksite away from his/her official duty station longer than his/her regular work hours, he/she will be paid overtime compensation for the actual work performed but not for the travel time in returning to his/her regular place of business or residence because the hours of work (i.e., the "event") could have been controlled. Thus, it is necessary to determine whether or not the "event" can be controlled and not whether it is in fact controlled.

Return Travel

(1) Generally, return travel of an employee to his/her official duty station outside regular working hours will not be considered hours of employment unless such return travel meets one or more of the conditions discussed above.

(2) If an "event" is completed at the close of an employee's regular hours of duty on a day which is followed by a workday, he/she will not be required to perform return travel that night, unless the travel is compensable as overtime; it is essential that he/she be at his/her regular place of business (or elsewhere) at the beginning of business the following morning; or the return travel will not require more than three hours. If he/she is required to return that night, without overtime compensation, upon his/her request, he/she will be given a statement of the reasons which required the travel. In order to avoid misunderstandings, the supervisor should make every effort to instruct the employee, in advance, concerning the return travel.

Voluntary Travel

(1) When an official "event," such as a training course, meeting or field visit, is planned so that an employee can travel to it during regular working hours but he/she voluntarily travels outside such hours, the following provisions will apply:

(a) If there is no advantage to the Government in the employee's traveling outside duty hours, no additional cost or time will be incurred by the Government. For example, a training course is scheduled to begin at 2 p.m. on Monday and travel is directed during working hours Monday morning. For personal reasons, an employee travels on the preceding Saturday and arrives at the training location prior to Monday. Transportation costs and per diem will be limited to the amounts which would have been allowable had he/she traveled during working hours. The employee may be considered to be in a "constructive travel status" on Monday morning, so that he/she will not be charged leave for that period so long as he/she reports at the time prescribed for the beginning of the training.

(b) If travel outside working hours enables the employee to perform official business more effectively, transportation costs and per diem for such travel may be allowed at Government expense, on the basis of the directing official's determination of advantage to the Government, to the extent warranted by the circumstances. For example, an employee has to visit another office for consultations that will take two days time. The employee can travel on Monday morning, work from about noon that day to noon on Wednesday, and return Wednesday afternoon. However, the employee volunteers to travel there on Sunday afternoon, work Monday and Tuesday, and return Wednesday morning. As this program will allow the employee to return to his/her office for several hours' work on Wednesday, the employee's supervisor can approve the longer period of travel as advantageous to the Government.

Travel Within Official Duty Station

The statutes and Federal regulations cited above do not authorize the overtime for time spent traveling within an official duty station. Hence, transit time between an employee's residence and the employee's assigned place of business or between the employee's residence or place of business and any other point of destination within his/her official duty station may not be regarded as "time spent in travel status" for overtime purposes. However, in the interest of equity, when an employee travels from his/her residence to a point of destination within his/her official duty station, he/she should not be required to leave home any earlier or arrive home any later than he/she does when he/she travels to and from his/her usual, assigned place of business.

Compensatory Time

(1) General

(a) As is the case for the above guidance on overtime duty, the following guidance on compensatory time applies to employees who are designated as being exempt from FLSA coverage. Compensatory time off in lieu of pay for irregular or occasional overtime work may be granted to Classification Act employees (i.e., those paid on a per annum basis), as well as prevailing rate (Federal Wage System) employees. However, "mandatory" compensatory time for prevailing rate employees may not be authorized.

(b) Employee Option and Mandatory Compensatory Time

1. Under 5 U.S.C. 5543, employees whose salaries are at or below the minimum scheduled step rate of GS-10 may request either overtime pay or compensatory time off for irregular or occasional overtime duty.

2. However, Section 5543 also permits approving officials to require employees whose salaries exceed the maximum scheduled step of GS-10 to take compensatory time off in lieu of overtime pay for irregular or occasional overtime duty.

(c) 5 U.S.C.5543, does not provide for the granting of compensatory time off in lieu of pay for work performed on holidays. Hence, employees officially ordered to work on holidays must be paid for such duty.

(d) The amount of allowable compensatory time is subject to the aggregate salary limitation applicable to premium pay for FLSA exempt. This limitation does not apply to FLSA nonexempt employees.

(e) As required by law, the amount of compensatory time off will be equal to the amount of overtime performed.

(f) When compensatory time off is authorized, the employee should initial the Time and Attendance Record or other locally designated form. This action will constitute evidence of the employee's election.

(g) Compensatory time shall be used by an employee before the employee's annual leave is used, unless employee has annual leave which would thereby be forfeited.

(h) Compensatory time may not be used until it is earned; i.e., an employee may not work compensatory time at the end of the week to offset leave taken earlier in the week.

(i) Compensatory time may not be used to offset advanced sick or annual leave (Comp. Gen. Decision B-157434, November 9, 1965).

(2) Guidelines

(a) The Service will not order overtime duty for employees who may request either overtime pay or compensatory time off when funds are not available to pay for such services unless the employee voluntarily chooses to perform overtime on a compensatory time-off basis. When the performance of overtime is desirable but funds are not available, supervisors may explain to employees, who may request compensatory time off, the need for overtime and the inability to pay for overtime so the employees may make their own decision. Such explanations should in no way attempt to influence an employee's decision.

(b) When funds are not available and their overtime services are needed, employees whose

salaries exceed the minimum scheduled step rate of grade GS10 may be required to take compensatory time off in lieu of irregular or occasional overtime pay. FLSA exempt employees: If management wants the employees to work overtime, management can force the employee to receive compensatory time. FLSA non-exempt employees: If management wants the employee to work overtime and the employee wants to be paid, the employee must be paid.

(3) Scheduling and Use of Compensatory Time Off from Duty.

(a) Officials who authorize compensatory time off in lieu of pay for irregular or occasional overtime are responsible also for scheduling the time off. If it is known that an employee is separating or will be separating from the Service, the supervisor must schedule the use of remaining compensatory time prior to the employee's separation date.

(b) Limitations - Under the regulations of the Department of the Treasury, the accumulation of compensatory time off shall not exceed 80 hours at any time. In addition, compensatory time must be used within 12 pay periods after the pay period when the overtime was worked. At the end of this time limit, unused compensatory time will be forfeited. These limitations apply to GS as well as prevailing rate (wage) employees. FLSA non-exempt employees must be paid. Further, Treasury regulations provide that any compensatory time remaining to the credit of an employee may not be converted back to overtime pay.

(4) Transfer of Compensatory Time Earned.

When an employee is reassigned from one organizational unit to another within the Service, any earned compensatory time properly recorded on the employee's time and attendance record will be honored by the employee's new supervisor. Every effort should be made, however, to schedule time off for the employee to liquidate his/her compensatory time off before the reassignment date. Compensatory time may not be transferred outside the Service.

(5) Compensatory Time Balance at Separation

(a) Managers should make every effort to permit an employee to use compensatory time remaining to his/her credit prior to separation from the Service. When worked, the employee agrees to accept time off in lieu of overtime pay. Accordingly, employees should be allowed to use such time prior to separation, which will avoid costly and unscheduled payments.

(b) As described in 26 Comp. Gen. 750: The date of separation stated in an employee's advance notice of separation may be administratively extended so as to include periods covered by the compensatory timeoff earned by the employee pursuant to 5 U.S.C. 5543. However,

where, due to reasons beyond the control of the employee, compensatory time off is not taken prior to separation and no extension of the date is granted, overtime compensation should be paid in lieu of the compensatory time off.

Night Duty (Night Differential)

(1) Legal Provisions. Section 5545 of 5 U.S.C. (5 CFR 630.121), provides the following:

(a) any regularly scheduled work between the hours of 6:00 p.m. and 6:00 a.m. shall be considered night work and the performance of such work shall be compensated for at the night differential rate.

1. An employee is entitled to a night pay differential for night hours of his/her tour of duty while he/she is in an official travel status, whether performing actual duty or not.

2. An employee is entitled to a night pay differential for a period of paid absence only when the total amount of that absence in a pay period, including both night and day hours is less than 8 hours.

(2) Designation of Night Hours Outside the United States. The officials authorized to prescribe tours of duty at posts outside the United States may establish night hours at such posts, if appropriate, in accordance with the provision of law. Times so designated as the beginning or end of night work shall correspond reasonably with the end or beginning, respectively, of the customary hours of business in the locality.

(3) Guidelines

(a) Night work shall be authorized only if the needs of the Government clearly make such action imperative, or service to the public would so dictate.

(b) Tours of duty which include night work shall be scheduled and made known to employees affected as far in advance as practicable and assignments thereto shall be made as equitably as possible.

(4) Night Pay (Night Differential)

(a) Night pay is basic compensation plus 10 percent of such compensation for work performed partly or wholly between the hours of 6:00 p.m. and 6:00 a.m. NOTE: night differential is not paid for the lunch period if the lunch would be after 6:00 p.m.

(b) The night rate shall be paid only to employees who perform regularly scheduled, night work. Exception: An employee is entitled to night pay differential when he or she is temporarily assigned during the administrative workweek to a daily tour of duty that includes night work. This temporary change in a daily tour of duty within the employee's regularly scheduled administrative

workweek is distinguished from a period of irregular or occasional overtime work in addition to the employee's regularly scheduled administrative workweek. The following examples illustrate the applicability of night pay.

1. A payroll clerk (who works regularly from 8:15 a.m. to 4:45 p.m.) is directed on a particular day to work on his/her payroll work until 9:30 p.m. Employee is not entitled to night pay, but is entitled to overtime.

2. Employee's normal tour of duty is 8 a.m. to 4:30 p.m. Prior to the beginning of the administrative workweek, she is directed to work from noon to 8:30 p.m. on Thursday only. She is entitled to night differential for the time between 6 p.m. and 8:30 p.m.

3. Employee's regularly scheduled administrative workweek is 48 hours: Monday through Saturday, 6 p.m. through 2 a.m. Employee is entitled to 48 hours night differential and 8 hours overtime. Note that employee may receive night differential and overtime compensation for the same hours.

(c) The amount of allowable night pay is subject to the aggregate salary limitation applicable to premium pay.

(d) Intermittent employees are entitled to night differential to the extent that their work is scheduled in advance of the administrative workweek.

(e) For exempt employees under the FLSA, night pay differential is in addition to overtime, Sunday, or holiday pay and it is not included in the rate of basic pay used to compute the overtime, Sunday, or holiday pay. However, for nonexempt employees, night differential is used to compute "regular rate" of pay.

(5) Entitlement to Night Differential During Periods of Absence

1. Section 636 of the Treasury, Postal Service, and General Government Appropriations Act, 1998 (Public Law 105-61) prohibits the use of funds appropriated by that Act, for the payment of Sunday premium pay to employees who do not actually perform work on Sunday. This ban does not apply to the payment of night differential for periods when employee do not actually perform work. This prohibition applies to all employees whose pay is from funds appropriated by the Act.

2. As a result of the above referenced prohibition, employees with work schedules that requires work between the hours of 6 pm and 6 am are not entitled to night differential pay for any period of absence of 8 hours or more. This prohibition applies to all types of absences to include the following: annual leave, sick leave, compensatory time absent, compensatory time for religious observance, credit hours absent, donated leave, leave bank leave, family medical leave, family friendly leave, military leave, court leave and witness service, COP (continuation of pay under FECA program), administratively excused absences (administrative leave), and time off as an incentive performance award. There are no exceptions to the prohibition.

3. Paid holidays are not included in the calculation of paid absence.

4. Creditable hours of work for payment of night differential shall be recorded, accumulated, and credited for each employee in minimum intervals of 15 minutes and multiplies thereof. Odd minutes will be rounded to the nearest quarter hour on a daily basis.

Holiday Duty

(1) Legal Provisions. Section 5546 of Title 5, United States Code, provides that all work, not exceeding 8 hours, which is not overtime work, performed on a holiday designated by Federal statute or Executive Order shall be compensated for at the holiday rate.

(2) Guidelines. Work on holidays shall be authorized only if the work is necessary for protection of life or property, is in the interest of the general public, or is required to meet an emergency such as completing a particular job without delay for the best interests of the Government.

(3) Holiday Pay

(a) Holiday pay is basic compensation plus premium compensation equal to the basic compensation, which, in effect, is doubletime pay but subject to the limitation below.

(b) The amount of allowable premium pay for holiday work is subject to the aggregate salary limitation applicable to premium pay.

(c) Intermittent employees (not having a regularly scheduled tour of duty) are not eligible for holiday pay, except to the extent that their work is scheduled in advance of the administrative workweek.

(d) An employee who is directed to and performs duty on a holiday which is within his/her 40-hour basic workweek is entitled to compensation for a minimum of two hours of holiday work.

(e) If a full-time employee works 8 hours per day, 4:00 p.m. to 12:30 a.m., and the employee is directed to work on a holiday from 6:00 a.m. to 2:30 p.m., the employee is entitled to overtime pay since the required work was outside of the tour of duty.

(f) Holiday pay shall not be paid for overtime work performed on a holiday. The number of holiday hours performed on a holiday will be included in the administrative workweek in

which the holiday occurs, and paid at the regular hourly rate. Odd minutes of holiday duty will be rounded to the nearest quarter hour on a workday basis. It is Service policy to schedule holiday work only in increments of fifteen minutes.

(g) Overtime pay and compensatory time off may only be granted for duty performed on a holiday outside the tour of duty.

Sunday Duty

(1) Legal Provisions.

(a) Section 5546 of 5 USC, provides that an employee is entitled to premium pay when he/she performs work within his/her basic workweek during a regularly scheduled tour of duty of which any part is within the period beginning at midnight Saturday and ending at midnight Sunday. The premium pay is 25 percent of his/her rate of basic compensation for each hour of work performed within that tour which constitutes a part of employee's basic workweek. The provision applies to Federal Wage System as well as GS employees.

(b) A full-time employee is entitled to pay at his/her rate of basic pay plus premium pay at a rate equal to 25 percent of his/her rate of basic pay for each hour of Sunday work.

(c) For employees who are exempt under the FLSA, premium pay for Sunday work is in addition to premium pay for holiday work, overtime pay, or night pay differential and is not included in the rate of basic pay used to compute the pay for holiday work, overtime pay, or night pay differential. For employees who are nonexempt under the FLSA, premium pay for Sunday work is used to compute a "regular rate" for overtime computations.

(2) Prohibition Against Payment of Sunday Premium Pay During Periods of Absence.

(a) Section 636 of the Treasury, Postal Service, and General Government Appropriations Act, 1998 (Public Law 105-61) prohibits the use of funds appropriated by that Act, for the payment of Sunday premium pay to employees who do not actually perform work on Sunday. This prohibition applies to all employees whose pay is from funds appropriated by the Act (all employees of the Department of Treasury). Accordingly, employees with work schedules that requires work between midnight Saturday and midnight Sunday must not be paid Sunday Premium Pay for any period of absence during these hours.

(b) This prohibition applies to all types of absences to include the following: annual leave, sick leave, compensatory time absent, compensatory time for religious observance, credit hours absent, absence on a holiday, donated leave, leave bank leave, family medical leave, family friendly leave military leave, court leave and witness service, COP (continuation of pay under

FECA program), administratively excused absences (administrative leave), and time off as an incentive performance award. There are no exceptions to the prohibition.

(3) Examples Relating to Sunday Work

(a) AWS Work Schedule (4-10) from 8:00 p.m. to 6:30 a.m. (10 hours with half-hour lunch period) Sunday, Monday, Tuesday, and Wednesday.

1. If the employee works the full 10 hours beginning on Sunday, employee is entitled to premium pay for his entire tour of duty -- 10 hours. (NOT TO EXCEED 40 HOURS)

2. If employee is on paid leave for the entire work day, employee is not entitled to the premium pay for Sunday work since employee performed no work on Sunday.

3. If employee is on paid leave from 8:00 p.m. to midnight on Sunday and works from midnight to 6:30 a.m. (the remainder of his/her tour), employee is not entitled to premium pay for Sunday work since the employee performed no work on Sunday.

4. If employee is on leave without pay from 8:00 p.m. to 11:00 p.m. (3 hrs.) on Sunday and works the remainder of his/her tour, employee is entitled to premium pay for 7 hours (since employee did perform work on Sunday).

(b) If any employee has a regular 6-hour tour of duty within his/her 40-hour basic workweek and any part of that tour is worked on a Sunday, employee is entitled to premium pay for the full 6-hour tour. Absences on leave would be treated as set forth in example (a) above. However, if the employee is required to work 8 hours on a particular Sunday, the employee is only entitled to Sunday premium pay for the 6 hours employee is regularly required to work.

(c) When an employee with an 8 hr/day (Th - M) has two separate tours of duty on Sunday (such as, a tour that begins on Saturday and ends on Sunday and another tour that begins on Sunday and concludes on Monday), employee is entitled to premium pay for Sunday work not to exceed 8 hours for each tour of duty (or 16 hours).

(d) An employee who works 5/4-9 and is scheduled to work on a tour of duty including Sunday, is entitled to the scheduled tour for the day, either 9 hour or 8 hours. If the employee is scheduled to work a late shift on Saturday and Sunday, the Sunday premium for the pay period cannot exceed 36 hours.

(e) An employee who does not work on Sunday because Sunday is the employee's holiday is not entitled to Sunday premium pay. Similarly, an employee on Military leave is not entitled to Sunday premium pay.

(f) An employee on flexitour with credit hours is scheduled to work a tour of duty

including Sunday. If the employee works a late shift Saturday and Sunday, the total Sunday premium cannot exceed 32 hours.

(3) Sunday Premium Pay Limitation. The amount of allowable premium pay for Sunday work is subject to the aggregate salary limitation applicable to premium pay.

Overtime, Night, Holiday and Sunday Pay of Part -time Employees

(1) Part-time employees are entitled to:

(a) overtime compensation for hours worked in excess of 40 hours in a week or in excess of 8 hours in a day.

(b) night differential if they meet the requirements (regularly scheduled tour of duty between the hours of 6 pm and 6 am.); and

(c) Receive their usual pay for being excused from work on holidays falling on their regular work days and holiday pay for work performed on holidays within their regularly scheduled tours of duty.

(d) A part-time employee is relieved from duty without charge to leave on the designated or in lieu of holidays of fulltime employees.

(2) If they are scheduled to work on an in lieu of day of fulltime employees and they perform such work, they are not entitled to holiday premium pay.

(3) Part-time employees are not entitled to premium pay for Sunday work (46 CG 337 (1966)).

Federal Wage System Employees

(1) 5 USC 5544, and 5 CFR 532 explain premium pay for prevailing rate or Federal Wage System employees. The rules for wage system employees can be found in either 5 USC 5544 (FLSA exempt employees) or 5 CFR 551 (FLSA non-exempt).

(2) Employees shall be entitled to receive night shift differentials in accordance with 5 USC 5343. An employee regularly assigned to a shift for which a night shift differential is payable shall be paid the night shift differential for a period of excused absence on a legal holiday or other day off from duty granted by Executive or administrative order.

(3) An employee regularly assigned to a shift for which a night shift differential is payable shall be paid the night shift differential for hours of the employee's tour of duty while in official travel status, regardless of whether the employee is performing work.

(4) An employee regularly assigned to a night shift who is temporarily assigned to a day shift or to a night shift having a lower night shift differential shall continue to receive the regular night shift

differential, a temporary detail for training purposes is also included. (See 5 CFR 410.602)

(5) An employee regularly assigned to a night shift, who is temporarily assigned to another night shift having a higher differential, shall be paid the higher differential a majority of the employee's regularly scheduled nonovertime hours of work on the temporary shift fall within hours having the higher differential.

(6) Employees regularly assigned to a day shift who is temporarily assigned to a night shift shall be paid a night shift differential.

(7) Employees regularly assigned to a night shift shall be paid a night shift differential during a period of leave with pay.

(8) Employees regularly assigned to a day shift who is temporarily assigned to a night shift shall be paid a night shift differential for any leave with pay taken when scheduled to work night shifts.

(9) Employees assigned to a regular rotating schedule involving work on both day and night shifts shall be paid a night shift differential only for any leave with pay taken when scheduled to work night shifts.

(10) Employees who are not regularly assigned to a day shift or a night shift but whose shift is changed at irregular intervals shall be paid a night shift differential during leave with pay if the employee received a night shift differential for the last shift worked preceding leave with pay.

Fair Labor Standards Act - FLSA

General

(1) The following guidance on the Fair Labor Standards Act does not discuss the exemption criteria that is used to determine "exempt" (not covered by the FLSA) and "nonexempt" (covered by the FLSA) status. For information regarding exemption criteria managers may contact their servicing personnel office with specific questions on individual employees or, for general information on exemption criteria and other information on the pay provisions of the FLSA, see CFR 551.102 to 551.541. The following provides detailed guidance to managers on "nonexempt" employee overtime entitlement under the FLSA.

(2) It is essential that all IRS managers are fully aware of the impact the FLSA has or will have on those non-exempt employee's under their supervision. One of the key factors in gaining familiarity with the FLSA is understanding that, as a general proposition, all time spent by an employee performing an activity for the benefit of the Service and under the control or direction

of the Service is hours of work and must be compensated as such under the FLSA as either regular hours worked or overtime.

(3) Non-exempt employees are paid overtime under the provisions of the FLSA and exempt employees are paid overtime under the provisions of 5 U.S.C. The overtime provisions under each authority are quite different. The maximum earnings limitations and maximum overtime rate under Title 5, do not apply to non-exempt employees. In addition, the FLSA provides for minimum standards for overtime entitlements and delineates administrative procedures by which covered worktime must be compensated.

(4) It is important that IRS managers gain familiarity with the FLSA and understand the impact it has on employee entitlement to overtime pay.

Background

(1) Since 1974, overtime pay for Federal civilian employees has been governed by two separate laws. (The FLSA and 5 U.S.C.) The overtime pay due an employee may be the same under both laws, but, if different, the non-exempt employee is entitled to the greater benefit.

(2) Federal employees serving in foreign areas are excluded from the FLSA. Employees in executive, professional, and administrative positions may be exempted if they meet specific exemption criteria. Exempt employees are entitled to overtime compensation in accordance with the overtime provisions of Title 5.

(3) The minimum wage and the hours of work and overtime pay provisions of the Fair Labor Standards Act do not apply to criminal investigators receiving availability pay.

(4) The FLSA provides detailed rules that dictate what time is considered hours of work and the numbers of hours that must be worked before overtime begins; and establishes criteria for determining when the employee's activities can be counted as work. Much of this criteria is considered generous and includes time not normally counted under other laws affecting federal employees.

(5) All work performed by an employee that is accepted by the IRS manager and most time on the job under the control of and for the benefit of the IRS is compensable under the FLSA. This makes it most important that managers ensure that work is performed by employees when they need it and want it. Under the "Suffered and Permitted" rule of the FLSA (see below), a manager incurs an obligation to compensate an employee if the manager knows (or should have known) that an employee is working outside regular hours.

(6) In regard to overtime pay computations, which is significantly different from overtime computation under Title 5, the FLSA prescribes two separate procedures. Because of the nature of the work of nonexempt employees engaged in law enforcement activities, the FLSA payment of overtime is based upon an overtime standard of 85 1/2 hours each biweekly pay period. Generally,

the 40 hour workweek is established as the overtime standard for all non-law enforcement employees. The following excerpt from the Act provides the basis for overtime pay for these nonexempt employees:

"... no employer shall employ any of his employees... for a workweek longer than forty hours unless such employee receives compensation for his employment in excess of the hours above specified at a rate no less than one and one half times the regular rate at which he is employed."

Managerial Responsibility

- (1) Managers must understand the provisions of the FLSA in order to comply and to inform employees of their FLSA rights.
- (2) Managers must establish and control the employee's hours of work and assure that the employee works only those hours unless there is a need for the employee to put in additional time.
- (3) Managers must ensure that accurate records of actual hours worked and hours absent by nonexempt employees are accurate and are maintained in accordance with established IRS guidelines.
- (4) Managers must ensure that appropriate documentation to determine eligibility of payment are submitted.

Hours of Work

(1) All time spent by an employee performing an activity for the benefit of the IRS and under the control or direction of the IRS is "hours of work", which must be compensated as either regular hours worked or overtime. Such time includes:

(a) Time during which an employee is required to be on duty in fulfillment of his/her basic work requirement (8, 9, or 10 hours a day and 40 hours per week; or the scheduled weekly hours of an employee on a 5-4/9 work schedule).

(b) **Suffered or Permitted** - Time during which an employee is "**suffered or permitted**" to work. Explanation follows:

1. Under Title 5, the employee must prove overtime was ordered or approved before payment is required. Under the FLSA that is not the case.

2. It does not matter that the employee was not asked to do the work. If the work is performed for the benefit of the IRS, the supervisor knows or has reason to believe that the work is being performed, and the supervisor has not taken positive steps to prevent the employee from working, the work has been **suffered or permitted** and is payable.

3. EXAMPLES - SUFFERED AND PERMITTED OVERTIME

a. A typist who works through lunch, who comes in early and stays late, and who produces work during this time outside of scheduled hours is working suffered and permitted overtime. If the supervisor does not take firm steps, such as ordering the employee not to work and ensuring the instruction is carried out, the supervisor has obligated the Service to pay for this work.

b. With the knowledge of her supervisors an employee voluntarily performed extra work at home in an effort to reduce a backlog of cases. She is entitled to overtime pay computed under the FLSA because her supervisors "suffered or permitted" the overtime at home.

c. Where an employee has presented evidence demonstrating that he performed work outside his regular tour of duty with the knowledge of his supervisor, the fact that management sent him a letter directing that he not perform overtime work does not preclude him from receiving compensation under the FLSA for such work actually performed. Despite its admonishment, management must be said to have suffered or permitted the employee's overtime work since the supervisor allowed the employee to continue working additional hours after the employee had received, but had failed to comply with management's directive.

d. Where the supervisor had failed to record overtime hours as required by the FLSA, and where the supervisor acknowledges overtime work was performed, the employee may prevail in a claim for overtime compensation for hours in excess of his 40-hour workweek on the basis of evidence other than official time and attendance records.

(c) Waiting Time or Idle Time - Waiting time or idle time which is under the control of the IRS manager and which is for the benefit of the IRS. Example of Waiting or Idle Time:

Time standing around waiting while machinery that breaks down is repaired, time standing around because of a temporary shortage of materials, time spent waiting for delivery of a document or Form to complete an assignment, etc.

(d) Preparatory or Concluding Activity - If it is reasonably determined by management that a preparatory or concluding activity is closely related to an employee's principal activities, and is indispensable to the performance of the principal activities, and that the total time spent in that activity is more than 10 minutes per workday, the employee will be credited with all the time spent in that activity, including the 10 minutes, as hours of work. If it is determined that the preparatory or concluding activity is hours of work, management must schedule the time period

for the employee to perform that activity. The employee will be credited with the time actually spent performing these tasks, but never more than the time scheduled.

1. A preparatory or concluding activity that is not closely related to the performance of the employee's principal activities is considered a preliminary or postliminary activity. Time spent in preliminary activities is excluded from hours of work and is not compensable even if it occurs between periods of activity that are compensable as hours of work. Example of Preparatory and Concluding Activity:

Any principal activity for which the employee is required to spend time (10 minutes or more each workday) to change into or out of special uniform or protective clothing. The clothing or protective gear must be unique and required for the primary activity.

(e) Hours in a Paid Nonwork Status - Annual leave, sick leave, holidays, compensatory time off, credit hours absent) are "hours of work".

(f) Rest Period - Any rest period that is authorized by management that does not exceed 20 minutes and that is within the workday shall be considered hours of work.

(g) Bona fide Meal Periods - Meal periods shall not be considered hours of work. A bona fide meal period is one in which the employee ceases to perform his/her regularly assigned duties for the purpose of eating lunch or other meal.

(h) Training - Time spent in training is to be administered under the FLSA as follows:

1. Time spent in **training** during regular working hours is hours of work. Time spent in training outside regular working hours is hours of work if: the employee is directed to participate in the training by his/her supervisor; AND the purpose of the training is to improve the employee's performance of the duties and responsibilities of his/her current position. ("Directed to participate" means that the training is required by the Service and the employee's performance or continued retention will be adversely affected by nonenrollment in the training.)

2. Apprenticeship or Other Entry Level Training - Time spent in apprenticeship or other entry level training, or internship or other career related work-study training outside regular working hours is not considered hours of work, provided no productive work is performed during such periods.

3. Time spent by an employee **performing work** for the IRS during a period of training shall be considered hours of work.

4. Time spent **attending a lecture, meeting, or conference** is hours of work if

attendance is: during an employee's regular working hours; or outside an employee's regular working hours, AND the employee is directed by his/her supervisor to attend such an event or the employee performs work for the benefit of the IRS during such attendance.

(i) Time spent **adjusting grievances or performing representational functions** during the time the employee is required to be on IRS premises is hours of work. Official time granted an employee by the Service to perform representational functions during those hours when the employee is otherwise in a duty status shall be considered hours of work. This includes time spent by an employee performing such functions during regular working hours (including regularly scheduled overtime hours), or during a period of irregular, unscheduled overtime work, provided an event arises incident to representational functions that must be dealt with during the irregular unscheduled overtime period.

(j) Time spent **waiting for and receiving medical attention** for illness or injury is considered hours of work if:

1. The medical attention is required on a workday an employee reported for duty and subsequently became ill or was injured
2. The time spent receiving medical attention occurs during the employee's regular working hours; and
3. The employee receives the medical attention on IRS premises, or at the direction of the IRS, at a medical facility away from the IRS premises.
4. Time spent taking a physical examination that is required for the employee's continued employment with the IRS is hours of work.

(j) Time spent working for **public or charitable activities** at the request of IRS management, or under management's direction or control is hours of work. However, time spent voluntarily in such activities outside an employee's regular working hours is not hours of work.

(k) **Time spent in an on-call status**. An employee will be considered off duty and time spent in an on-call status will not be considered hours of work if:

1. The employee is allowed to leave a telephone number or to carry an electronic device for the purpose of being contacted, even though the employee is required to remain within a reasonable call-back radius; or
2. The employee is allowed to make arrangements such that any work which may arise during the on-call period will be performed by another person.

(l) **Time spent on standby duty**. An employee will be considered on duty and time spent on standby duty shall be considered hours of work if:

1. The employee is restricted to IRS premises, or so close thereto that the employee cannot use the time effectively for his or her own purposes; or

2. The employee, although not restricted to IRS premises:

a. is restricted to his/her living quarters or designated post of duty;

b. has his/her activities substantially limited; and

c. is required to remain in a state of readiness to perform work.

Travel as Hours of Work for Nonexempt Employees

Authorized Travel

Authorized travel is defined as travel, which is performed under the direction or control of a responsible official or manager, and is for the benefit of the employing agency (IRS).

Travel Status

(1) For non-exempt employees in a travel status, the time spent traveling is considered hours of work under the FLSA if:

(a) An employee is required to travel during regular working hours.

1. Example: Travel to and from a timekeepers' training course is scheduled to begin and end wholly within the employee's regular or established tour of duty.

2. Employee in this example is not entitled to overtime for such travel, only regular pay.

(b) An employee is required to drive a vehicle (condition of employment) or perform other work while traveling.

1. Example: - Driver of an automobile, truck, bus, or other vehicle, to include criminal investigators

2. Assistant driver or crew member assisting in the operation of a vehicle.

3. Employee required to perform work while traveling such as a courier carrying classified documents; or a security specialist guarding classified or valuable equipment.

4. See Exhibit 1.

(c) An employee is required to travel as a passenger on a one-day assignment away from the official duty station;

1. Example: See Exhibit 2.

(d) An employee is required to travel as a passenger on an overnight assignment away from the official duty station during hours on nonworkdays that correspond to the employee's regular working hours.

1. Example: When an employee performs authorized travel as a passenger to a temporary duty station outside the limits of the official duty station and as a result of such travel is required to remain at the temporary duty station overnight, such travel is in excess of a one-day assignment and, therefore, is considered to be travel that keeps an employee away from official duty station overnight. An employee who performs such travel during regular working hours on regular workdays is substituting travel for other duties during these hours and the time spent traveling is hours worked. The same principle applies to such travel as a passenger during corresponding hours on nonwork days (hours which correspond to an employee's regular working hours on regular workdays). However, time spent traveling as a passenger that occurs outside regular working hours and outside corresponding hours on nonwork days is not considered hours of work if the travel keeps the employee away from official duty station overnight and the employee performs no work while traveling.

(e) An employee who travels from home before the regular workday begins and returns home at the end of the workday is engaged in normal "home to work" travel; such travel is not hours of work. (For exceptions Exhibit 3.) When an employee travels directly from home to a temporary duty location outside the limits of his/her official duty station, the time the employee would have spent in normal home to work travel shall be deducted from time spent driving a vehicle, performing work while traveling; or time spent traveling as a passenger on a one-day assignment away from the official duty station.

(f) An **employee** who is offered one mode of transportation, and who **is permitted to use an alternative mode of transportation**, or an employee who travels at a time other than that selected by management, will be credited with the lesser of:

1. The actual travel time which is hours of work, as described in (a) through (c), above; or
2. The estimated travel time which would have been considered hours of work had the employee used the mode of transportation offered by the agency, or traveled at the time selected by the agency.

(g) FLSA Travel Tables - Attached

The Exhibits of this Handbook (referenced above) should be utilized by managers to determine if time spent traveling by a nonexempt employee should be considered hours of work under the FLSA. The Exhibits are as follows:

Exhibit 1 - WORK PERFORMED WHILE TRAVELING AWAY FROM OFFICIAL DUTY STATION AS "HOURS OF WORK" UNDER FLSA

EXHIBIT 2 - TRAVEL AS A PASSENGER ON A ONE-DAY ASSIGNMENT AWAY FROM OFFICIAL DUTY STATION AS "HOURS OF WORK" UNDER FLSA.

EXHIBIT 3 - HOME TO WORK TRAVEL AS "HOURS OF WORK" UNDER FLSA.

EXHIBIT 4 - TRAVEL WITHIN THE LIMITS OF THE OFFICIAL DUTY STATION AS "HOURS OF WORK" UNDER FLSA.

EXHIBIT 5 - TRAVEL AS A DRIVER OF A PASSENGER VEHICLE TO A TEMPORARY DUTY STATION AS "HOURS OF WORK" UNDER FLSA.

EXHIBIT 6 - TRAVEL THAT KEEPS AN EMPLOYEE AWAY FROM OFFICIAL DUTY STATION OVERNIGHT.

(h) In addition to the above, the Federal Employees' Pay Comparability Act of 1990 (FEPCA) expanded the criteria for determining whether travel time is hours of work for nonexempt employees. Although the following has been a longstanding part of pay administration under Title 5 (exempt employees), these provisions are now applicable to non-exempt employees. Time spent in a travel status away from an employee's official duty station is hours of work under the FLSA in the following situations:

1. the time spent in a travel status is within the days and hours of the employee's regularly scheduled administrative workweek, including regularly scheduled overtime hours; or the travel
2. involves the performance of work while traveling;
3. is incident to travel that involves the performance of work while traveling;
4. is carried out under arduous conditions; or
5. results from an event which could not be scheduled or controlled administratively, including travel by an employee to such an event and the return from such event to his/her official duty station.

Example 1: See Exhibit 1.

Example 2: A courier is one whose duties include carrying information, mail supplies, etc., work which to a large extent can be performed only while traveling and which would be compensable. A courier's return travel after the delivery of information or supplies would be compensable as incident to travel which involves the performance of work while traveling. In many instances of

travel, a government employee will necessarily transport supplies or equipment and to this extent incidentally serves as a "courier." The CG has expressly held, however, that the fact that incident to the purpose of travel, files, documents, supplies, etc. are transported, does not change the character of travel. Whether the transportation of equipment is merely incidental to the employee's travel or is itself the employee's primary function is for determination by the administrative agency. B-17858.

Example 3: Whether an employee's travel is performed under arduous conditions must be determined upon the facts in each individual case. For example, travel over unusually adverse terrain or during severe weather conditions--as distinguished from travel over hard surface roads or when no unusually adverse weather conditions are encountered, or travel by rail or other common carrier--is travel under arduous conditions and is compensable. B-163654.

- An employee may not be paid overtime or compensatory time for travel outside her regular duty hours on the basis that her travel, which was delayed due to bad weather, was under arduous conditions. Travel by common carrier, including airlines, is not travel under arduous conditions. (B-231800); and an extended period of travel without a break, such as 30 hours, does not qualify as being arduous. (B-168119)

Example 4: An arbitration award of overtime to employees required to travel on Sunday to attend training may not be implemented since it conflicts with 5 U.S.C. 5542(b)(2). The arbitrator concluded that the travel resulted from an event beyond the control of the agency because the agency had relinquished control over the scheduling to the training contractor. However, since the agency could control scheduling through the contract, the training course is not an uncontrollable event for the purposes of the overtime statute. The award conflicts with 5 U.S.C. 5542 and may not be implemented. (B-1900494).

Overtime Pay Provisions of the FLSA

(1) General

(a) Overtime entitlement under the FLSA for nonexempt employees is covered in two separate sections of the Act. Section 7(a) provides guidance on overtime entitlement and calculation for employees who are not fire fighters and who are not engaged in law enforcement activities. Instructions in this section of the Act covers the vast majority of those nonexempt employees in the federal workforce. For these employees overtime is defined as all hours in excess of the 8 hours per day or 40 in a workweek. The 8 hour day may be referred to as the 8-hour daily overtime standard that must be met in order to be entitled to overtime pay for the day. The employee's 40 hour workweek establishes "40" as the weekly overtime standard which must be met in order to be entitled to overtime pay for hours in excess of 40 in the workweek.

(b) **Section 7(k)** of the Act provides guidance on overtime entitlement and calculation for employees who are fire fighters and those who are engaged in law enforcement activities. In the Internal Revenue Service, these employees are Series 1811, Criminal Investigators or Special Agents. Section 7(k) establishes a separate overtime standard for a specified work period. Currently, for nonexempt employees engaged in law enforcement activities (criminal investigators) the standards are all hours that exceed 85 1/2 in a 14 day period or 42 3/4 hours in a 7 day period. When the employee's total of hours worked in the pay period exceed 85 1/2 (including meal time, AUO hours worked, travel time, and other hours worked as defined above, the employee is entitled to the computation of overtime under the FLSA. (**IMPORTANT NOTE:** In accordance with 5 CFR 550.186(d), the overtime pay provisions of the Fair Labor Standards Act do not apply to criminal investigators (GS-1811) receiving Law Enforcement Availability Pay (LEAP). In addition, standby duty pay under 5 CFR 550.141 and administratively uncontrollable overtime (AUO) pay under 5 CFR 550.151 may not be paid to a criminal investigator receiving availability pay. Although the LEAP has replaced AUO for criminal investigators in the IRS and the possibility of these employees receiving AUO are remote, annual premium pay for AUO remains an active pay provision of Title 5 and is, therefore, covered in this handbook.)

(2) **Title V Limitations Do Not Apply**

(a) Limitations on the overtime hourly rate (GS-10, Step 1) and the aggregate limitation on pay (GS-15, step 10) as established under the pay provisions of Title 5, do not apply to nonexempt employees under the FLSA. Under the limitation established in 5 CFR 550.105 (Title 5--aggregate pay limitation) an employee may be paid base pay and premium pay (night differential, overtime pay, premium pay on an annual basis and pay for Sunday and holiday work) only to the extent that the payment does not cause his/her aggregate rate of pay for any pay period to exceed the maximum rate for a GS-15/10. This limitation does not apply to nonexempt employees under the FLSA.

(b) Similarly, under Title 5 CFR 550.113 an exempt employee whose rate of basic pay exceeds the rate of pay for a GS-10/1, is limited to the overtime hourly rate of a GS-10/1. This limitation does not apply to non-exempt employees. A non-exempt employee whose established hourly rate of pay under the General Schedule, exceeds the hourly rate of a GS-10, Step 1, will be compensated for overtime work on the basis of his/her established hourly rate. For example: an exempt GS-12/1 supervisor and a subordinate nonexempt GS-11/1 employee work 2 hours of overtime on Monday night with no additional premium pay entitlement. The supervisor will earn less than the subordinate employee for the two hours of overtime work because of the limitation (GS-10, Step 1) placed on the supervisor as an exempt employee. The non-exempt employee would be compensated for overtime at 1 1/2 times his hourly rate.

Absence and Leave

Leave Administration--General Provisions

Scope

- (1) This chapter contains guidance for administration of leave for IRS employees except those excluded under 5 USC 6301 (for example, presidential appointees).
- (2) Instructions for recording hours worked and leave taken are found in the Handbook.

Regulations

- (3) 5 CFR 610, Hours of Duty, and 5 CFR 630, Absence and Leave; and the related 5 U.S.C. Chapter 61, Hours of Work, and 5 U.S.C. Chapter 63, Leave, provide the federal regulations governing the information provided in this Handbook.

Delegations of Authority in Matters of Absence and Leave

- (1) Delegation Order No. 104, as revised, contains the Commissioner's redelegation of authority in absence and leave matters.
- (2) Delegation Order No. 156, as revised, contains the Commissioner's redelegation of authority in disclosure of payroll and leave records matters.
- (3) Delegation Order No. 47, as revised, contains the Commissioner's redelegation of authority to authorize excused absences for attendance at meetings at government expense.
- (4) Delegation Order No. 39, as revised, contains the Commissioner's redelegation of authority to establish tours of duty and authorize overtime and work on a holiday.
- (5) Delegation Order No. 184, as revised, contains the Commissioner's redelegation of authority to identify employees who may certify and approve T/A Records containing their own time and attendance data.

Policy Statement References

The following policy statements refer to leave and absence: P0-30, P-0-35, P-0-36, P-0-37, P-0-38, P-0-56, and P-1-181 (See IRM 1218, Policies of the Internal Revenue Service).

Responsibilities

Heads of Office

Heads of Office listed in Delegation Order No. 104, as revised, are responsible for the proper administration of the leave regulations and policies within their organizations.

National Director, Personnel Division

The National Director, Personnel Division, is responsible for developing and disseminating guidance on statutory and regulatory requirements and management policy decisions, for providing advice and assistance to field and National Office management concerning leave administration, and for resolving questions and disputes equitably in accordance with the needs of the Service and statutory and regulatory requirements.

Office of Personnel/Payroll Systems

The Office of Personnel/Payroll Systems is functionally responsible for furnishing instructions and guidance to administrative officials in the following areas:

- (1) Timekeeping and leave recording:
- (2) Assigning employees to the appropriate leave earning category on the basis of service computation dates furnished by the servicing Personnel office
- (3) General administration of statutes, regulations, and policies in the area of absence and leave.
- (4) Administration and coordination of all activity related to time and attendance reporting, related error resolution procedures, generation of payroll and financial reports, and overall administration of the requirements of the Treasury Integrated Management Information System (TIMIS) at the National Finance Center (NFC).

Servicing Personnel Offices

- (1) Servicing Personnel offices are responsible for:
- (2) Interpreting leave statutes, policies, and regulations and advising managers and employees accordingly;
- (3) Furnishing accurate employee Service Computation Dates for the purpose of establishing leave earning categories;
- (4) Informing employees and managers of changes in statutes, leave regulations, policies, and practices as appropriate; and
- (5) Providing technical assistance to employees and managers in disciplinary and administrative actions related to duty hours and absence (leave).

Supervisors

Supervisors are responsible for:

(NOTE: References to local procedures include those procedures and channels prescribed in locally negotiated agreements.)

- (1) Equitably administering the leave rules, regulations, and procedures in accordance with established policies and balancing the needs of both the Service and employees;
- (2) Complying with all requirements for scheduling and documenting leave, including signing the Time and Attendance Record/Roster (depending on local procedure) whenever written approval is required, e.g., advance leave, AWOL;
- (3) Referring questions of policy and interpretation to the servicing Personnel office as appropriate
- (4) Establishing leave schedules early in the year to provide for adequate staff coverage at all times, to afford employees the opportunity to enjoy a vacation, and to avoid forfeiture of leave and compensatory time;
- (5) With advice and assistance from the servicing Personnel office, responding as soon as possible to employee leave requests, including requests for Leave Without Pay (LWOP) and advance leave;
- (6) Insuring that work, including night work, Sunday work, holiday work and all other work with potential for Premium Pay entitlement, is assigned equitably and in accordance with the needs of the Service, and is accurately and properly recorded;
- (7) Charging absences to the appropriate leave type, including Absence Without Leave (AWOL), if necessary;
- (8) Ensuring that all leave charges are properly recorded;
- (9) Counseling employees on policies, regulations and procedures related to leave and absence
- (10) Identifying and correcting, by appropriate methods, leave abuse and potential abuse
- (11) Ensuring that employees submit appropriate documentation of absences as required and supplying timekeepers with such documentation in accordance with local procedures
- (12) Ensuring that absences are reported to timekeepers as appropriate and in accordance with local procedures;
- (13) Ensuring that transfers, separations, reassignments, and accessions are reported to timekeepers as appropriate and in accordance with local procedures;

(14) Complying with all requirements for documenting and scheduling restored forfeited annual leave.

(15) When requested, providing an employee a transcript of sick leave used during a previous year from the manager's duplicate T/A records.

Employees

Employees are responsible for:

(1) Requesting and securing approval of leave as far in advance as possible. When approval cannot be obtained in advance (e.g., in emergencies), it must be obtained as soon as possible after the beginning of the absence

(2) Documenting leave requested and taken in accordance with local procedures

(3) Ensuring that leave taken is properly reported to the timekeeper in accordance with local procedures;

(4) Using leave for its intended purposes;

(5) Keeping the supervisor informed of the nature and duration of any absence, and providing required documentation concerning absences and anticipated return to duty;

(6) Monitoring their own leave balances, and scheduling leave, in cooperation with their supervisors, to avoid forfeiture of annual leave and compensatory time; and

(7) Bringing errors in reported leave balances to the attention of the supervisor as appropriate.

(8) Although taking some types of leave (e.g., sick leave for medical treatment of disabled veterans; LWOP while receiving Workers' Compensation benefits), is an employee's right, nothing in these regulations relieves the employee of the responsibility for properly requesting any leave and documenting absences.

Definitions

Pay Period

In the Internal Revenue Service, a Pay Period consists of fourteen consecutive days, beginning on a Sunday and ending on a Saturday. Each year the Department of the Treasury publishes a Pay Period, Pay Date, and Leave Accrual Chart (Treasury Form TD F 35-03.1) which identifies Pay Periods and Pay dates for pay (Calendar Year) and leave accrual (Leave Year) purposes. This chart is applicable to Bureaus and sub-agencies of the Department (including the Internal Revenue Service) and may be utilized by offices and managers of the Department for pay and leave accrual projections and planning.

Leave Year

A leave year is the period beginning with the first day of the first complete pay period in a calendar year and ending with the day immediately preceding the first day of the first complete pay period of the following calendar year.

Eligibility for Annual and Sick Leave

General

(1) A full-time employee earns leave during each full biweekly pay period while in a pay status or in a combination of pay status and nonpay status, except as specified in the following text:

There are a few instances when an employee may be given leave credit on a pro rata basis for Service employment of less than a full pay period, as follows:

- (a) Transfer from or to another Government agency without a break in service when the pay periods do not coincide with those of the Service (31 CG 217);
- (b) Transfer to or from another Federal government agency when the leave system differs from that of the Service and the annual and sick leave can be transferred on an adjusted basis
- (c) Separation for and return from extended military service, at the time reemployment rights are exercised (31 CG 581, question 7); and
- (d) When in leave without pay status for the purpose of receiving compensation under the Federal Employees' Compensation Act, for that part of the pay period not in receipt of such compensation (32 CG 310).

(2) There is no credit of leave for fractional parts of biweekly pay periods either at the beginning or end of an employee's period of service.

(3) An employee is considered to have been on the rolls for a full biweekly pay period if he or she has been employed during the days within such pay period, exclusive of holidays and all nonworkdays established by federal statute or by Executive or administrative order, which fall within his or her basic administrative workweek. If Monday is a holiday and an employee enters on duty on Tuesday and is employed for the rest of the pay period, the leave accrual for that pay period is not affected by the holiday.

(4) When an employee's service is interrupted by a nonleave earning period (such as a period during which receiving Worker's Compensation benefits), he or she earns leave on a pro rata basis for each fractional pay period that occurs within the continuity of his/her employment.

(5) A part-time employee for whom there has been established in advance a regular tour of duty on one or more days during each administrative workweek, accrues Annual Leave on a pro rata basis.

(1) Part-time employees, for whom there have been established in advance regular tours of duty on one or more days during each administrative workweek, earn annual leave from the first full pay period of employment, as follows:

(a) employees with less than 3 years of service earn one hour of leave for each 20 hours of pay status;

(b) employees with between 3 and 15 years of service earn one hour of leave for each 13 hours in pay status;

(c) employees with 15 or more years of service earn one hour of leave for each 10 hours in pay status; and

(d) Any hours in excess of 40 in an administrative workweek are disregarded for leave accrual purposes. Nonpay status does not affect the leave accrual of part-time employees because they earn leave only when in pay status.

(6) If part-time employees work a number of hours that is less than the number required for a minimum leave accrual, these hours are carried over to the next pay period until they equal the number required for a minimal accrual, which is then credited. (HOURS OVER 80 ARE DROPPED IN THAT PAY PERIOD)

(7) Employees with Intermittent work schedules do not earn leave.

Special Considerations for Seasonal Employees

(1) When Seasonal employees' service is interrupted by a non-leave earning period e.g., a period during which receiving Workers' Compensation Benefits, they earn leave on a pro rata basis for each fractional period that occurs within the continuity of their employment.

(2) There is no credit of leave for fractional parts of biweekly pay periods either at the beginning or end of an employee's period of service.

(3) Periods of nonwork/nonpay status within the continuity of employment (i.e., release from duty because of lack of work) are treated as Leave Without Pay for purposes of computing leave accruals. They are not considered "non-leave earning periods".

Accrual Reduction Because of Nonpay Status

(1) Full-time Employees. Full time employees do not receive leave accruals in the pay period in which their nonpay status for the current leave year reaches a total of 80 hours. A similar reduction is made each time the employee accrues an additional 80 hours of nonpay status. Accumulated periods of nonpay status which total less than 80 hours are dropped at the end of the leave year. Nonpay status during periods when employees do not earn leave (for example, fractional pay periods at the beginning or ending of the appointment) are not included in computing the total hours in nonpay status which require a reduction in leave accrual.

(2) Full-Time Seasonal Employees. Full-time seasonal employees' periods of nonwork/nonpay status during the continuity of employment (e.g., release from duty because of lack of work) are considered equivalent to nonpay status for purposes of the leave reduction discussed above.

(3) Part-Time Employees. The leave accounts of part-time employees are not reduced by nonpay status because they earn leave only when in pay status.

Charges to Leave and Compensatory Time Off

General

Leave is charged to an employee's account only for absences when she or he would otherwise work and receive pay at straight time rates. Leave is not charged for absences during hours scheduled in excess of the basic work requirement, holidays, or other nonwork days.

Sequence of Leave Usage

(1) To preclude the employee losing restored forfeited annual leave, current use or lose annual leave, or compensatory time absent. Treasury has prescribed the following sequence for leave usage. The timekeeper cannot authorize or approve any type of leave.

(a) Compensatory time absent.

(b) Restored forfeited annual leave that will expire in the current leave year.

- (c) Annual leave that will become use or lose at the end of the current leave year.
- (d) Restored forfeited annual leave that does not expire in the current leave year.
- (e) Annual leave with no use or lose balance for the current leave year.

(2) After pay period 18 each year, the sequence should change to facilitate the use of all use or lose before forfeiture occurs. The sequence becomes:

- (a) Annual leave that will forfeit at the end of the leave year.
- (b) Restored forfeited annual leave that will expire at the end of the leave year.
- (c) Compensatory time absent.
- (d) Restored forfeited annual leave that does not expire in the current leave year.
- (e) Annual leave with no use or lose annual leave balance for the current leave year.

(3) An employee who is entitled to credit hours can choose to take credit hours at any given time, but should be reminded that credit hours can be carried forward for an indefinite period of time, but other types of leave are subjected to loss by forfeiture. Therefore, other types of leave should be considered first when scheduling time off.

Minimum Charges

The minimum charge for annual and sick leave and leave without pay is one hour, and additional charges are in multiples thereof. Absences on separate days are not combined. If, for example, an employee is absent a half hour on two separate days, the minimum charge is two hours (one hour on each day).

Charges for Absence Without Leave (AWOL)

AWOL is charged in multiples of 15 minutes.

Compensatory Time Off

(1) Charges to compensatory time off (which is not leave but time off in lieu of payment for irregular or occasional overtime work performed) are made in increments of 15 minutes. Compensatory time off must be used within 12 pay periods after it is earned, and should be used before annual leave except when annual leave must be used to prevent forfeiture.

(2) Compensatory time absent may not be substituted for sick leave previously granted for the purpose of avoiding a forfeiture of compensatory time at the end of the twelve pay period or 80

hour limit.

(3) Compensatory time absent may not be used to offset advanced annual or advanced sick leave. (See unpublished Comp. Gen. Decision B-157434. November 9, 1965.)

(4) The only exception is during pay period 18 or later in the leave year, and when used for an on-the-job injury or occupational disease.

(5) The employee should use all use or lose annual leave before any compensatory time absent. The use of annual leave before compensatory time during pay period 18 or later does not stop the counter for the expiration of compensatory time. The 12 pay period limit and 80 hour limits are still in effect.

(6) Compensatory time may not be used until it is earned. An employee cannot work compensatory time at the end of the week to offset leave taken earlier in the week.

Leave Charges for Uncommon Tours of Duty

Sick leave, Annual leave, and Leave Without Pay may be charged in quarter hour increments only when an employee has an uncommon tour of duty (an AWS work schedule is not an uncommon tour of duty) with days consisting of an uneven number of hours (e.g., 6 3/4) and is absent for the entire day. However, if the employee is absent for only a part of the day, sick leave, annual leave, and leave without pay are charged in multiples of one hour.

Liquidation of Leave Indebtedness

(1) Upon Separation:

(a) 5 CFR 630.209 provides that when an employee who is indebted for unearned annual and/or sick leave separates (from the Government), the employee shall be required to refund the amount paid for such leave or the amount shall be deducted from any salary due the employee. If the debt is not liquidated in this manner, it may be recovered from any lump sum payment or by a setoff from the employee's retirement account. A refund is not required, however, if separation is the result of death or disability retirement; the employee enters military service with restoration rights (see 5 CFR 630.209); or the employee resigns or is separated because of disability which prevents the employee from returning to duty or continuing in the service, and which is the basis of the separation as determined by his or her supervisor on acceptable medical evidence provided by the employee.

(b) When an employee returns to duty after military service, his or her leave account is reestablished and he or she is liable for repayment of any advance annual or sick leave previously used. If he or she does not return to duty or separates before full repayment (except when separation or failure to return to duty is due to death or disability, see above), he or she is required to refund the amount covering the leave indebtedness (31 CG 361).

(c) There is no authority requiring an employee to refund the amount paid for leave

advanced prior to separation when the employee is retired for disability or is unable to return to work because of illness; and if the employee is subsequently reemployed; the forgiven leave is not chargeable against subsequently earned leave (29 CG 234; 33 CG 145).

(d) If the salary and lump-sum payment for leave due a separating employee are insufficient to cover leave indebtedness, the employee may refund the difference to the Service by cash or check.

(2) At the End of the Leave Year:

(a) Unliquidated advance leave is carried forward from one leave year to the next until liquidated by subsequent leave earnings. If the employee so requests, advance sick leave may be liquidated by a charge against an equivalent amount of earned annual leave, provided that the annual leave is charged prior to the time it would otherwise be forfeited at the end of the leave year.

(b) Annual leave indebtedness at the end of a leave year resulting from reduction of leave accrual because of periods of nonpay status is carried forward for liquidation by leave earned in the following leave year.

(c) If an employee desires, he or she may be permitted to liquidate leave indebtedness by converting the absence to leave without pay and refunding the amount due.

(3) Compensatory Time. Compensatory time to an employee's credit may not be used as a setoff against advance leave (45 CG 243; 59 CG 253). However, in 59 CG 253 the Comptroller General held that compensatory time may be used to offset excess annual leave taken because it had been credited to an employee's account by administrative error, if such compensatory time would have been available for use at the time the erroneously credited annual leave was taken.

Absence of Disabled Veterans

In accordance with Executive Order 5396, disabled veterans must be granted sick leave or annual leave, as appropriate, or leave without pay, if necessary, for medical treatment, when they present official statements from duly constituted medical authorities to the effect that treatment is necessary. The veterans must give prior notice of the period during which absence for treatment will occur.

Involuntary Leave

(1) If a manager determines that an employee should be placed on leave, or in non-duty status without charge to leave, against his or her desire, he or she should consult the servicing employee relations office for guidance. Involuntary leave does not apply to situations in which absence is required because of inappropriate, disruptive, or threatening behavior or because the agency believes the employee's presence on the job could be injurious to the employee, other employees, or the public.

Transfer and Recredit of Leave**Annual Leave**

(1) When an employee transfers between positions covered by subchapter I of Chapter 63 of title 5, USC, without a break in service, the agency from which he/she transfers shall certify his/her annual leave account to the employing agency for credit or charge. SF-1150, "Record of Leave Data Transferred," is used to transmit the leave data between agencies.

(2) An employee's annual leave account is credited when he or she is reemployed, along with any unused portion of leave for which a refund of the lumpsum payment is required. Recredit is not effected until the refund has been made in full.

(3) When annual leave is transferred between different leave systems under 6308 of Title 5, USC. (Transfers between positions under different leave systems.), or is recredited under a different leave system as the result of a refund under 6306 of 5 USC (Annual leave; refund of lump-sum payment; recredit of annual leave), 7 calendars of annual leave are deemed equal to 5 workdays of annual leave.

Sick Leave

(1) Sick leave which is used in the computation of an annuity for an employee shall be charged against his sick leave account and may not thereafter be used, transferred, or recredited.

(2) Except as provided in (1) above, an employee who has had a break in service is entitled to a recredit of sick leave (without regard to the date of his or her separation), if he/she returns to federal employment on or after December 2, 1994, unless the sick leave was forfeited upon reemployment in the federal government before December 2, 1994.

(3) An employee who transfers to a position to which he/she cannot transfer his/her sick leave; or transfers to position under a different leave system to which he/she can transfer only a part of his/her sick leave is entitled to a recredit of the untransferred sick leave (without regard to the date

of the original transfer) if the employee returns to the position or leave system under which it was earned on or after December 2, 1994.

(4) The recredit of sick leave shall be supported by authentic, legible, verifiable, or legible standard forms (i.e., SF-1150).

Leave Status on Day of Death

If an employee dies while in duty status or while in leave with pay status, she/he is not charged leave for the day of death, regardless of the time of death but given administrative leave. If an employee dies while in nonpay status, he or she is charged with leave without pay for the day of the death (25 CG 366 and 60 CG 53).

Leave Credit for Unwarranted Personnel Action

(1) Public Law 89-380, the Back Pay Act of 1966, provides that each employee who, on the basis of an administrative determination or a timely appeal, is found to have undergone an unjustified or unwarranted personnel action shall be entitled to any net lost pay, allowances or differentials and "for all purposes, shall be--considered to have rendered service for such agency during such period, except that--annual leave restored under this Act which is in excess of the maximum leave accumulation permitted by law shall be credited to a separate leave account for the employee if he/she is restored to the agency rolls." Annual leave in this separate leave account must be scheduled and used by the end of the leave year ending two years after the date on which the annual leave is credited to the separate leave account.

(2) See 5 CFR 550.801, Back Pay, for the OPM regulations on the Back Pay Act.

Annual Leave

Planning Annual Leave

(1) Supervisors' and employees' are responsible for establishing leave schedules early in the year to ensure that the needs of the Service and employees are met. Such schedules should be established for all employees, whether occupying supervisory or non-supervisory positions. Because annual vacations are important to maintaining health and efficiency, employees should be encouraged to request an annual leave period of at least two weeks for vacation purposes.

(2) In planning leave, supervisors should consider other types of planned extended absences, e.g., military and court leave, details to other offices, leave without pay, and travel.

(3) Negotiated agreements may impose additional conditions for bargaining unit employees.

Accordingly, managers should familiarize themselves with the leave Articles of any locally negotiated agreement.

(4) While the taking of Annual Leave is an absolute right of the employee, it is subject to the right of the head of the agency concerned (supervisors) to approve/disapprove the time at which leave may be taken. (39 CG 611 and 16 CG 481.)

(5) If an employee is administratively granted LWOP when the employee has an annual leave balance, that period of LWOP may not later be converted to annual leave unless the period was granted for absence due to an injury or illness for which an Office of Workers' Compensation Programs Claim was disallowed.

(6) In addition, LWOP may be converted to annual leave upon the request of an employee for whom an erroneous "skeletonized SF-1150," Record of Leave Data, was used to establish a leave account upon entrance on duty with IRS. When the official SF-1150 is received from the losing agency, and the leave is credited to the employee's annual leave account, an adjustment may be made to the employee's leave for periods when LWOP was charged.

(7) Annual leave may not be substituted for sick leave previously granted for the purpose of avoiding a forfeiture of annual leave at the end of the leave year. However, advanced sick leave may be converted to annual leave provided the annual leave is charged prior to the time it would be forfeited at the end of the leave year. A timekeeper may make the substitution only with the approval of the employee and the employee's supervisor.

Determining Creditable Service

The servicing Personnel office is responsible for determining each employee's creditable service for leave accrual purposes.

Use of Annual Leave by New Employees

(1) Annual leave may be granted as of the first day of employment to those employees whose appointments are for 90 days or longer.

(2) Newly appointed employees who are on appointments for less than 90 days are not entitled to use annual leave until after they have been employed for a continuous period of 90 days under successive appointments without a break in service. At completion of the 90 day period, annual leave earned during the first 90 days of the appointment will be available to use on the 91st day.

(3) If an employee is initially appointed for less than 90 days but the appointment is extended before the expiration date, so the total amount of time is 90 days or longer, the employee is entitled to leave credit starting from the beginning date of the initial appointment.

(4) Employees may use any annual leave earned under previous appointments which has been

recredited to their account.

Annual Leave Earning Rates

Full-Time Employees

(1) Full-time employees earn annual leave from the first full pay period of employment, as follows:

(a) Employees with less than 3 years of service earn 4 hours each pay period (13 days per leave year);

(b) Employees with between 3 and 15 years of service earn 6 hours each pay period and 10 hours for the last complete pay period in the calendar year (20 days per leave year); and

(c) Employees with 15 or more years of service earn 8 hours each pay period (26 days per leave year).

Effective Date of Change in Rate of Accrual

Any change in the rate of earning annual leave is effective at the beginning of the first pay period following the date on which the employee completes the required amount of service.

Annual Leave Maximum Accumulations

Legal Maximums

(1) The maximum accumulations of annual leave which may be carried forward from leave year to leave year is 30 days (240 hours) for employees in the United States and 45 days for overseas employees who are subject to 5 USC 6304(b). Part-time employees are also limited to the 30 and 45 days maximum accumulations as described above.

(2) Unused annual leave accrued by an employee while serving under an appointment in the Senior Executive Service (SES), shall accumulate for use in succeeding years until it totals not more than 90 days (720 hours) at the beginning of the first full biweekly pay period (or corresponding period for an employee who is not paid on the basis of biweekly pay periods) occurring in a calendar year.

(a) When an employee outside the SES moves to a position in the SES, any annual leave accumulated prior to movement shall remain to the employee's credit.

(b) An employee in the SES who, as of the first day of the first pay period beginning after October 13, 1994, has accumulated annual leave in excess of 90 days (720 hours) is entitled to retain that leave as a personal leave ceiling.

(c) See 5 CFR 630.301 for additional guidance on annual leave accumulation by SES employees.

Savings Provisions

(1) Employees are permitted to retain accumulated leave in excess of the prescribed legal maximums in the following instances:

(a) 5 USC 6304(c) provides that an employee who had more than a 30 day (240 hours) balance of annual leave as of the end of the 1952 leave year retains that amount of leave as his or her personal or individual leave ceiling. This ceiling is reduced, however, if she or he uses more annual leave in a year than she or he earns. The new, lesser amount of leave becomes the new personal leave ceiling, except that in no case will the ceiling fall below 240 hours.

(b) If the accumulated and accrued leave of an overseas employee is between 31 and 45 days when the employee transfers to the United States, he/she retains the full amount as his/her maximum accumulation as of the end of the last full pay period at the overseas post of duty. The employee carries this amount forward at the end of the leave year in which the transfer occurs and into subsequent leave years so long as his/her leave balance at the end of any leave year is not a lesser amount. When she/he has a lesser amount, this becomes the new ceiling, except that in no case will the ceiling fall below 240 hours (30 days).

Purposes

(1) Annual leave is provided and used for two general purposes:

(a) To allow every employee an annual vacation period of extended leave for rest and recreation; and

(b) To provide time off for personal and emergency purposes.

Agency Authority

Work requirements and consideration of the interests of the employee are the determining factors in acting on requests for leave. Although the taking of annual leave is a statutory right of the employee, the interests of the Service must take precedence over the employee's personal wishes in case of conflict.

Substitution of Annual Leave for Sick Leave

If requested by the employee and approved by the supervisor, an absence which would otherwise be chargeable to sick leave may be charged to annual leave. Advance sick leave may be liquidated, at the employee's request, by a charge against accrued annual leave, provided that the annual leave charge is made prior to the time it would be forfeited. However, annual leave may not be substituted for sick leave on a retroactive basis solely for the purpose of avoiding a forfeiture of annual leave at the end of the leave year or as an inducement to an employee to stay on the job.

Annual Leave Prior to Separation

(1) In general, employees may not be granted annual leave when it is known in advance that a separation will occur. The purposes of this requirement is to ensure that the government is not incurring additional costs for employees that should actually have separated prior to the leave. Therefore, when it is known that a separation will occur, management's exercise of administrative authority to grant Annual Leave should be limited to situations in which exigencies of the Service require such actions.

(2) An employee who is a reservist or member of the National Guard, and enters extended military or naval service with restoration rights is entitled to be carried on Annual Leave rather than receive a lump-sum payment. (41 CG 320.)

(3) Grants of terminal leave may also be appropriate under these circumstances:

(a) An employee has applied for disability retirement

(b) An employee is under notice to be separated because of Reduction in Force (25 CG 82);

(c) An employee is in leave status pending acceptance by the Armed Forces for extended active duty (24 CG 650); and

(d) An employee has received notice of separation for cause and requests leave or the Service deems it necessary to place the employee on involuntary annual leave. But involuntary annual leave is only appropriate in situations that are clearly nondisciplinary.

Advancing Annual Leave

(1) If an employee who is otherwise eligible to earn leave has shown him or herself to be dependable and deserving, he or she may be granted advance annual leave. Advance leave may not exceed the amount that will be earned prior to separation or the end of the current leave year, whichever comes first.

(2) Leave may not be advanced to employees with intermittent work schedules.

(3) The employee's request and use of advanced annual leave serves as his/her commitment to repay the leave through future leave accruals (or cash payment). An employee cannot be allowed to continually use annual leave accruals each pay period when there is an outstanding annual leave indebtedness. All such requests should be carefully evaluated by supervisors on a case by case basis to ensure that the employee is committed to repaying the leave through future leave accruals.

(4) Negotiated agreements may impose additional conditions for Bargaining Unit employees.

(5) Compensatory time may not be used to offset advanced sick or annual leave (Unpublished Comp. Gen. Decision B-157434, November 9, 1975).

Restoration

General

(1) All forfeited leave restored under Public Law 93-181 will be processed under these instructions.

(2) There should be a minimum number of restorations because of exigency of the public business.

Forfeiture and Restoration of Annual Leave

(1) PL 93-181. (5 CFR 630.306-309) Leave in excess of the maximum permissible carryover which is forfeited as the result of administrative error, exigencies of the public, business, or sickness of the employee may be restored to the employee in a separate account under the following conditions:

(a) Administrative Error. When an administrative error caused (or causes) the loss of annual leave, any annual leave that was forfeited because of the error may be restored.

(b) Exigency of the Public Business. When the exigency is of such importance as to preclude the use of properly scheduled annual leave. Conditions for restoration are as follows:

1. Annual leave must be scheduled in writing before the start of the third biweekly pay period prior to the end of the leave year;

2. The determination must be made that the exigency is of such importance that the employee cannot be excused from duty for the duration of the scheduled annual leave; or

3. There is no reasonable alternative to the cancellation of the scheduled leave, and it is not generally practicable to assign another employee to perform the work.

(c) **Sickness of the Employee.** When a period of sickness (or injury, or any other medical condition for which sick leave would be approved) interfered with the use of scheduled annual leave. Conditions for restoration are as follows:

1. The annual leave was scheduled in writing before the start of the third biweekly pay period prior to the end of the leave year; or

2. The period of absence due to sickness occurred at such a time late in the leave year or was of such duration that the annual leave could not be rescheduled for use before the end of the leave year to avoid forfeiture.

Approving Authority

Delegation Order #104 (as revised) lists the officials who have authority to determine that an exigency is of major importance and that forfeited Annual Leave may be restored.

Additional Requirements

(1) To be eligible for restoration, leave **MUST** be scheduled in writing before the start of the third biweekly pay period prior to the end of the leave year. Annual leave that is not prescheduled prior to the designated timeframe may not be considered for restoration.

(2) Upon restoration, the restored forfeited annual leave should be rescheduled as soon as possible for later use.

Documentation Required for Approval of Restoration

(1) The following documentation is required for approval of the restoration of forfeited annual leave to a separate leave account:

(a) The date the leave was approved by the appropriate official;

(b) the date(s) during which the leave was scheduled for actual use and the amount scheduled (days/hours);

(c) Reason(s) for subsequent cancellation of approved leave. If because of an exigency of the public business, documentation must include the beginning and ending dates of the exigency and a copy of the approved action;

Supervisor's Responsibility for Proper Handling of Documentation

- (1) The supervisor is responsible for assuring all the above documentation is obtained.
- (2) The supervisor is responsible for being aware of the number of hours of leave restored and making arrangements for the use of this leave as soon as the workload permits.
- (3) The supervisor is responsible for advising the employee that if the restored annual leave is not used within established timeframes, it may not be restored again - if restored leave is not used it will again be forfeited with no further possibility of restoration.
- (4) The supervisor will forward the original documentation to the employee's timekeeper for filing and future reference.

Time Limit for Use of Restored Forfeited Annual Leave

(1) Annual leave restored to a separate leave account must be scheduled and used no later than the end of the leave year ending two years after; (a) the date annual leave was restored in correcting an administrative error; (b) the date fixed by management as the termination of the exigency of the public business that resulted in forfeiture of annual leave; or (c) the date the employee is determined to be recovered and able to return to duty, if leave was forfeited because of sickness.

Use of Restored Leave

Managers and employees must be aware of the time limit for use of restored leave and the need to plan for the use of accruing leave so as to avoid forfeiture of that leave as well.

Lump Sum Payments

Legal Requirements

Under 5 USC 5551 and 5552, an employee who separates from the Federal service for one or more workdays or who enters active duty in the armed forces and elects payment, shall be paid in a lump-sum for accumulated and current accrued annual leave to which she/he is entitled by statute. In case of an employee's death, the beneficiary is entitled to the lump- sum payment.

Employees Entering the Armed Services

(1) An employee entering active duty with the Armed Forces may be paid (5 USC 5552) for accumulated and current accrued Annual Leave or elect to have it remain to his or her credit. By contrast, a reservist or member of the National Guard entering the Armed Forces MAY be carried on the rolls in an Annual Leave status until his or her Annual Leave is exhausted.

(2) An employee may not elect to be paid for part of his or her leave and have the balance remain to his or her credit. However, any leave restored to an employee under 5 USC 6304(d)(1) (restored forfeited Leave maintained in a separate account) may not be retained, but must be liquidated by a lump-sum payment immediately. If an employee desires, all of his or her Annual Leave except that restored forfeited Annual Leave maintained in a separate account, may retain to his or her credit until his or her return, even though the current leave accrual might be in excess of the ceiling at the end of the leave year in which he or she enters military service. In such cases, the maximum limitation on leave carryover would be applied at the beginning of the leave year following the one in which he or she returns to duty.

(3) If a reservist or member of the National Guard elects to use his or her annual leave while receiving military pay, the leave ceiling still applies, so he or she will forfeit excess Annual Leave at the end of the leave year.

Exempt Officer

When an employee subject to the annual and sick leave provisions of 5 USC 6301 accepts a presidential appointment, which is exempted from those provisions, he or she may not receive a lump-sum payment for Annual Leave (40 CG 164, 38 CG 386, 33 CG 177, B-165516). The accumulated and accrued Annual Leave is to be credited for payment upon separation or death under 5 USC 5551 or for recredit upon reemployment without a break in service in a position subject to the leave provisions (49 CG 545, B-116694). If a lump sum payment is made, the rate shall be the salary received prior to the presidential appointment but the time period shall be projected from the date of separation (40 CG 579). If the employee has any leave in a separate account restored under 5 USC 6304(d)(1) it shall be liquidated by lump sum payment immediately upon transfer to the excepted position.

Employees Transferring to International Organizations

(1) Under 5 USC 3582(a)(4) an employee who transfers to an international organization (as defined in 5 USC 3581) may elect to retain his or her accumulated and current accrued annual leave or to receive a lump-sum payment. If he or she elects the lump-sum payment but is reemployed within six months after transfer, he or she must refund the lumpsum payment to the agency.

(2) The above does not operate to cause a forfeiture of retained annual leave following reemployment or to deprive an employee of a lump-sum payment to which he or she would otherwise be entitled.

Computation of Payment

(1) The lump-sum payment is computed on the basis of the rate(s) to which entitlement exists at separation and which would have affected an employee's compensation had he or she remained in the Service for the period covered by the leave (38 CG 161,163). Examples:

(a) An employee who meets all requirements for a within-grade increase, but is separated before the effective date, is entitled to lump-sum payment at the increased rate for the leave extending beyond what would have been the effective date of the increase (26 CG 102). Also, the employee is entitled to an adjustment in the lump-sum payment whenever a statutory increase becomes effective on a date which occurs during the period over which the lump sum is projected. (For example, an employee is separated September 25 with entitlement to lump-sum payment for 240 hours; a statutory increase becomes effective October 13; the lump-sum payment is adjusted to reflect the increased rate from October 13 through the remaining period over which it was originally projected (47 CG 773)).

(b) An employee receiving pay retention is not entitled to lump-sum payment at the retained rate for that part of the leave that extends beyond the date the retained rate would have expired if the employee had remained on the rolls.

(c) An exempt officer, upon final separation from service, is entitled to lump-sum payment for the accrued and current leave to his/her credit at the time of acceptance of the presidential appointment at the salary rate the employee was receiving on the day before accepting the presidential appointment (40 CG 579)

(d) A reemployed annuitant, upon final separation from service, is entitled to a lump-sum payment computed at the rate for the position held by him or her without being reduced by the amount of his or her retirement annuity (36 CG 209).

(e) Where an employee converts to a position as an intermittent employee with no regular tour of duty during an administrative workweek and where he will earn no leave and cannot transfer his leave, he shall receive a lump-sum payment for all annual leave accumulated under his prior position. (47 CG 706 (1968)).

(f) If the employee is separated prior to a statutory pay increase but the period of projected leave extends beyond the effective date of the increase the lump-sum payment shall be adjusted to reflect the increased rate for any leave from the effective date of the pay increase. (47 CG 773 (1968)).

(g) The lump-sum payment also includes the following additional amounts when appropriate.

1. Premium percentage compensation to which the employee would have been entitled had employee remained on the rolls (36 CG 18 and 38 CG 161, 163).

2. Differential or cost of living allowance to which an employee is entitled at separation when

employee is separated at employee's overseas post (32 CG 323). However, employee is not entitled to such amounts, if employee is separated after employee leaves his/her overseas post (38 CG 594), unless employee leaves the overseas post for temporary official duty and it would not be in the public interest to return the employee to the permanent post of duty for a brief period before separation (B-155356).

(h) The time covered by the lump-sum payment is not counted as civilian Federal service (26 CG 102, 105, and 24 CG 526); nor does the employee earn leave during this period. The payment is not regarded, except for purposes of taxation, as salary or compensation and is not subject to retirement deductions.

(i) An employee is not entitled to pay for holidays during the period covered by his lump-sum annual leave payment. (5 U.S.C. 5551(a); 61 CG 363 - 1982).

Refunds

Legal Requirements

(1) Section 6306 of Title 5, US Code, provides that any person who is reemployed in the Federal service (except as provided in Section 6301 U.S.C.) prior to the expiration of the period covered by the lump-sum leave payment, is required to refund to the employing office an amount equal to the gross compensation received for the unexpired portion of the lump-sum leave period. The period covered by the refund is the period from date of reemployment to expiration of the lump-sum period.

(2) If the lump-sum payment for the refund period included payment for any differential or cost of living allowance, such amounts must be included in the refund (CG B137579).

(3) The law contemplates an immediate refund of that part of the lump-sum payment which is to be refunded and such requirement ordinarily should be a condition precedent to reemployment. Upon payment of the refund, the amount of Annual Leave represented by the refund is credited to the employee's leave account and is available for use.

(4) However, the refund may be collected in installments. In such case, none of the Annual Leave represented by the refund may be credited to the employee's account or used until the full refund is received. Also, delay in completing the refund may result in forfeiture of leave because of the Annual Leave carryover limitation of Section 6304 of Title 5, USC(34 CG 17 and 38 CG 91).

Servicing Personnel Office Responsibility

The servicing Personnel office will determine if appointees are entering on duty prior to the expiration of annual leave represented by a lumpsum payment. This determination will include information about whether the lump-sum payment included a cost of living adjustment or post differential; and, if the separation was for the purpose of a transfer to an International

Organization, the duration of the separation must also be determined. The Personnel Office, through TIMIS, will compute the total indebtedness and advise the employee of the amount. Whenever possible, collection will be made by the servicing Personnel office prior to reemployment in accordance with existing procedures. When requiring a full refund would impose a hardship, employees may satisfy the indebtedness by payroll deductions. Whenever possible, deductions will be in sufficiently large amounts to liquidate the indebtedness within six months.

Additional Leave Provisions for Employees Stationed Outside the United States

(1) The Leave Act provides additional leave benefits for employees stationed outside the United States: free leave-travel time and "home leave." See 5 CFR 630.601 for additional guidance on Home Leave. The regulations governing the payment of such travel and transportation expenses are contained in the IRS Travel Handbook.

(a) Free Leave - Travel Time Employees serving outside the United States who are authorized to accumulate 45 days annual leave (those subject to 5 USC 6304(b)) may be granted free travel time for the purpose of taking leave in the United States and return. The free time is limited to the period needed for travel by common carrier over the most direct route and any time necessarily spent in awaiting transportation. Such free time may be granted only once during each two-year tour of duty.

Home Leave

General

(1) Within IRS, there are a relatively few employees in Tax Administration Advisory Services (TAAS) and/or Assistant Commissioner (AC) International who are entitled to earn and use home leave. The personnel records and travel vouchers which support entitlement to home leave will remain in the servicing personnel office for all overseas employees. The information necessary to support payment while on home leave and for the preparation of an SF-1150 will be furnished by the servicing personnel office when needed.

(2) Home leave is authorized by U.S. Code 6305(a) and is earned by service in the United States, in the Commonwealth of Puerto Rico, or in the possessions of the United States. Employees must have lived abroad for two years to be eligible for home leave. Employees must also be returning abroad for an additional two years before entitled to home leave. If home leave is granted and the employee does not fulfill the additional two years abroad, the T/A records must be corrected to establish an accounts receivable.

(3) Employees who are entitled to accumulate 45 days of annotated home leave.

Accrual of Home Leave

(1) Home leave is earned and used in daily increments.

(2) Accruals vary with the employment conditions of the employees. For each 12 months of service abroad, and meeting the given conditions, employees will earn as follows:

(a) An employee who accepts an appointment to, or occupies a position for which the agency has prescribed the requirement that the incumbent accept assignments anywhere in the world as the needs of the agency dictate will earn 15 days.

(b) An employee serving with a United States mission to a public international organization will earn 15 days.

(c) An employee serving at a post for which a 20 percent or higher foreign or non-foreign (but not tropical) pay differential is authorized will earn 15 days.

(d) Employees not included in (a) (b) or (c) above who receive a foreign or territorial (but not tropical) pay differential of at least 10 and less than 20 percent, will earn 10 days.

(e) Employees working abroad who are not included in (a) (b) (c) or (d) will earn 5 days.

(3) If an employee is recruited abroad, his/her accruals begin with the entry on duty. When recruited in the United States for work abroad, his/her service abroad begins on the date of arrival at the overseas post. Full credit is given for the date of arrival.

(4) Entitlement to accruals end when the employee is separated from duty while abroad, or he/she leaves the post for separation or reassignment in the United States. The employee is entitled to full credit for his day of departure.

(5) Employees may be charged LWOP (or other non-pay status) for a maximum of two workweeks within each 12 months before losing eligibility for home leave.

(6) Employees continue accruing home leave while on paid leave or on detail to another position.

(7) Time spent in the Armed Forces of the United States which interrupts service abroad also is included, but only for eligibility, not earning purposes.

(8) Transaction code 40 is used to post home leave earned.

(9) For additional information see 5 CFR Part 630.

Use of Home Leave

(1) Home leave can be used only after the employee has experienced 24 continuous months abroad and expects to return abroad for an additional two year period.

- (2) Home leave may be used in combination with other types of paid leave.
- (3) Home leave should be used shortly after return to the United States, but not later than three months thereafter.

Posting Home Leave

- (1) Home leave will be posted to the T/A record in whole day increments.
- (2) Home leave is posted for dates within the employees tour of duty only. Weekend and AWS off days are not posted.
- (3) Transaction code 69 is posted for home leave taken.
- (4) Generally, home leave should begin shortly after return to the United States but not later than three months thereafter. However, the leave may be delayed beyond this time if, in management's judgment, it is necessary for the employee to attend training or reorientation sessions or to complete any special or urgent assignment.

Sick Leave/Sick Leave Earning Rates

- (1) Federal regulations pertaining to sick leave are provided in 5 CFR 630.401.
- (2) Sick leave is credited at the beginning of each pay period and is then available for use (39 CG 151). For each employee subject to the Leave Act and for whom there has been established a regular tour of duty, sick leave is earned as follows:
 - (3) Full-time employees earn sick leave at the rate of 4 hours for each full pay period of employment (13 days per leave year). Part-time employees earn sick leave at the rate of 1 hour for each 20 hours in pay status. Any hours in excess of 40 in any administrative workweek are disregarded for purposes of computing leave accrual.

Sick Leave Accumulation

- (1) Unused sick leave accumulates from year to year without restriction.
- (2) For employees who have Civil Service Retirement System coverage, sick leave is creditable towards the retirement annuity (not towards the length of service required for retirement eligibility). All sickleave to an employee's credit at the time of retirement is reported to the Office of Personnel Management for credit in calculating the annuity and is considered to have been "used." Therefore, no sick leave balance remains and if the retired employee is subsequently reemployed, the starting sick leave balance is zero.
- (3) Managers should consult a Benefits Counselor for information on the effect of the Federal

Employees' Retirement System on accumulated sick leave.

Granting Sick Leave

Purposes

(1) Federal Employees Family Friendly Leave Act. Public Law 103-388, the Family Friendly Leave Act (FFLA), expanded the use of sick leave by permitting employees to use their own personal sick leave to care for an ill family member. The Act was effective December 2, 1994. Generally, sick leave under the Act may be used for any illness, injury or other condition which would justify the use of sick leave if the employee had the condition. In addition, the Act permits the use of sick leave to make arrangements necessitated by the death of a family member or to attend the funeral of a family member. Although these sick leave provisions apply to all employees who earn sick leave, there are limitations to the use of sick leave for these purposes. These limitations and other related provisions of the Act are discussed below.

(2) 5 CFR 630.401 provides that an employee shall be granted sick leave when any of the following situations exist:

- (a) The employee receives medical, dental, or optical examination or treatment
- (b) The employee is incapacitated for the performance of duties by physical or mental illness, injury, pregnancy, or childbirth
- (c) (FFLA) Provides care for a family member as a result of physical or mental illness; injury; pregnancy; childbirth; or medical, dental or optical examination or treatment (See below for limitations).
- (d) (FFLA) Makes arrangements necessitated by the death of a family member or attends the funeral of a family member. May be referred to as bereavement.
- (e) Would, as determined by the health authorities having jurisdiction or by a health care provider, jeopardize the health of others by his/her presence on the job because of exposure to a communicable disease; or
- (f) Must be absent from duty for purposes relating to the adoption of a child, including appointments with adoption agencies, social workers, and attorneys; court proceedings; required travel; and any other activities necessary to allow the adoption to proceed. Sick leave may be granted for any period 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. However, sick leave may not be used either by birth or adoptive parents who voluntarily choose to be absent from work to bond with a birth or adopted child.

(3) Limitations Under the FFLA.

(a) The amount of sick leave granted to an employee during any leave year for the purposes described in (2)(c) and (d)(FFLA leave), above, may not exceed a total of 104 hours (13 days for an employee with a work schedule of 8 hours per day).

1. Employees will be able to use a total of 40 hours (5 days) of sick leave for family care or bereavement purposes. **This 40 hour entitlement, or any portion thereof, may be advanced to the employee.**

2. Employees who wish to take more than 5 days (40 hours) for these purposes may use up to 8 additional days (64 hours) but only to the extent that their sick leave balance does not fall below 80 hours. **Employees may not be advanced sick leave in order to meet this 80 hour requirement. Only the first 40 hours may be advanced (See (3)(a)1., above).** For a part-time employee, the sick leave balance must not fall below an amount equal to twice the average number of hours in the employee's scheduled tour of duty each week.

3. PC-TARE and TIMIS does not maintain a cumulative total of leave usage under the FFLA; however, Transaction 62 with Prefix Code 62, provides the means by which FFLA leave is identified when taken by an employee. Accordingly, in the absence of a cumulative total, FFLA leave usage should be maintained manually by managers to ensure that the established limitations are not exceeded.

4. When sick leave is granted to an employee in excess of the first 40 hours or 5 days, the amount of sick leave retained in the employee's sick leave account shall, in each instance, be at least equal to the minimum prescribed (80 hours for full-time employees) after deducting the amount to be used for family care or bereavement.

5. If the number of hours in the employee's tour of duty is changed during the leave year, the employee's entitlement to use sick leave for family care or bereavement shall be recalculated based on the employee's new tour of duty.

(4) **Family Member Under the FFLA.** The Federal Employees Family Friendly Leave Act provides explicitly that the term "family member" must be defined in the same way that the term is defined under the OPM regulations governing the Federal Leave transfer (sharing) program. Under 5 CFR 630.902, "Family member means 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.

(5) The coverage of the FFLA (in terms of the individuals for whom a federal employee may

provide care while on paid sick leave) is somewhat broader than the coverage of the Family and Medical Leave Act of 1993, under which federal employees may use unpaid leave to care for a "spouse, son, daughter or parent."

(6) Nothing in these regulations relieves the employee of the responsibility for properly requesting leave and documenting absences.

(7) Negotiated agreements may impose additional conditions for bargaining unit employees.

Requesting Sick Leave

(1) Supporting Evidence. Employees are responsible for requesting and securing approval of sick leave.

(2) Usually, the employee's initialing of the Time and Attendance Record or Time and Attendance Roster, is sufficient certification for sick leave absences of three workdays or less. However, when an employee is absent on sick leave frequently, or when it appears that sick leave is being abused, a medical certificate or other administratively acceptable evidence may be required for sick leave for three days or less and will be submitted by the employee, if possible, before the end of the pay period in which the employee returns to duty. Negotiated agreements may impose additional conditions for Bargaining Unit employees. When evidence may be required for absences of less than 3 days, the employee should be given advance notice of the requirement so that, when absent, she/he can immediately obtain the services of a physician or other practitioner. If the employee fails to submit acceptable evidence as required, the absence may be charged to annual leave, leave without pay, or absence without leave, and when appropriate, disciplinary action may be taken.

(3) Absences of more than 3 workdays will be supported by a medical certificate or other administratively acceptable evidence (e.g., SF 71; other locally acceptable documentation) which must be submitted within 15 calendar days after return to duty. In lieu of a medical certificate, a signed statement from the employee may be accepted. The statement should indicate the nature of the illness and the reason why a medical certificate is not being submitted. Nonsubmission of a medical certificate may be the result of a shortage of physicians, remoteness of locality, or because the services of a physician were not required. If the absence involves exposure to a contagious disease, the statement should include the information pertaining to the guidance of local health authorities having jurisdiction or health care provider which identifies the subject disease as being contagious.

Approving Sick Leave

(1) Supervisors responsible for approving sick leave must verify that the circumstances of absence justify approval.

(2) The Comptroller General has ruled (B-110034, 6/17/52) that an employee whose absence was charged as LWOP was not entitled to compensation for sick leave upon the employee's subsequent explanation that the absence was for dental care because sick leave was not approved by the

proper officer or physician as required by regulations (i.e., the employee did not follow prescribed procedures in requesting the leave).

(3) Employees will be held strictly accountable for their statements in connection with their requests for sick leave. If for any reason the employee's statement or that of the physician or other practitioner is not considered adequate, the supervisor will take necessary steps to obtain additional evidence to justify the approval or disapproval of sick leave.

(4) Supervisors should be alert to the possible illegal or improper use of sick leave for outside employment. An indication of such practice might be frequent short periods of sick leave. If the supervisor has any doubt in this regard, especially if the employee has permission to engage in outside employment, the supervisor should question the employee before approving the leave. A periodic review of the employee's leave records may be helpful in spotting possible abuse.

(5) However, there are instances when outside employment while on sick leave is acceptable, e.g., telephone solicitation; writing; or other sedentary activity during confinement at home because of pregnancy or recuperation from illness or injury.

Restoration to Grant Sick Leave

An employee may not be restored to the rolls after separation for the purpose of granting sick leave in the absence of administrative error or oversight in the processing of a separation action (33 CG 422); but an employee may be restored to correct a bona fide error so as to grant sick leave to an employee retiring on disability (CG B175210).

Sickness During or After Annual Leave

If sickness occurs during or after annual leave, sick leave will be granted to cover the entire period of illness, provided; the sickness is reported promptly; the request is supported by a medical certificate or other administratively acceptable evidence; and there is reasonable assurance that

sick leave is not being abused.

Sickness After a Nonpay Period

Sick leave may be granted for a period immediately following a period of nonpay status if, in the judgment of the supervisor, this action is warranted. However, it is improper to terminate nonpay status primarily to grant sick leave (CG B-122201, 1/7/55).

Substitution of Sick Leave for Leave Without Pay

Sick leave may be granted retroactively to cover a period of leave without pay granted to an employee pending action on a claim submitted to the Office of Workers' Compensation Programs which was disallowed.

Reduction in Force

Employees who have received separation notices because of Reduction in Force may be granted sick leave for illness during the 30 day (or other time period) advance notice period. Proposed separation dates specified in RIF notices will not be changed for purposes of extending the sick leave period.

Advancing Sick Leave

(1) If an employee who is otherwise eligible to earn leave has shown him/herself to be dependable and deserving, he/she may be granted advance sick leave subject to the following conditions:

(a) All requests for more than three workdays must be supported by a medical certificate or other administratively acceptable evidence as to the reason for the absence (see also local agreements for bargaining unit employees);

(b) There must be a reasonable indication that the employee will return to duty after his/her illness;

(c) The amount advanced to a full-time employee may not exceed 30 days (240 hours) at any time. (Advances to part-time employees will be on a pro-rata basis. For example: the maximum advance which may be made to a half-time employee is 15 days.) When it is known or reasonably expected that an employee will separate during the year (for example, expiration of appointment; retirement), the total advance may not exceed the amount that will be earned prior to the anticipated separation; and

(d) The employee's request and use of advanced sick leave serves as his/her commitment to repay the leave through future leave accruals (or cash payment). An employee cannot be allowed to continually use sick leave accruals each pay period when there is an outstanding sick leave indebtedness. All such requests should be carefully evaluated by supervisors on a case by case

basis to ensure that the employee is committed to repaying the leave through future leave accruals.

(e) Negotiated agreements may impose additional conditions for Bargaining Unit employees.

(2) The amount of annual leave to an employee's credit has no bearing on whether an advance of sick leave should be approved.

(3) Compensatory time to an employee's credit may not be used to liquidate an advance of sick leave (CG B-157434, November 9, 1965).

Recredit of Sick Leave

(1) When an employee transfers between positions, from one agency to another, the agency from which the employee transfers shall certify his or her sick leave account to the employing agency for credit (or charge, if employee transfers a negative sick leave balance) to his sick leave account at the gaining agency.

(2) Sick leave that is used in the computation of an annuity for a retiring employee shall be charged against his sick leave account and may not thereafter be used, transferred, or recredited.

(3) An employee who has had a break in service is entitled to arecredit of sick leave (without regard to the date of his or her separation), if he or she returns to federal employment on or after December 2, 1994, unless the sick leave was forfeited upon reemployment in the federal government before December 2, 1994.

(4) When sick leave is transferred between different leave systems, 7 calendar days of sick leave are deemed equal to 5 workdays of sick leave. (5 CFR 630.502(d))

(5) An employee who transfers to a position under a different leave system to which he/she can transfer only a part of his/her sick leave is entitled to arecredit of the untransferred sick leave (without regard to the date of the original transfer) if the employee returns to the leave system under which it was earned on or after December 2, 1994.

(6) An employee who transfers to a position to which he /she cannot transfer his/her sick leave is entitled to a recredit of the untransferred sick leave (without regard to the date of the original transfer) if the employee returns to the leave system under which it was earned on or after December 2, 1994.

(7) The recredit of sick leave must be supported by written documentation available to the employing agency in its official personnel records. Authentic legible, verifiable, or legible standard forms (i.e., SF-1150) should be considered acceptable.

(8) If an employee desires, he/she may be permitted to liquidate a minus sick leave balance by

converting the advanced sick leave to LWOP. The timekeeper will do this by correcting the T/A record. An Accounts Receivable will be established. When the indebtedness is paid, the leave is credited to the employee's account.

(9) An employee who liquidates advanced leave by refunding the monies, must repay the value of the advanced leave as well as for intervening holidays which occurred during the period.

(10) An employee may request of his/her supervisor permission to liquidate a minus sick leave balance by annual leave from his/her annual leave account. Only annual leave that has been accrued and credited to the employee's annual leave account may be substituted for advanced sick leave. When an employee liquidates an indebtedness for advanced leave (whether annual or sick) through accruals of the appropriate leave types each pay period or by substituting previously accumulated annual leave for advanced sick leave (under authorized circumstances only), the employee is substituting earned or accumulated leave for advanced leave. Since no nonpay status is involved in such liquidations, the employee remains in a paid leave status and retains entitlement to the pay received for the intervening holidays and no monies are exchanged.

Absence as a Result of Family Responsibilities

General

(1) The Internal Revenue Service is committed to providing for its employees a family friendly work environment which takes into consideration employee needs as well as organization priorities. Managers are encouraged to support the ideals of family friendly leave practices and flexible work arrangements and understand that employees have interests and additional responsibilities beyond those they have to the Service.

(2) Employees may request absence in order to comply with responsibilities related to personal and family matters. Management should be liberal in granting appropriate types and amounts of leave for these purposes, unless severe work interruptions would result. Absences as a result of family responsibilities may be necessitated by: caring and/or arranging for the care of ill or elderly relatives, maternity/paternity, adoption, child care, and arranging for and adjusting to changes resulting from situations such as those listed above.

Absence for Maternity Reasons

(1) Pregnancy is a condition which eventually requires the employee to be absent from the job because of incapacitation. This absence is chargeable to sick leave as appropriate, annual leave, or

leave without pay. Employees may invoke their entitlement to the FMLA for the birth or adoption of a child. Leave entitlement under the Family Friendly Leave Act (FFLA) is also available to provide care for a child, newborn or otherwise.

(2) There is no specified amount of leave that may be granted for absence for maternity reasons. The length of time will be determined by the employee, her supervisor, and her physician. Sick leave may be used for the time required for physical examinations and for the period of incapacitation due to delivery and recuperation. Annual and/or leave without pay may be granted an employee for a period of adjustment and child bonding; or to make arrangements for child care. The same leave policies, regulations and procedures apply for leave for maternity purposes as are applicable for leave generally, except that there are additional benefits available to employees under the FMLA.

(3) The Service will not ordinarily require a new mother to return to duty earlier than six months after childbirth unless her absence causes a severe work interruption.

(4) Nothing in these regulations relieves the employee of the responsibility for properly requesting leave and documenting absences.

(5) An employee should make known her intent to request leave for maternity purposes, including the type(s) of leave, approximate dates, anticipated duration, and whether she will invoke her entitlement under the Family Medical Leave Act, as far in advance as possible to allow time for preparation for any necessary staffing adjustments.

(6) An employee who is not planning to return to work should submit her resignation as soon as possible after she has made the decision not to return.

(7) The fact that an employee is on leave for maternity reasons will not preclude her separation before the expiration of this leave for reasons such as Reduction in Force, for cause, or for similar reasons unrelated to the maternity absence.

(8) If after consulting her physician, the employee requests modification of her duties or a temporary reassignment, every reasonable effort will be made to accommodate her request.

(9) An employee returning from an absence for maternity reasons will return to her position or one of like seniority, status and pay, unless termination is otherwise required by expiration of appointment, by Reduction in Force, for cause, or other reasons not related to the maternity absence.

(10) Negotiated agreements may impose additional conditions for Bargaining Unit employees.

Absence for Paternity Reasons

(1) An employee may request annual leave, sick leave (under the FFLA) or leave without pay for

purposes of assisting or caring for his minor children or the mother of his newborn child while she is incapacitated for maternity reasons. Each leave request will be considered on its own merits, consistent with the established guidelines for granting annual leave, sick leave, and leave without pay.

(2) Under 5 CFR 630.401(a)(3), employees may use sick leave to provide care for a family member as a result of physical or mental illness; injury; pregnancy; childbirth; or medical, dental, or optical examination or treatment. Father and mother are each entitled to use sick leave for these purposes.

(3) Under the Family Medical Leave Act, employees are entitled to a total of 12 administrative workweeks of unpaid leave (or paid leave, if available) during any 12-month period to care for the birth of a son or daughter and the care of such son or daughter. Father and mother are each entitled to 12 administrative workweeks of unpaid leave for child birth or the care of a son or daughter with a serious health condition.

(4) Negotiated agreements may impose additional conditions for Bargaining Unit employees.

Leave for Employees Adopting Children

(1) The service recognizes that adoption provides significant benefits to society in general, and also recognizes that the procedures involved can make significant demands on employees' time. Therefore, except when the employee's absence will create a severe work interruption, management should make every effort to grant appropriate types of leave.

(2) 5 CFR 630.401(a)(6) provides that sick leave may be used for absences from duty for purposes relating to the adoption of a child, including appointments with adoption agencies, social workers, and attorneys; court proceedings; required travel; and any other activities necessary to allow the adoption to proceed.

(3) Under the Family Medical Leave Act, an employee is entitled to a total of 12 administrative workweeks of unpaid leave (or paid leave, if available) during any 12-month period for the placement of a son or daughter with the employee for adoption or foster care. A father and mother are each entitled to 12 administrative workweeks of unpaid leave for a birth, adoption, or foster care.

Absence Without Pay

Leave Without Pay

General

- (1) Leave Without Pay (LWOP) is a temporary nonpay status and absence from duty administratively granted upon an employee's request. Employees do not have the right to be granted leave without pay except: disabled veterans needing medical treatment; reservists and members of the National Guard ordered to military training duties when Military Leave is not appropriate; and employees who are pursuant to a claim for job related illness or injury with the US Department of Labor, Office of Workers' Compensation Programs.
- (2) In most cases, leave without pay is the result of insufficient annual or sick leave to the employee's credit to cover all or a portion of the absence.
- (3) Employees are required to be in LWOP status while receiving compensation under the Federal Employees' Compensation Act. (US Department of Labor, Office of Workers' Compensation (OWCP).
- (4) Extended LWOP is a period exceeding 30 calendar days.
- (5) Employees and managers should consult their servicing personnel office or benefits counselor for information on the effect of LWOP on their federal employee benefits (Health insurance, Life Insurance, Within-Grades, etc.)
- (6) Nothing in these regulations relieves the employee of the responsibility for properly requesting leave and documenting absences.
- (7) When an employee reaches and exceeds 80 hours in non-pay status in a pay period, any non-pay hours accumulated over 80 will be held and counted toward the next 80 hour cutback.
- (8) For leave accrual reduction purposes, periods of non-pay status which total less than 80 hours will be dropped at the end of the leave year.
- (9) Hours of non-pay status charged to an employee who enters on duty or separates during a pay period, should not be included in computing the total hours in non-pay status which is required for a reduction in leave accruals. The time & attendance representative must ensure that all nonpay hours charged during a fractional pay period are excluded from hours toward an 80 hour cutback.

(10) Negotiated agreements may impose additional conditions for bargaining unit employees.

LWOP Without the Employee's Consent

(1) In a few instances employees may be placed in LWOP status without their consent. This occurs when the situation is clearly nondisciplinary in nature.

(2) Suspension--used only when documented with an SF-50.

(3a) OWCP--used when the 45 days of FECA have been used and the employee is still unable to return to duty and the OWCP claim has been approved.

(3b) OWCP--used when the 45 days of FECA have been used and the employee is still unable to return to duty and the OWCP claim is still pending approval.

(3c) LWOP that accrues while an employee is being paid by OWCP will count toward reduced leave accruals but will not count toward the within grade.

(4) If more than one type of LWOP is charged on the same day or the same pay period, the time & attendance representative must annotate in remarks, each type of LWOP and the dates each was charged. This audit trail will be critical for updating the LWOP counter through PACT/PRES.

Considerations in Acting on Requests for Extended LWOP

(1) Each request for extended LWOP should be examined closely to determine, as far as possible, that the employee will return at the end of the LWOP period and that the value to the Government or the serious needs of the employee are sufficient to justify the administrative costs and inconveniences.

(2) The following paragraphs describe costs and inconveniences; benefits which should accrue if the LWOP is approved; and examples of cases in which extended LWOP would be proper:

(a) Costs and inconveniences:

1. Encumbrance of a position;
2. Loss of employee's service;
3. Obligation to provide active employment at the expiration of approved leave;
4. Credit for up to 6 months each calendar year toward retirement, except when employee

is on LWOP to serve as full-time officer or employee of an employee organization; and

5. Eligibility for continued coverage for up to 12 months or nonpay status under the Federal Employees Group Life Insurance Act and 365 days of nonpay status under the Federal Employees Health Benefits Act.

(b) Expected benefits:

1. increased job ability;
2. Protection or improvement of employee's health;
3. Retention of a desirable employee; and
4. Furtherance of a program of interest to the Government (e.g., Peace Corps).

(c) Examples of appropriate cases:

1. For educational purposes, when the completion of the course or research will contribute to the Service's best interests;
2. For illness or disability that is not permanent or disqualifying;
3. To protect employee status pending final action by OPM on an application for disability retirement or pending final action by the Office of Workers' Compensation Programs; and,
4. For service as a full-time officer or employee of an employee organization.

Duration

(1) An employee requesting extended LWOP will normally be required to exhaust all Annual Leave to his/her credit before such leave may be granted except as may be otherwise authorized locally.

(2) There is no maximum amount of LWOP which can be granted.

(3) The initial grant of LWOP may not exceed one year. However, under unusual circumstances or in furtherance of a program of interest to the Government, extensions of LWOP beyond one year may be approved as specified in Delegation Order No. 104 (revised).

(4) Extensions of LWOP should be approved only when the interests of the Service are best served thereby or when it would be clearly unfair to the employee to deny the extension.

(5) LWOP may not extend beyond the expiration of an employee's appointment. Also, it generally is terminated when the employee accepts another Federal appointment.

Substitution of LWOP for Annual or Sick Leave

(1) Although substitution of LWOP for Annual or Sick Leave is unusual, it may be appropriate under conditions such as; (a) to correct an administrative error; (b) approval of Workers Compensation claims.

(2) Managers should consult their servicing Personnel offices before authorizing such adjustments.

Leave Without Pay for Career or Career-Conditional Employees Who Relocate

(1) It is the policy of the Treasury Department (Treasury Personnel Bulletin No. 68-18, April 17, 1968) to be liberal in granting LWOP for at least 90 days when an employee moves to a new location under the following conditions:

- (a) The employee has career or career-conditional status;
- (b) There is reason to believe that the employee may locate other Federal employment
- (c) The employee requests LWOP; and
- (d) Granting LWOP will not cause hardships to the parties concerned.

(2) The purpose of this policy is to avoid costly breaks in service.

Absence Without Leave

Definition

Absence Without Leave (AWOL) is a nonpay status resulting from a supervisory determination that no type of approved leave will be granted for a particular absence. AWOL is charged in 15 minute increments.

Relationship to LWOP

AWOL is not to be confused with Leave Without Pay (LWOP), which is granted on an employee's request. LWOP is a permissive type of leave, such as sick or annual, and does not have disciplinary connotation. AWOL, on the other hand, results from disapproval of an absence and may be the basis for disciplinary action.

Supervisors' Responsibility

Supervisors should discuss questionable absences with employees as soon as possible to determine whether the absences should be charged to approved leave or to AWOL.

Military Leave

General

Scope

As explained below, there are several types of military leave. Managers must determine which type of military leave is applicable in each situation in order to correctly apply the provisions of 5 USC 6323.

Reserve Components

(1) The reserve components of the Armed forces (Section 261, Title 10, US Code) are:

- The Army National Guard of the United States;
- The Army Reserve;
- The Naval Reserve;
- The Marine Corps Reserve;
- The Air National Guard of the United States;
- The Air Force Reserve; and
- The Coast Guard Reserve.

Eligibility for Military Leave

(1) Eligible Employees:

(a) Full-time employees and part-time career employees (16-32 hours per week) with permanent, TAPER, or term appointments, or other temporary appointments of one year or more, are entitled to military leave, if otherwise eligible. This includes seasonal employees. (NOTE: part-time career employees, regardless of type of appointment, are eligible only for the Military Leave provided for in 5 USC 6323(a), and then only for a portion of the 15 days pro-rated in accordance with their tour of duty.)

(b) Individuals are not required to use military leave when called to active duty. They are also entitled to use any accrued annual leave (or sick leave, if appropriate). Note: Military leave cannot be used for inactive duty, e.g., drills.)

(c) Temporary employees whose appointments are limited to less than one year and

employees with intermittent work schedules are not entitled to Military Leave.

(d) Employees who are not entitled to Military Leave should be granted Annual Leave or Leave Without Pay, if otherwise eligible for these types of leave, to perform active military duty. (NOTE: Employees are not entitled to be compensated for any civilian time worked while on military leave; therefore, employees shall not report to duty during this time.)

Pay Status Requirement

Generally, a pay status either immediately prior to the beginning of active military duty or a return to pay status immediately afterward is a requisite to entitlement to military leave with pay since, otherwise, no civilian pay would have been lost. It is important to note that the controlling factor is not whether the employee is in pay status per se, but whether, except for the active military duty, employee would have been in pay status. (For example, an employee who was granted LWOP to put her affairs in order before entering active duty would not, solely because of this, lose entitlement to military leave). Should an employee who is otherwise entitled to Military Leave not return to the civilian position, he/she must furnish appropriate written evidence of attendance on active military duty before she/he is entitled to his or her civilian pay (37 CG 608).

Types of Duty Not covered by Military Leave

(1) The types of military duty listed below are not qualifying for Military Leave. However, except as otherwise provided, Annual Leave or Leave Without Pay should be granted to permit employees to engage in these activities.

(a) Summer training as members of Reserve Officer Training Corps. (35 CG 531 modified by 52 CG 755);

(b) Temporary members of the Coast Guard Reserve (23 CG 916);

(c) Participation in parades by members of a State National Guard;

(d) Training with a State defense organization or a State military organization which is not part of the National Guard, or any other organization created by the State in the absence of the State National Guard during an emergency (23 CG 92);

(e) Civil Air Patrol--established as a civilian auxiliary of the United States Air force.

(f) "Inactive" duty training. Periods of inactive duty training are those for which employees are not ordered to active duty, and generally consist of special assignments of short duration during regular working hours, nonduty hours, or nonwork days (32 CG 363);

(g) Weekly meetings and drills as a member of the District of Columbia National Guard (32 CG 363);

(h) Time to travel on a workday to a place of training unless orders encompass travel time; and

(i) Active duty as a commissioned officer in the Reserve Corps of the United States Public Health Service.

Military Leave for Active Federal Military Duty or Field or Coast Defense Training

General

An employee who is otherwise entitled to Military Leave is entitled to leave without loss of pay, time, or performance or efficiency rating for active duty for engaging in field or coast defense training under sections 502-505 of Title 32 as a Reserve of the armed forces or member of the National Guard. An eligible fulltime employee accrues 15 days military leave each fiscal year, and the military leave (not to exceed 15 days) which is unused at the beginning of the succeeding fiscal year is carried forward for use in addition to the days which are credited at the beginning of the fiscal year. This gives a fulltime employee the potential of 30 days military leave during a fiscal year. Accruals of Military Leave under 5 USC 6323(a) for part-time career employees are pro rated.

Application

For this purpose, active military duty includes duty on the active list, fulltime training duty, annual training duty, and attendance while in the military service at a school designated as a service school by law or by the Secretary of the military department concerned (37 CG 313). Military Leave applies to extended active Federal military service as well as to two week summer encampments. To be eligible for Military Leave the employee must receive orders which activate her/his Reserve or National Guard status.

Charging Military Leave for Active Duty or Field or Coast Defense Training

(1) Military Leave for active duty or field or coast defense training is limited to a maximum of 30 calendar days during each fiscal year, regardless of the number of training periods in the year. This leave may be taken intermittently, a day at a time, or as otherwise directed by competent military authority (27 CG 353).

(2) Nonwork days falling within a period of active military duty are charged against the employee's Military Leave balance. However, nonworkdays occurring at the beginning or end of the period are not charged (27 CG 245). If an employee's orders specify three separate 5 day periods of duty of Monday through Friday for three consecutive weeks, he/she may not be charged for any of the weekends since he/she is not in active military duty status on those days.

(3) In light of the 1980 amendment to the military leave statute, 5 USC 6323(a), federal employees who are members of the Reserve or National Guard are entitled to carry over up to 15 days of unused military leave into the next fiscal year. When the carried over leave is combined with the 15 days accrued in the new fiscal year, it produces a maximum military leave benefit of 30 days which may be used in one fiscal year. Employees may be continued in military leave status on leave they had to their credit in the fiscal year they entered active duty although the military duty to which the leave is applied extends into the next fiscal year. (CG Decisions to the contrary are no longer applicable. See B-241272.)

(4) Federal employees who are members of the Reserve or National Guard serving on active military duty which extends into a second fiscal year may accrue and use the 15 days of military leave which accrues at the beginning of the second year without return to civilian status. This is authorized under the 1980 amendment to section 6323(a), which provides additional flexibility in accrual and use of military leave. Comptroller General decisions to the contrary are superseded. See B-241272.

Computation of Military Leave Accrual for Part-time Employees

(1) Military leave authorized under 5 USC 6323 (a) for part-time employees will accrue at a rate based on the number of hours in the employee's regularly scheduled tour of duty. In computing the accrued, use the following formula:

(a) $15 \times (\text{____}/40) = \text{____}$ Take 15 days (the number of days a full-time employee would accrue and multiply that by the number of hours in the employee's weekly tour of duty divided by 40 (the number of hours a fulltime employee works per week.) The answer is the number of military days the employee will accrue for this fiscal year.

(b) Example: $15 \times (20/40) = 7 \frac{1}{2}$. In this example, the employee works 20 hours per week. The employee would be entitled to 7 military days this fiscal year and have one-half military day to carry forward into the next fiscal year. Fractional days can be carried forward until a whole day is accrued. However, an employee can never use a fractional day of military leave and a fractional day shall never be rounded to a whole day.

(2) When a part-time employee changes tour of duty two factors need to be considered: (1) the number of hours in the tour of duty at the time the military leave is taken and (2) the number of military days previously taken in the current fiscal year. If the employee has been granted military leave under another tour of duty within the fiscal year, the days of leave used are subtracted for the days authorized under the current tour of duty to determine the number of days remaining for

use. A reservist had a scheduled tour of 30 hours per week at the beginning of the fiscal year. He accrues 11 days of military leave with 1/4 day to carry forward. ($15 \times (30/40) = 11 \frac{1}{4}$). He has no carryover days from the previous fiscal year. In November he serves on active duty for five days, leaving a balance of 6 days unused military leave. In January, his tour of duty changed to 20 hours per week. His authorized military days would now become 7 with 1/2 day to carry forward. ($15 \times (20/40) = 7 \frac{1}{2}$). The employee has used 5 military days during the fiscal year; therefore he has a balance of 2 days ($7 - 5 = 2$) available for use in the remainder of the fiscal year.

(3) Military leave is taken in whole days only. A partial day accrued is not rounded off, but is carried over to the next fiscal year provided it doesn't cause the carryover to exceed 15 days. If it does, the partial days accrued is dropped so that the carryover balance is 15.

(4) When the scheduled tour of duty for a part-time employee varies from week to week and then repeats the cycle, the scheduled hours of duty for the cycle may be averaged for use in the computation of military leave accruals. The following example demonstrates how to compute military leave for an employee with a regularly scheduled tour of duty (with a SF50 documenting the schedule) of 30 hours a week for two weeks, 20 hours a week for two weeks, 35 hours a week for two weeks, and 25 hours a week for two weeks, and then repeats the cycle, (a) Average the number of scheduled hours a week during the cycle ($30 - 20 - 35 - 25 = 110/4 = 27 \frac{1}{2}$ days). Now, following the formula compute ($15 \times (27/40) = 10.3125$) or $10 \frac{1}{3}$ days. Note that the fraction was rounded off to a partial day which may conveniently be expressed as a fraction. A fraction shall not be rounded off to a whole number.

(5) The hours which a part-time employee works that are in excess of the hours he/she is scheduled to work (temporary tour of duty increase) cannot be considered in the computation of military leave accruals. Military leave is based on the scheduled tour of duty, not on the number of actual hours worked.

(6) Only a permanent change in the regularly scheduled tour of duty, documented through an SF-50, can authorize a change to the tour by which the military leave is computed. Temporary increases of the number of duty hours do not constitute a change in the regularly scheduled tour of duty for the purpose of military leave accruals.

(7) The military leave balance for a parttime employee will never contain a minus balance. If the recomputation of military leave results in a balance which is less than the number of days which have already been taken during the fiscal year, the new balance will be zero number of days. The zero balance will remain for the rest of the fiscal year unless another change to the employee's tour of duty results in a new leave balance greater than zero. Any such recomputation must take into consideration:

(a) the military leave balance on October 1 of the current fiscal year,

(b) the number of days military leave taken during the current fiscal year,

(c) and the current tour of duty on which the recomputation is based.

(8a) All holidays occurring within a continuous period of absence for military leave should be posted as to this rule:

(1) The military leave is for law enforcement.

(2) The orders specifically relieve the employee from military duty on such days.

(9) When military orders require an employee with an 8 hour per day, Monday through Friday tour of duty, to report for duty on a Monday, which is a holiday, and the employee's orders required him/her to report for training duty on the previous Saturday, then the military leave is posted beginning Tuesday, the day after the holiday.

Military Leave for Reserve and National Guard Law Enforcement Duty

Legal Basis

(1) 5 USC 6323(b) states: "Except as provided by Section 5519 of this title, an employee ... permanent or temporary indefinite, who--

(a) is a member of a Reserve component of the Armed Forces ... or the National Guard ... and

(b) performs, for the purpose of providing military aid to enforce the law--(I) Federal service under section 331, 332, 333, 3500, or 8500 of Title 10 or other provision of law, as applicable, or (ii) Full-time military service for his state the District of Columbia, the Commonwealth of Puerto Rico, or a territory of the United States--is entitled, during and because of such service, to leave without loss of, or reduction in, pay, leave to which otherwise entitled, credit for time or service, or performance or efficiency rating. Leave granted by this subsection shall not exceed 22 workdays in a calendar year."

(2) 5 USC 5519 provides that "an amount (other than a travel, transportation, or per diem allowance) received by an employee or individual for military service as a member of the Reserve or National Guard for a period for which he/she is entitled to leave under Section 6223(b) of this title shall be credited against the pay payable to the employee or individual with respect to his or her civilian position for that period."

Charging Military Leave for Law Enforcement Duty

(1) The 22 workdays of Military Leave for Law Enforcement duty are distinct from the 15 days of Military Leave for active duty field or coast defense training. Subsection 6323(b) provides that the

compensation of an employee granted leave under that subsection shall not be reduced by reason of such absence. The Comptroller General has held that an employee is entitled to the same compensation, including overtime, he or she would have received had he/she rendered service in the civilian position on the days he/she was absent on Military Leave (49 CG 233). Military Leave authorized by 5 USC 6323(b) is not charged for absences on days when the employee is not regularly scheduled to work.

(2) In no case will an employee's regularly scheduled workweek be altered solely to increase entitlement to compensation.

Credit of Military Pay Against Civilian Pay

(1) To give effect to 5 USC 5519 employees who are granted Military Leave authorized by 5 USC 6323(b)(Public Law 90-599) must turn in to the Internal Revenue Service the military base pay they receive for the days of absence which occur on workdays. The amount is remitted in the same manner as prescribed for court fees and deposited and accounted for in accordance with local guidelines. Employees may retain military pay received for regularly scheduled nonwork days. Also, if the military pay exceeds the employee's civilian pay, the employee may retain the excess military pay. The amount to be turned in does not include any travel, transportation, or per diem allowances incident to the military service. The military pay to be turned in applies only to the pay for Military Leave granted for law enforcement duty. (See, generally, 49 CG 233).

(2) The House Report on the Military Leave bill (Report No. 1560 on HR 13855) states that "the granting of leave and the reduction in civilian pay under these provisions are mandatory, and neither the agency nor the employee will have any discretion in this regard as to the application of the provisions involved."

Military Leave for District of Columbia National Guard Duty

Legal Basis

5 USC 6323(c) provides that an employee--...who is a member of the National Guard of the District of Columbia, is entitled to leave without loss in pay or time for each day (emphasis added) of a parade or encampment ordered or authorized under title 39, District of Columbia Code. This subsection covers each day of service the National Guard, or a portion thereof, is ordered to perform by the commanding general.

Application

This provision authorizes unlimited Military Leave for employees who are members of the District of Columbia National Guard to participate in parades and encampments or as ordered by

the Commanding General. Military Leave under this provision is charged for intervening nonworkdays. Participation in band concerts and other functions is included under this authority (CG B-130985). (Also see 44 CG 244). This authority is not appropriate for the ordering of an individual to a military service school.

Requesting Military Leave

(1) Employees who are members of the Reserves or National Guard, who are otherwise eligible for Military Leave and who are anticipating a period of active military duty will submit requests for Military Leave to their supervisors as far in advance as possible. The employee must furnish the supervisor with a copy of her/his military orders. If possible this will be done before entering on active duty. Also, a certificate by the responsible military officer as to the employee's attendance will be required from the employee upon his/her return from active military duty.

(2) Military Leave is a right of the employee and if military duty is performed for which Military Leave may be granted, there is no administrative authority to deny such leave (44 CG 224).

(3) Nothing in these regulations relieves the employee of the requirement to properly request leave and document absences.

Comptroller General Decisions

Concurrent Salary Payments Beyond Military Leave Period

Employees who have exhausted their Military Leave may be granted Annual Leave for additional active military leave compensation concurrently with military pay and allowances (30 CG 241). Comptroller General Decision B-153332, March 16, 1964, held that when an employee remained hospitalized in the military service beyond the allowable Military Leave, he could be granted Sick and Annual Leave and receive such leave pay concurrently with military pay and allowances.

Premium Pay

In order for an employee to receive overtime pay during a period of Military leave, the work that would have entitled the employee to overtime pay must have been regularly scheduled and it must be clear that the employee, but for the military service, would have been required to perform that work.

Effect of Resignation

An employee who is also a member of the reserves and who resigns prior to entering military service has terminated civilian status and is not entitled to Military Leave regardless of any rights

he or she may have to restoration or reemployment upon completion of military service. Employees resigning under these conditions must be so advised (37 CG 608).

Comptroller General Decision 49 CG 233, (B-133972) Military Leave for Law Enforcement

(1) When an employee has exhausted the 22 workdays of Military Leave for Law Enforcement duty and is ordered to perform additional periods of such service, the employee may be granted Annual Leave or any remaining unused Military Leave which may be granted (15 calendar days for active military duty or field or coast defense training).

(2) An employee who is ordered to perform Law Enforcement duty and who has such Military Leave available, may not elect to use and may not be involuntarily charged any other type of leave for such absence.

(3) Annual Leave may not be substituted for available "Law Enforcement" Military Leave even to avoid forfeiture of Annual Leave.

(4) When an employee has exhausted the 22 workdays of Military leave for law enforcement purposes, the employee may not be further excused from the duty for such purpose without loss of pay or charge to leave.

(5) An employee is entitled to the same overtime pay, they would have received had they worked in the civilian position on the days they were required to be on Military Leave for Law Enforcement duty.

(6) When the National Guard is used for alleviating results of disasters such as floods, earthquakes, and hurricanes, the maintenance of law and order is a prime function of the assigned military duties. Therefore, such duty is covered by the term "military aid to enforce the law."

(7) A copy of military orders or a statement by the commanding officer showing the authorization, extent and nature of the service would be sufficient evidence that the duty was "for the purpose or providing military aid to enforce the law."

(8) When an employee exhausts the 22 workdays of Military Leave that may be granted for disaster duty, he or she may not then be granted administrative leave for such duty. Also, administrative leave may not be authorized instead of leave under 5 USC 6323(b) (22 workdays) for a short period of absence in order to avoid turning in the military base pay to the Service.

(9) When the D.C. National Guard is ordered to perform the kind of duty for which Military Leave is provided by 5 USC 6323(b), the Military Leave should be charged under the authority

with appropriate adjustment being made in civilian pay. Example: An employee was required to perform duty covered by 5 USC 6323(b) from 7 p.m. on a regular workday (April 3) to midnight on April 5 (a regular nonwork day). The employee performed his civilian duties before entering active military duty. Employee was not required to turn in the military pay for April 3 since he was not excused from civilian duties or subject to military control while performing the civilian duties. Employee was required to turn in military pay for April 4 (Friday) but not for April 5 (Saturday), a nonwork day for which he received no civil service pay.

Court Leave and Official Duty for Court Services

Legal Basis

(1) 5 USC 6322 states: an employee as defined in section 2105 of this title...is entitled to leave, without loss of, or reduction in pay, leave to which...otherwise entitled, credit for time or service, or performance or efficiency rating, during a period of absence with respect to which...summoned, in connection with a judicial proceeding, by a court or authority responsible for the conduct of that proceeding, to serve--

(a) as a juror, or

(b) as a witness on behalf of any party in connection with any judicial proceeding to which the United States, the District of Columbia, or a state or local government is a party in the District of Columbia, a State, territory, or possession of the United States including the Commonwealth of Puerto Rico, or the Trust Territory of the Pacific Islands. For the purpose of this subsection, 'judicial proceeding' means any action, suit, or other judicial proceeding, including any condemnation, preliminary, informational, or other proceeding of a judicial nature, but does not include an administrative proceeding or hearing."

(2) "Judicial proceeding" is further defined to include all stages (preliminary hearing, inquest, trial, or deposition taking of the proceeding), including hearings and conferences before a committing court, magistrate, or commission, grand jury proceedings, and coroners' inquests, and hearings and conferences conducted by a prosecuting attorney for the purpose of determining whether an information or charge should be made in a particular case. A judicial proceeding does not include an administrative proceeding or hearing.

(3) 5 USC 6322(b) provides that an employee, as defined by section 2105 ...is performing official duty during the period with respect to which ...summoned, or assigned by his (her) agency, to--

(a) testify or produce official records on behalf of the United States or the District of Columbia; or

(b) testify in his (her) official capacity, or produce official records on behalf of a party other than the United States or the District of Columbia.

(4) If witness service in a non-official capacity is performed on behalf of a private party, the absence is charged to leave and the employee may accept fees and expenses.

(5) Exhibit 8 summarizes employees' leave and pay status for different types of jury and witness service.

Service Policy

It is the civil responsibility of all IRS employees to respond to calls for jury and other court services. Policy Statement P-0-35 states that the Service will not request a court to excuse an employee from jury duty except when his or her services are absolutely essential to meet major work schedules which cannot reasonably be postponed. The Heads of Office listed in Delegation Order No. 104, as revised, are responsible for determining when the needs of the Service require that requests be submitted to the court for employees to be excused from jury duty, or that such duty be deferred. In every case in which such action is taken, the letter shall give the reasons for the particular request, and shall point out that it is not the policy of the Internal Revenue Service to ask for relief from jury duty for its employees except for unusual conditions.

Requesting Court Leave

When an employee is called for service which qualifies for Court Leave, either as a juror or witness, he/she must advise his/her supervisor and submit a copy of the court order, subpoena, summons, or other written official request, as far in advance as possible.

Documentation of Court Service

On return to duty, the employee must submit written evidence of attendance at the judicial proceeding, showing the dates and hours served. Such statements, which generally may be secured from a party such as the clerk of the court, should include information about any money received, such as the jury or witness fees and the rate thereof and any amounts received for meals and transportation.

Jury Duty

Employee Eligibility--Jury Service Court Leave

(1) Employees serving under permanent, TAPER, term, temporary, and Seasonal (during the seasons) appointments, full-time or part-time, are eligible for Court Leave for jury service (27 CG 300, 36 CG 378, and 48 CG 630).

(2) Court Leave is available only to an employee who, except for jury service, would be on duty or

on leave with pay. Thus, an employee with an Intermittent work schedule or an employee on Leave Without Pay, may not be granted Court Leave when called to jury service. However, such an employee may retain the jury fees for each day's attendance (20 CG 276 and 27 CG 83).

Use of Annual Leave

If an employee is on Annual Leave when called for jury service, Court Leave should be substituted (27 CG 83). No exception is made for Annual Leave that would otherwise be forfeited at the end of the leave year. However, properly scheduled Annual Leave that is forfeited because of jury service, which constitutes an exigency of the public business, is subject to restoration under PL 93-181 (60 CG 598).

Duration of Jury Service

(1) An employee under proper court order will be granted Court Leave for the entire period, from the date stated in the summons on which he/she is required to report to the court to the time he/she is discharged by the court.

(2) If an employee is excused or released by the court for any day or a substantial part of a day, the employee is expected to return to duty, provided the return would not cause the employee hardship because of distances involved between home, duty station, and the court. Local guidelines may be established depending on the circumstances of each case. When only an hour or two remain in the daily tour, the employee would not normally be expected to return to duty. Failure to return to duty, when it is reasonable for the employees to do so, may result in a charge to Annual Leave, Leave Without Pay (LWOP), or Absence Without Leave (AWOL). It is the responsibility of the supervisor to instruct the employee before Court Leave begins as to when and under what conditions he/she is expected to report to work if temporarily released from court service.

Witness Service

Employee Status--Witness Service

Full-time and part-time employees, including Seasonal employees during the season, but not employees with Intermittent work schedules, may be entitled to be carried in official duty status or Court Leave for witness service, depending on the type of witness service they perform, as follows.

Types of Witness Service

(1) When an employee is summoned or assigned by the IRS management to testify in his/her official capacity or to produce official records, the employee is in official duty status and entitled to

his or her regular compensation. An employee is considered to be a witness in his/her official capacity when called as a witness in the official capacity of the position in which he or she is currently serving.

(2) When an employee is summoned as a witness in a judicial proceeding to testify in a nonofficial capacity on behalf of a State or local government, the employee is entitled to Court Leave during the time he or she is absent as a witness.

(3) When an employee is summoned or assigned by the IRS to testify in a nonofficial capacity on behalf of the United States or District of Columbia governments, the employee is in official duty status and is entitled to her/his regular compensation.

(4) If the witness service in a non-official capacity is performed on behalf of a private party, the employee's absence from duty must be charged to annual leave or leave without pay and the employee may accept fees and expenses incidental to that witness service.

(5) Exhibit 8 summarizes employees' leave and pay status for different types of jury and witness service.

Travel Expenses of Witnesses (5 USC 5751)

(1) The travel expenses of employees performing witness service in official duty status will be paid as follows.

(a) An employee summoned, or assigned by the Internal Revenue Service, to testify or produce official records on behalf of the United States is entitled to travel expenses paid by the Government. If the case involves the IRS, the employee's travel expenses will be paid by the Service. If the case does not involve the IRS, the Service will pay the travel expenses and later the appropriate IRS Finance Office will obtain reimbursement from the agency properly chargeable with the travel expenses.

(b) An employee summoned, or assigned by the IRS, to testify in his/her official capacity or produce official records, on behalf of a party other than the United States, is entitled to travel expenses paid by the IRS, except to the extent that travel expenses are paid to the employee for his or her appearance by the court, authority, or party which caused him/her to be summoned.

(2) See the IRS Travel Handbook, for further information.

Jury and Witness Service Fees Ineligibility for Fees

(1) An employee may not receive fees for service as a juror in a court of the United States or District of Columbia or for service as a witness on behalf of the United States or District of Columbia (5 USC 5537).

(2) "Court of the United States" means the Supreme Court of the United States, courts of appeals, district courts constituted by Chapter 5 of Title 28 including the Court of International Trade and any court created by Act of Congress, the judges of which are entitled to hold office during "good behavior," (28 USC 451), and including the District Court of Guam, the District Court of the Virgin Islands, and the District Court for the District of the Canal Zone.

Credit of Fees Against Salary

(1) Fees received by an employee for service as a juror or witness during the period for which the employee is entitled to court leave under 5 USC 6322(a) or is performing official duty under 6322(b) shall be credited against pay payable to the employee by the United States for that period (5 USC 5515), with the following exceptions:

(a) The employee is permitted to keep any amount of the jury fee which exceeds the amount of compensation due to him/her (29 CG 302);

(b) employees who perform jury service on nonwork days are entitled to retain fees received for such service (37 CG 695; 26 CG 88; 36 CG 378); and

(c) the employee may accept and keep any allowance for mileage, meals and lodging (20 CG 115); fees received for jury service on a holiday falling within the employee's basic tour of duty may be retained by the employee provided that, had he/she not been on jury duty, he/she would have been excused from regular duties on the holiday (27 CG 293 and 45 CG 251).

(2) When a local tax is deducted from the jury fee before payment to the employee, the employee must include the amount withheld, since it is part of the total jury fee.

(3) The employee is to turn in the fees together with a copy of the court statement and a memorandum containing his/her name, Social Security number, office, and the dates he/she was in court. Managers should check their local finance office to ascertain local procedures associated with turning in fees for jury service.

Comptroller General Decisions

(1) Entitlement to overtime pay. An employee who performs witness service in an official duty status on days for which he/she would have been entitled to receive overtime pay had he/she rendered service in his/her civilian position is entitled to the compensation he/she would have received on these days (37 CG 1 and 26 CG 151).

(2) Employee-defendant as witness. An employee who is summoned to county court for a traffic violation is not entitled to court leave as a witness under 5 USC 6322 in connection with his appearance in court as a defendant. Entitlement of Employee-Defendant to Court Leave, 62 CG 87 (1982).

(3) Appearance in juvenile court proceeding. An employee summoned to appear on several occasions in juvenile court proceedings in Pennsylvania concerning her son is not entitled to court leave under 5 USC 6322 since she was summoned as a party to the proceedings rather than as a witness, under a Pennsylvania statute which provides that the court shall summon the parents, guardian, or custodian, and any other persons as appear to the court to be "proper or necessary parties to the proceeding." Court Leave, B-214719, June 25, 1984.

(4) To accompany child to judicial proceeding. Court leave authorized by 5 USC 6322 to employees serving as witnesses is limited to the time required by an employee to appear personally as a witness or a juror. Consequently, this statutory provision does not permit court leave to an employee required to accompany her 10-year-old son who was a witness at a federal grand jury proceeding. 66 CG 355 (1987).

(5) Prevailing plaintiff in discrimination action. Although not entitled to court leave under 5 USC 6322 which is limited to jurors and certain summoned witnesses, an employee who prevails in a discrimination action filed against her agency in federal court is entitled to official time for attendance at her trial without charge to leave. 59 CG 290 (1980).

(6) Night jury service. An employee, who performs duty for a full workday and then sits on a grand jury in the evening, may be granted court leave for the day following such duty to the extent necessary to alleviate hardship. The employee is entitled to retention of a pro rata portion of his grand jury fee to the extent that the hours actually served exceed hours of court leave granted. B-70371, August 5, 1975

(7) Testimony in official capacity. When an employee is summoned or assigned by his agency to testify in his official capacity or to produce official records, he is in an official duty status and entitled to his regular compensation without regard to any entitlement to court leave. 38 CG 142 (1958).

(8) Forfeiture of annual leave. Where an employee forfeited 16 hours of scheduled annual leave because of jury duty, the annual leave may be restored since jury duty constitutes an exigency of the public business under 5 USC 6304(d)(1)(B). See 5 USC 6322 which prohibits the loss of or reduction in annual leave where an employee is summoned to perform jury service. 60 CG 598 (1981).

(9) Return to duty when excused by court. An employee who resided in Virginia and whose permanent duty station was Washington, DC, was summoned to jury duty in New Jersey for a 1-week period beginning on a Monday. The employee is entitled to court leave for the Friday he was excused from jury duty under the holding in 26 CG 413 (1946). In view of the substantial distance involved, it would have imposed a hardship to have required the employee to return to his permanent duty station following a day of jury service on Thursday to report for duty on Friday. C. Robert Curran, 64 CG 851 (1985).

Holidays

General

Employee Coverage

The provisions of this subsection apply to employees identified at 5 CFR 610.201. In addition, see 25 CG 407 and, for contrast, 25 CG 877 and CG B-177093 for guidance regarding temporary employees whose compensation is fixed on a rate per day, per hour, or on a piecework basis. See 28 CG 727 for guidance regarding experts and consultants employed on a per diem basis.

Definition

A Federal legal holiday is a day designated as a holiday by federal statute or Executive Order and on which employees are excused thereby from duty without loss of pay or charge to leave.

Days Designated as Holidays

(1) As specified in 5 USC 6103(a) and (c), the following are Federal legal public holidays:

- (a) January 1--New Year's Day;
- (b) January 20--Presidential Inauguration Day in the Washington, D.C. Metropolitan area only on January 20 of each fourth year after 1965, Inauguration Day);
- (c) Third Monday in January. Birthday of Dr. Martin Luther King, Jr. (PL 98-144);
- (d) Third Monday in February. Washington's Birthday;
- (e) Last Monday in May. Memorial Day;
- (f) July 4--Independence Day;
- (g) First Monday in September. Labor Day;

- (h) Second Monday in October. Columbus Day;
- (i) November 11 -- Veterans Day.
- (j) 4th Thursday in November. Thanksgiving Day; and
- (k) December 25 -- Christmas Day.

Office Closings

Internal Revenue Service offices are closed to public business on Federal legal holidays. When a legal holiday falls on a Saturday, offices are closed on the preceding Friday; if the holiday falls on a Sunday, offices are closed on the following Monday.

Work on Holidays

An agency may require the service of employees on a holiday or "in lieu of" day in cases of necessity or emergency (27 CG 191). Unauthorized absence by employees who are assigned to work on a designated holiday or "in lieu of" holiday will result in loss of pay for that day. Officials with delegated authority to establish tours of duty may, within their discretion, include a holiday within the official hours of duty or regular workweek of employees and require them to work on that day. (22 CG 762, 27 CG 191 and 44 CG 274). However, tours of duty may not be changed solely or primarily to effect a pay entitlement.

Effect of Absence Without Pay on Holidays

(1) If an employee is prevented from working solely because of the holiday, the employee receives pay for the holiday. For example, if a holiday immediately precedes Leave Without Pay (LWOP) or Absence Without Leave (AWOL) and the employee is in pay status the last workday before the holiday, the employee receives pay for the holiday. If a holiday immediately follows Leave Without Pay (LWOP) or Absence Without Pay (LWOP) or Absence Without Leave (AWOL) and the employee is in pay status the first workday following the holiday, the employee receives pay for the holiday.

(2) Employees may not be paid for a holiday falling within a period of Leave Without Pay (LWOP) or Absence Without Leave (AWOL).

(2a) LWOP must be posted for a holiday which falls within a period of LWOP.

(b) AWOL must be posted for a holiday immediately following or within a period of absence without leave. However, when an employee is in pay status immediately prior to a holiday and is in

AWOL status immediately following the holiday, the employee is entitled to pay for the holiday.

(c) When an employee is on LWOP that extends through the last workday preceding a holiday and the employee is on AWOL the day after the holiday, post AWOL for the holiday. When LWOP extends through the holiday, post LWOP for the holiday.

Determining Holidays

(1) Workday means those hours which comprise, in sequence, the employee's regular daily tour of duty within any 24-hour period, whether falling entirely within one calendar day or not.

(2) 5 USC 6103(b) and Executive Order 11582, authorizes "in lieu of" holidays for full-time employees when a holiday falls on a non-workday. For purposes of pay and leave, the day to be treated as a holiday is determined as follows, in accordance with Executive Order 11582, February 11, 1971):

(a) When a holiday falls on a workday, that workday is the holiday

(b) When a holiday falls on a non-workday outside a full-time employee's basic workweek, the day to be treated as his or her holiday is the workday immediately before the non-workday unless the holiday falls on Sunday -- then the subsequent workday is the holiday. This guidance applies to all full-time employees to include employees with irregular work schedules (other than Monday thru Friday) and employees on AWS work schedules (5-4/9 and 4/10 compressed work schedules).

(c) Part-time employees are not covered by 5 USC 6103(b) and Executive Order 11582, which authorize "in lieu of" holidays for full-time employees when a holiday falls on a non-workday. However, the Comptroller General has issued an opinion that favors the practice of excusing part-time employees for the designated or "in lieu of" holidays granted to full-time employees on days falling within the part-time employee's regularly scheduled workweek (B-214156), May 29, 1984). This option for part-time employees may only be considered if the part-time employee's office will be closed because of an "in lieu of" holiday for full-time employees.

(d) Instead of a holiday that occurs on a regular weekly non-workday of an employee whose basic workweek is other than Monday through Friday, except the regular weekly non-workday administratively scheduled for the employee instead of Sunday, the workday immediately before that regular weekly nonworkday is a legal public holiday for the employee. (i.e. Those employees who have a holiday that falls on the day administratively scheduled as their Sunday, the holiday is treated differently. Any employee whose basis workweek includes Sunday and who ordinarily be excused from work on a holiday falling within his basic workweek shall be excused from work on the next workday of his basic workweek whenever a holiday falls on a day that has been administratively scheduled as his regular weekly non-workday in lieu of Sunday.

3) First part of a workday which consists of portions of two calendar days, that entire workday is the holiday.

(4) "In lieu of" holidays are authorized only for those holidays designated in 5 USC 6103(a). Under 5 USC 6103(c), an "in lieu of" holiday is not authorized when Inauguration Day falls on an employee's regularly scheduled non-workday.

(5) The occurrence of a holiday shall not affect the designation of the basic workweek.

| WORK SCHEDULES -- HOLIDAY SCHEDULING | | | | | | |
|---|-------|--------|-----|--------|--------|-------|
| KEY: DO = DAY OFF LH = LEGAL HOLIDAY W = WORK DAY ILOH = IN LIEU OF HOLIDAY | | | | | | |
| Holiday is on a Saturday, first of three consecutive nonworkdays: | | | | | | |
| SUN | MON | TUES | WED | THUR | FRI | SAT |
| DO | W | W | W | W | W/ILOH | DO/LH |
| DO | W | W | W | W | W | DO |
| Holiday is on a Sunday, second of three consecutive nonworkdays: | | | | | | |
| SUN | MON | TUES | WED | THUR | FRI | SAT |
| DO | W | W | W | W | W | DO |
| DO/LH | DO | W/ILOH | W | W | W | DO |
| Holiday is on a Monday, third consecutive nonworkday: | | | | | | |
| SUN | MON | TUES | WED | THUR | FRI | SAT |
| DO | W | W | W | W | W/ILOH | DO |
| DO | DO/LH | W | W | W | W | DO |
| Holiday is on a Friday, first of three consecutive nonworkdays: | | | | | | |
| SUN | MON | TUES | WED | THUR | FRI | SAT |
| DO | W | W | W | W/ILOH | DO/LH | DO |
| DO | W | W | W | W | W | DO |
| Holiday is on a Saturday, second of three consecutive nonworkdays: | | | | | | |
| SUN | MON | TUES | WED | THUR | FRI | SAT |
| DO | W | W | W | W/ILOH | DO | DO/LH |
| DO | W | W | W | W | W | DO |
| Holiday is on a Sunday, third consecutive nonworkday: | | | | | | |
| SUN | MON | TUES | WED | THUR | FRI | SAT |
| DO | W | W | W | W/ILOH | DO | DO |

| | | | | | | |
|---|-------------|-------------|--------|--------|--------------|-------------|
| DO/LH | W/ILOH | W | W | W | W | DO |
| Holiday is on a Saturday, first of two consecutive nonworkdays: | | | | | | |
| SUN | MON | TUES | WED | THUR | FRI | SAT |
| DO DO | W W | W W | W W | W W | W/ILOH DO | DO/LH DO |
| Holiday is on a Sunday, second of two consecutive nonworkdays: | | | | | | |
| SUN | MON | TUES | WED | THUR | FRI | SAT |
| DO DO/LH | DO W | W W | W W | W W | W W | DO DO |
| Holiday is on a Sunday, first of two consecutive nonworkdays: | | | | | | |
| SUN | MON | TUES | WED | THUR | FRI | SAT |
| DO DO/LH | DO DO | W W/ILOH | W W | W W | W W | W W |
| Holiday is on a Monday, the second of two consecutive nonworkdays: | | | | | | |
| SUN | MON | TUES | WED | THUR | FRI | SAT |
| DO DO | DO DO/LH | W DO | W W | W W | W W | W/ILOH W |

State or Local Holidays

(1) Delegation Order No. 104 (as revised), Absence, Leave and Carry-over of Annual Leave, authorizes certain officials to determine when work may not be properly performed because of local holidays, to close their offices on such days, and to dismiss employees under their supervision and control from duty without charge to leave or loss of pay. In determining when work may not be properly performed, the responsible official should consider the standards which follow.

(a) The building or office in which the employees work is physically closed; or building services essential to proper performance of work are not operating.

(b) Local transportation services are discontinued or interrupted to the extent that employees are prevented from reporting to their work locations.

(c) The duties of the employees consist largely (or entirely) of dealing directly with employees and officials of business or industrial establishments or local government offices, and all such establishments are closed in observance of the holiday, and there are no other duties (consistent with their normal duties) to which the employees can be assigned on the holiday.

(2) When an office is not closed on a local holiday, employees may not be excused without charge

to leave solely because of the holiday. However, supervisors should be liberal in granting leave to employees who wish to observe the holiday.

(3) In line with State Department regulations, Internal Revenue Service employees stationed at foreign posts of duty may be absent from duty without charge to leave on a local holiday provided the holiday does not fall within a period of approved leave. In the unlikely event that this provision conflicts with the standard set forth in (1) above, the standard will prevail.

(4) State and local holidays are not holidays within the meaning of 5 USC 6103(a), and 5 USC 6103(a) does not authorize "in lieu of" holidays when state or local holidays occur on employees' regularly scheduled nonwork days.

Comptroller General Decisions

Entitlement to Holiday for Seasonal Employees

(1) Holiday pay -- Seasonal Employees. Seasonal employees are not entitled to be paid for being excused on a Federal legal holiday when there is no work available immediately following the holiday. Seasonal employees are to be placed in non-work status at close of business the day before the holiday. Seasonal employees are not entitled to pay for the holiday when the following conditions exist, but they may elect LWOP or annual leave for the holiday:

(a) When placed in non-work due to lack of work.

(b) When the employee has agreed to a short period of LWOP when work is not available, but placing the employee in non-work status would not be practical because of the short amount of time involved.

(2) Seasonal employees are entitled to be paid for a Federal legal holiday that falls within their basic work week during a normal season when they continue to work before and after holiday.

(3) When a seasonal employee continues to work before and after the holiday because work is available, the regular holiday posting is made to the T/A record. B-193821. June 18, 1979, distinguishing 56 CG 393 (1977), and 45 CG 291 (1965).

(4) Holiday good will gesture. On the last workday before Christmas, an Installation Commander released the Installation's civilian employees for the afternoon as a "holiday good-will gesture." The Civilian Personnel Officer found the action to be a humbug stating that the Commander had no authority to release employees as a holiday good-will gesture. The Installation Commander's exercise of the discretionary authority to grant excused absence in the circumstances was a lawful order under existing entitlement authorities. It follows that the employees in question are entitled to administrative leave--everyone of them. A Christmas Case, 64 CG 171 (1984).

(5) Pay status before or after holiday. An employee in a pay status for the workday immediately before or after a holiday is entitled to pay for the holiday regardless of whether he is on leave without pay or absent immediately succeeding or preceding the holiday. 56 CG 393 (1977) overruling 13 CG 207 (1934) and modifying 45 CG 291 (1965); 18 CG 206 (1938); 16 CG 807 (1937); and 13 CG 206 (1934).

(6) Nonpay status before and after holiday. An employee in anonpay status for the workdays immediately before and after a holiday may not receive compensation for a holiday on which he performed no work since there is no presumption that he would have worked on the holiday if it had been a regular working day. B-187520, February 22, 1977; and B-186687, January 13, 1977.

(7) Irregular unscheduled holiday work. If the employee's services are administratively required on the holiday and he absents himself on a holiday within his regularly scheduled tour of duty, he must be charged leave. 56 CG 551 (1977), overruling 54 CG 662 (1975). See also B-193709, November 28, 1979.

(8) "In lieu of" holiday. Under Executive Order No. 11582, February 11, 1971, an employee whose basic workweek is Tuesday through Saturday is entitled to Saturday off, an "in lieu of" holiday, when a holiday falls on Monday, a regular day off. Therefore, when an agency incorrectly requires employees to take Tuesday as a holiday, the employees are entitled to holiday premium pay for working on Saturday and must be paid for Tuesday without a charge to annual leave. B-127474. February 9, 1979.

Adjustment of Work Schedules for Religious Observances

Religious Holidays - General

(1) There is no official observance of religious holidays except any which are also legal holidays. However, requests for Annual Leave or Leave Without Pay from employees desiring to observe the religious holidays will be approved except in cases (which ordinarily should be few) when their absence would seriously impede Service operations or essential public service. If circumstances permit, work schedules may be rearranged to substitute other work time for the absence.

(2) While the approval of a request for Annual Leave or Leave Without Pay and the determination of whether an employee's work schedule may be rearranged are at the discretion of the Service, managers must be aware of section 713.204(g) of OPM's regulations which require that if an agency cannot accommodate an employee's religious need, the agency has a duty in a complaint arising under the provisions of the Equal Opportunity regulations to demonstrate its inability to do so.

Compensatory Time Off for Religious Observances

(1) Federal regulations for this subject are provided in 5 CFR 550.1002 and Public Law 95-390, enacted September 29, 1978. Also, 5 USC 5550(a).

(2) An employee whose personal religious beliefs require the abstention from work during certain periods of time may elect to engage in overtime work for time lost for meeting those religious requirements. To the extent that such modifications in work schedules do not interfere with the efficient accomplishment of the Service's mission, employees will be afforded the opportunity to take time off from their regular duty hours and repay their time off in an equal amount of compensatory overtime work on normal non-duty time, including holidays. Instances in which the efficient accomplishment of the Service's mission may be interfered with and for which absence will not be approved include, but are not necessarily limited to, the following:

(a) An employee's presence on the job at the time in question is deemed absolutely essential by management and there is no suitable replacement, or

(b) No opportunities are foreseen, within a reasonable length of time (120 days), at which the employee will be able to repay compensatory time taken. For example:

1. The employee requires supervision which would not be available;
2. The work is such that productive work is not available on what is normally non duty time; or
3. Significant security, utility, rental or other costs would be necessary to allow work on normal nonduty times.

(3) Compensatory time off for this purpose will be granted when an employee's personal religious beliefs require that the employee abstain from work during certain periods of the workday or workweek. This time off includes normal commuting time for the employee. Whenever possible, any reasonable request will be granted. However, management has the responsibility to determine whether or not compensatory time off should be granted. Accordingly, in questionable circumstances, management may ask for the basis of an employee's request and respond to the employee's request based on the information provided.

(4) Supervisors are responsible for determining the needs of employees under their supervision for compensatory time off and should request that employees, whenever possible, notify them at least 15 days in advance of any request for time off for religious observance. This will enable supervisors to plan for employee absences and to arrange for compensatory overtime to be worked, either before or after the absence, so that the needs of the Service and employees are harmonized.

(5) Employees may work compensatory overtime for this purpose before or after the grant of compensatory time off. A grant of advance compensatory time off should be repaid by the appropriate amount of compensatory overtime work within a reasonable amount of time (120 days). Compensatory time off shall be granted in increments of one quarter hour and compensatory overtime worked shall be credited in the same increments. Supervisors are responsible for keeping appropriate records on employees under their supervision.

(6) Compensatory overtime work performed by an employee for this purpose is outside premium pay provisions. Consequently, subject to management approval, employee may work hours in addition to a normal tour of duty or on normal nonwork days, including holidays, to apply to compensatory time off for religious observance. However, employees may not work during normal break and/or meal periods for this purpose.

(7) Nothing in these regulations should be construed as giving an employee any additional right to perform work away from the employee's normal post of duty.

(8) Once a request is granted to take advanced compensatory time off, an opportunity **MUST** be found for an employee to work compensatory overtime. If, at such time as he/she may initially request, no productive overtime work is available to be worked by the employee, required supervision is not available, or substantial cost to the government would accrue; then alternative times should be arranged for the performance of the compensatory overtime work. If, within a reasonable length of time (120 days) an appropriate time is not agreed upon, management may direct the employee to perform the compensatory overtime work at the Service's option.

If the employee has a positive religious compensatory leave balance, the employee is entitled to payment for these hours at the base rate of pay at the time they were earned.

(9) Employees who take advanced compensatory time off for religious observance may subsequently charge that time to Annual Leave or Leave Without Pay (LWOP). However, once employees take Annual Leave or LWOP, they may not subsequently change that to compensatory time off for religious observances. If an employee leaves the Service before he/she has an opportunity to work compensatory overtime to repay a grant of advance compensatory time off, the supervisor is responsible for initiating appropriate steps to secure repayment of the indebtedness, at the employee's regular hourly rate.

(10) Employees cannot be allowed to accumulate excessive (excessive = more than the amount that would be expected to be used within 120 days) amounts of compensatory time for religious observance. Each request to work compensatory time for religious observance should be

accompanied by an indication as to when the religious compensatory time will be taken. Similarly, when religious compensatory time is advanced to an employee, there must be an indication as to when it will be worked.

(11) Notwithstanding these provisions, employees retain the option of requesting Annual Leave, Leave Without Pay, or a change to their regularly scheduled tour of duty to accommodate their personal religious beliefs.

(12) Negotiated agreements may impose additional conditions for Bargaining Unit employees.

(13) Nothing in these regulations relieves employees of the requirement to properly request and document absences.

Excused Absence

General

(1) An excused absence is not leave, but is absence from duty administratively authorized without charge to leave. The term "administrative leave", while not officially recognized in legislation or executive regulations, is used to refer to an authorized absence from duty with pay and without charge to leave.

(2) 5 CFR 610.301 provides general guidance on "standards" under which administrative leave is granted to employees. The standards are:

(a) Normal operations of an establishment are interrupted by events beyond the control of management or employees.

(b) for managerial reasons, the closing of an establishment or portions thereof is required for short periods.

(c) It is in the public interest to relieve employees from work to participate in civil activities which the Government is interested in encouraging.

(3) Ordinarily, excused absences are authorized on an individual basis, except when an installation is closed, or a group of employees is excused from work for various purposes. Guidance on civil activities that are encouraged by the Government, as well as other accepted activities, are identified below. Any questions regarding authority to grant administrative excusal/leave to employees in other situations that are not listed below, may be directed to the National Director, Personnel Division.

(4) Nothing in these regulations relieves employees of the responsibility for properly requesting and documenting absence from duty.

Rest Periods

General

(1) A rest period is a break in the daily tour of duty during which employees are permitted to interrupt work for the relief of fatigue. Supervisors may prescribe rest periods for employees under their jurisdiction. In general, employees who are not free to vary their rate of work output--for example, those engaged in routine, repetitive types of clerical processes--are the ones eligible for rest periods. Rest periods should not exceed ten minutes in length, and should generally not be authorized more frequently than at two hour intervals. Such periods are considered part of work time without lengthening the tour of duty.

(2) The National Director, Personnel Division, will consider recommendations for rest periods different in the interest of the health, safety, and efficiency of employees who, because of operational necessity, are required to work three around-the-clock rotating shifts.

Comptroller General Decisions - Rest Periods

(1) An employee who skipped a rest period and departed early would not have completed his (her) basic work requirement. Rest breaks will not be utilized to extend a meal break or similar break. An employee who is otherwise entitled to rest breaks will generally not be entitled to a break after two hours of work if the break occurs shortly or immediately before a meal break or the end of the employee's tour of duty (CG B-190011).

(2) Agencies may grant employees brief rest periods when such periods are determined to be beneficial or essential to the efficiency of the federal service. However, such periods are considered to be part of the employee's basic workday, and an employee who skipped a rest period and departed early would not have worked a full 40-hour week. Furthermore, any decision to expand a lunch period from 30 to 45 minutes should be done pursuant to 5 USC 6101(a)(3)(F) (breaks in working hours of more than 1 hour may not be scheduled in a basic workday) rather than scheduling a 15 minute rest break prior to lunch. B-190011, December 30, 1977.

Medical Absences

Blood Donations

Employees who volunteer as blood donors, without compensation, to the American Red Cross or to other organizations maintaining blood banks, or respond to other calls for blood donations are entitled to 4 hours of excused absence for recuperative purposes. In addition, excused absence will be granted for travel to and from the donation site and to actually give blood. The amount of recuperative time may be extended if employees require additional time for recuperation not to

exceed the remaining scheduled hours of duty on that day. When bloodmobiles are available locally, arrangements should be made for donorship at the office instead of sending employees to blood donor centers (30 CG 521). An employee who is not accepted for donating blood is only entitled to be excused for travel to and from the donation site and the time needed to make the determination.

Apheresis Donation

Apheresis is the process that allows for the collection or withdrawal of one or more blood components, which consists of red blood cells, white blood cells, platelets, and plasma. The process takes 1 1/2 to 2 hours. Since an apheresis donation may be given as often as twice a week, but no more than twenty-four times a year, consideration should be given in allowing these donations with discretion regarding administrative leave. The current IRS policy pertaining to blood donations should apply to apheresis donations.

Bone Marrow Donation and Organ Transplants

(1) Employees may be granted up to 7 days paid leave (excused absence/administrative leave) to be a bone marrow or organ donor. This includes the time required for testing to see if he/she is a compatible donor, plus the time required to undergo the transplant procedure and recuperate. If the employee exhausts his/her own leave, he/she may get additional time off from work by requesting annual and/or sick leave, advanced leave, compensatory time, credit hours, and donated leave through leave transfer or the Leave Bank (if a member of the Bank). A physician's certification will be required in support for all such requests. Such certification should be submitted to his/her supervisor in support of the employee's request for leave.

(2) As with blood donors, travel time may be included in the period of excused absence. However, such travel must be limited to the local commuting area.

(3) Employees who wish to determine if they are a compatible donor must present to their supervisor, in support of their leave request, an official statement of such testing from the medical facility or physician which indicates the period of absence required for the test as well as any recuperative time required.

Treatment for Injury Incurred in Performance of Duty

An employee injured in the performance of duty will be excused for the time required for examination and/or emergency treatment by a Federal physician, local health unit or facility officially authorized to treat employees injured in the performance of duty. If the injury requires the employee to be absent from work, absence for the day on which the injury occurs is generally administratively excused.

Voluntary Medical Service Programs

Employees taking advantage of medical service programs (such as voluntary chest X-rays and immunization programs established by local health organizations) may, with the approval of their supervisor, be excused for the time needed for this purpose.

Employment Related Medical Examinations

Employees who are required by the Service to undergo a medical examination to determine their ability to perform in a specific position or to take X-rays after appointment are in duty status during the time needed for these purposes, except that periods of absence without pay will not be interrupted solely to authorize excused absence for purposes of such a physical examination.

Physical Examination for Duty in Armed Forces

(1) Employees will be excused without charge to leave or loss of pay for the purpose of reporting for a physical examination before being ordered to report for enlistment or induction in the armed services, provided the request for absence is supported by official notification from proper authority. If the absence extends beyond one workday, the employee must submit a statement from the examination station indicating the necessity for additional absence. If, through choice on the part of the employee, she/he is ordered to report to other than the nearest examining station and as a result is absent from duty for more than one workday, the excess absence is charged to leave.

(2) Employees who are required to report for a periodic physical examination for purposes of transfer between reserve components of the Armed Forces, or retention of their status in any of the military reserve components, may be granted sick leave for the period of absence under regulations applicable to the approval of sick leave for medical examinations.

Reasonable Accommodation

(1) As authorized under the Rehabilitation Act of 1973, as amended, the IRS has adopted flexible leave policies to accommodate disabled employees. Such policies are established to provide "reasonable accommodation" to such employees under certain situations. Generally, situations in which administrative excusal (administrative leave) would be appropriate include:

(a) When extreme weather conditions make it difficult for physically disabled employees to get to or from work.

(b) When temporary building conditions adversely affect performance or health, such as extremes of heat or cold which could affect persons with neurological disorders or respiratory ailments.

Absences for Relocation Purposes

(1) The General Services Administration's Federal Travel Regulations provide, under certain circumstances, that an employee may be authorized one advance round trip at Government expense to seek new residence quarters when changing permanent official duty stations within the continental United States. The General Services Administration's Federal Travel Regulations specify that the period of the trip at Government expense may not exceed 10 calendar days, including travel time, and that the employee will be in duty status during the authorized period. If the trip to seek a new residence exceeds 10 calendar days, the employee must request leave to cover any additional absence.

(2) In addition, an employee may be excused from duty without charge to leave or loss of pay for a reasonable time to make personal arrangements and to transact personal business directly related to a permanent change of duty station in the best interests of the Government, provided that such business or arrangements cannot be transacted outside the employee's regular working hours. An employee may apply for administrative leave authorized by this paragraph after his/her change in permanent duty station has been approved. The leave may be taken either before or after he/she is required to report for duty at the new duty station and, generally, must be completed no later than six months after reporting to the new duty station. However, when relocation of a family residence is involved and the family does not move with the employee at the time of transfer, the leave may be delayed until the end of the school year (if applicable), but in no case longer than two years after the notice of change of duty station.

(3) The following is a guide to the types of purposes for which excused absence is appropriate.

(a) Locating living quarters at the new post. An employee shall not be excused for this purpose if the employee has obtained or will obtain the advance round trip described in (1) above

(b) Locating and completing arrangements with a mover, including packing;

(c) Securing utilities such as electricity, gas, fuel oil and water and State driver's license and auto tags;

(d) Return to previous residence for negotiations and legalities in connection with sale or other disposition of that property;

(e) Reception of the household goods shipment at the new station, including unpacking;
and

(f) Return to previous residence to prepare household goods for shipment.

(4) Excused absence for relocation purposes is appropriate only when the cost of the move is borne by the Service.

(5) When members of the same immediate family, e.g., husband and wife, parent and child, both IRS employees, are reassigned within the Service and the cost of relocation (travel and transportation of household goods) for one of the employees is paid by the Service, relocation leave will be granted to both IRS employees.

Absence for Voting or Registration

(1) When practicable, without interfering seriously with operations, employees who desire to vote or register in any election or in referendums on a civil matter in their community shall be excused for a reasonable amount of time for that purpose as follows:

(a) As a general rule, where the polls are not open at least three hours either before or after an employee's regular hours of work, the employee may be granted an amount of excused leave which will permit him or her to report to work three hours after polls open or leave work three hours before polls close, whichever requires the lesser amount of time off.

(b) Under exceptional circumstances when the general rules do not permit sufficient time, an employee may be excused for such additional time as may be needed to enable him or her to vote, depending on individual circumstances, but not to exceed a full day.

(2) If an employee's voting place is beyond normal commuting distance and vote by absentee ballot is not permitted, the employee may be granted sufficient time off in order to be able to make the trip to the voting place to cast a ballot. When more than one day is required to make the trip to the voting place, managers will be liberal in granting the necessary leave (annual, compensatory time, credit, LWOP) for this purpose.

(3) For employees who vote in jurisdictions which require registration in person, time off to register may be granted on substantially the same basis as for voting, except that no such time shall be granted if registration can be accomplished on a nonwork day and the place of registration is within reasonable one day round trip travel distance of the employee's residence. (32 CG 361).

(4) Each IRS office will assemble necessary information about hours during which polls are open in all political subdivisions in which its employees reside and will determine the amount of excused absence which employees may be granted pursuant to the above policy. In addition, each IRS office will notify employees of its determination in this matter and of the fact that, upon request, excused absence for voting and registering will be granted in accordance with the above standards. Before each election in the local area, IRS offices will call this policy to the attention of all employees.

Conventions, Conferences and Tax Forums

(1) Conventions and Conferences. Management officials may authorize subordinates to be absent from duty without charge to leave or loss of pay to attend conventions or conferences when it is determined that the benefits to be derived by the Service are sufficient to justify the absence. Authorizations should be limited to those situations in which the direct relationships between items on the agenda and the employee's official assignments make it necessary or desirable that he or she attend. Employees may not be excused without charge to leave to attend conferences or conventions that do not have a direct relationship to official assignments, e.g., meetings of employee or veterans organizations.

(2) **Tax Forums** - It is Service policy (Policy Statement P-1-181) to encourage and authorize employees to participate in tax forums and similar meetings to the extent such activities promote taxpayer understanding of and compliance with tax laws and regulations and promote cooperation and confidence between taxpayers and the Service. Attendance or participation by Service personnel at meetings, business luncheons, and the like sponsored by such organizations can be of mutual benefit. Where such meetings are held as luncheons or during duty hours, supervisors are authorized to excuse Service personnel to attend without charge to leave, provided the benefits to be derived by the Service justify the absences. Officials must be discerning in determining whether attendance at such meetings, luncheons, or similar events is in the Service's best interests.

Relations With Employee Organizations

Occasionally, it may be necessary for Service officials to request employees who are officials of employee organizations to meet with them for consultation in the interest of the Service. When these employees are requested to attend such a meeting, their absence from regularly assigned duties will be without charge to leave or loss of pay.

Examinations

Civil Service Examinations

Employees taking noncompetitive examinations for promotion, reassignment, or training within the Service and those taking examinations in relation to retention in their present jobs, including reexaminations, will be excused without charge to leave or loss of pay for the time necessary, including travel time, to complete the examination. Any absence for the purpose of taking other civil service examinations is charged to leave.

Professional Examinations

(1) The basic qualification requirements for the kinds of positions do not specify admission to the

Bar, possession of a Certified Public Accountant (CPA), Certified Employee Benefit Specialist (CEBS), Certified Management Accountant (CMA,) or Certified Internal Auditor (CIA) certificate, or possession of a Professional Engineer's license, or membership as an Associate or Fellow in the American Society of Pension Actuaries. However, such distinguished attainments, with the backgrounds they represent, enhance the technical efficiency of the Service. Also, such professional stature permits Service personnel to meet on an equal with similarly qualified personnel of other agencies and with private tax and law practitioners. Therefore, excused absences are authorized in accordance with the Service's interest in its employees' acquiring the top qualifications of their profession.

(2) An employee occupying one of the positions listed below may be administratively excused to take the CPA, CEBS, CMA, CIA, Professional Engineer, or Bar or actuarial examinations up to four times, if necessary. Additional excused absence may be granted for this purpose by the appropriate chief officer or Assistant Commissioner, or their designees, for National Office employees; or by the Regional Commissioner or designee for field employees, provided the employee has shown progress toward achieving success in passing the examination. Requests for excused absence in excess of the four times normally permitted may be approved by the appropriate Regional Inspector for Field Inspection employees and the appropriate Inspection Division Director for National Office for Inspection employees. The excused absence may include necessary travel time on the day of the examination. Also, an employee may be excused, including travel and attendance time, to appear at an oral interview required as a prerequisite to being sworn in or licensed in the profession. These authorizations do not apply to any employee who already has been sworn in as an attorney, CPA, CEBS, or CIA in any jurisdiction. This excused absence may be granted to employees in functional areas and positions, both in the National Office and the field, in which professional accounting, internal auditing, engineering or legal knowledge is required or very helpful, such as the following: Internal Audit (Auditors); Internal Security (Investigators); Examination (Internal Revenue Agents), Tax Auditors, Estate and Gift Tax (Attorneys); Collection (Revenue Officers); Appeals (Internal Revenue Agents); Technical (Tax Law Specialists); Criminal Investigation (Special Agents); Finance (Systems and Operating Accountants); and EP/EO (Actuaries, IRS Agents, Tax Auditors, Tax Law Specialists). Supervisors are responsible for instituting adequate controls to ensure that this authority is properly administered.

(3) Negotiated agreements may impose additional conditions for Bargaining Unit employees.

(4) With the increasing number of professions directly or indirectly requiring systems and/or computer knowledge, the Service recognizes the need for excellence and technical efficiency in the field. The Certified Information Systems Auditor (CISA) examinations (or other similar examinations in the computer field) are intended to establish recognized professional standards in the computer industry; the attainment of these distinctions enhances the technical efficiency and status of computer professionals.

(5) Excused absence for the purpose of taking the CISA or CDP examinations (or other similar examination) may be granted provided the employee is currently in one of the computer specialty areas.

(6) An employee occupying a position involving secretarial duties may be excused for the purpose of taking the Certified Professional Secretary examination (or other similar examination) If the employee is taking fewer than all the examination sections scheduled for one day and, based on the distance between the examination location and the office and the working time remaining in the day, or the working time available at the beginning of the day, it would be reasonable for the employee to return to work that day, the employee is expected to do so. Supervisors are responsible for instituting adequate controls to ensure that this authority is properly administered.

Institutional Equivalency Examinations

Employees who are participants in the Service's Accounting Crossover Program may be excused from duty without charge to leave in order to take institutional equivalency examinations (e.g., examinations to obtain college credit for knowledge gained outside the traditional classroom setting) and for a reasonable amount of time to travel to and from the examination site.

Brief Periods of Absence and Tardiness

(1) Tardiness and unavoidable or necessary absences from duty of less than one hour (59 minutes) caused by circumstances personal to the employee may be excused for adequate reasons or handled administratively by requiring additional work.

(2) When employees are chronically tardy or otherwise absent from duty without adequate excuse, such tardiness and absence may be handled administratively under the disciplinary procedures. If leave is charged, Annual Leave will be charged in one hour increments; AWOL and Compensatory Time off will be charged in quarter hour increments. If the charge exceeds the period of absence, the employee will not be required to work until the charged time has elapsed.

Draft Registration

Male employees who were not required to register for the draft prior to employment with the Service (Public Law 99-145, November 8, 1985) will be excused without charge to leave or loss of pay for a sufficient period of time to enable them to register. The length of time an employee is excused will generally not exceed one hour.

Funerals - (Military)

(1) Employees who are veterans of a war, campaign, or expedition (for which a campaign badge has been authorized) or who are members of honor or ceremonial groups or organizations of such veterans, may be excused from duty without charge to leave or loss of pay for up to 4 hours in any

one day, to participate as active pallbearers, as members of firing squads, or as guards of honor in funeral ceremonies for members of the Armed Forces whose remains are returned to the United States from abroad for final interment in the United States (Public Law 82582, July 17, 1952).

(2) Section 6326, Title 5 USC, entitles an employee to not more than three days of leave without loss of, or reduction in, pay, or leave to which otherwise entitled, 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. 5 USC 630.803 lists the following persons as being "immediate relatives" of the deceased member of the Armed Forces: the spouse, and parents thereof; children, including adopted children, and spouses thereof; parents; brothers and sisters, and spouses thereof; and any individual related by blood or affinity whose close association with the deceased was such as to have been the equivalent of a family relationship. Also, in accordance with Treasury Department policy (Treasury Personnel bulletin No. 67-93, December 5, 1967), employees shall be excused from duty to the same extent and for the same purposes when the death results from wounds, disease, or injury incurred in line of duty in the Armed Forces outside a combat zone.

Crime Provision

(1) When a government agency acquires evidence that indicates an employee has allegedly committed a crime, the employee is immediately placed in non-duty status with pay for no longer than ten (10) workdays. The employee is given this time to pursue legal rights. The number of hours in the employee's daily tour of duty should be posted using the transaction code for other leave.

Closing of Offices

Authority

(1) Closing Offices for Administrative Reasons. Although there are many emergency situations (e.g., office closings) in which it is appropriate to excuse employees without charge to leave, there are also some situations in which it is appropriate to charge employees leave when a field establishment is closed. General guidance is provided below. Managers faced with emergency closings and similar situations should consult their servicing Personnel office for technical assistance. (19 CG 955)

(a) If a statute or Executive Order closes a federal office for one or more days within the regular tour of duty of employees, these days may not be charged as annual or sick leave.

(b) A head of a department, under proper authority, may close a federal office for one or more days within a regular tour of duty of employees without requiring employees to take annual or sick leave.

(c) A head of the department or establishment exercises statutory authority to require all or any of the employees under his/her jurisdiction to take annual leave on a particular day or days which but for such action would be within the regular tour of such employees...such day or days would be the same as days of duty... and would not be regarded as 'nonworkdays established by...administrative order'..."

(d) When an employee as defined by 5 USC 2105, whose pay is fixed at an hourly rate (i.e., prevailing rate employee), is relieved or prevented from working on a day on which agencies are closed by Executive Order, or by administrative order under regulations issued by the President, that employee is entitled to the same pay for that day as for a day on which an ordinary day's work is performed.

Delegation Order No. 104, as revised, Absence, Leave, and Carry - Over of Annual Leave, authorizes heads of office to close their offices and dismiss employees under their supervision and control from duty without charge to leave or loss of pay because of interruption to normal operations by events beyond the control of management or employees or for managerial reasons. Regional Commissioners are responsible for coordinating such closings within their regions and the Chief, Management and Administration has such responsibility for components located in Washington, D.C. (See Delegation 104, as revised, for detailed delegation of authority).

Guidelines for Office Closings

(1) The closing of offices and dismissal of employees shall be confined to emergency situations. Examples of reasons for closing are:

(a) interruption of normal operations of an office by events beyond the control of management or employees, such as emergencies resulting from extreme weather conditions, fires, floods, catastrophes, riots, or serious interruption to public transportation services; or

(b) for managerial reasons such as re-building, breakdown of machines or of essential services or facilities, unanticipated delays in the flow of work or in the receipt of material, and power failure.

(2) Negotiated agreements may impose additional conditions for bargaining unit employees.

Dismissals and Charges to Leave

(1) Because of emergencies such as those listed above, offices may be closed for an entire day, be opened late, or be closed and the employees dismissed either for the entire day or after the beginning of business. Whether an employee is charged leave for the absence depends on her or his duty status at the time of dismissals. Another important factor is whether the office is closed before the workday begins or during the workday. The following provides guidance on the treatment of employees if the office closes during an employee's workday.

(a) Office closure during the workday:

1. If the employee was on active duty and was excused--no charge to leave.
2. If the employee was absent on leave for the entire day, and dismissal occurs during working hours, absence is charged to the appropriate leave which was previously requested and approved.
3. If the employee was scheduled to report for duty at the regular time but had not yet reported for duty at the time of dismissal--no charge to leave. Example: Employee regularly reports at 9 a.m.; dismissal occurs at eight a.m. Employee is not charged leave.
4. If the employee reported for work but departed on approved leave before receipt of official word of dismissal--the entire absence (including the time which would have been subsequently excused) is charged to appropriate leave.
5. If the employee was on duty and departed on approved leave after official word of dismissal was received but before the time set for dismissal--leave is charged from the time the employee departed on approved leave until the time set for dismissal. (For example: official word of dismissal received at 11:30 a.m. that the office would be closed and employees excused at 2:45 p.m. At 12:45 p.m. an employee departs on annual leave. The employee is charged for two hours annual leave from 12:45 to 2:45).
6. If the employee was scheduled to report for duty after an initial period of leave and dismissal occurs before the scheduled reporting time, leave is charged until the time set for dismissal.
7. If the employees would have been on approved leave the entire shift and the office is closed for the entire shift, the employee is excused without charge to leave, unless the employee was in nonpay status the day immediately before and the day immediately after the closing.
8. If a late opening is approved, employees are excused until the stipulated arrival time.

(b) Office closure before the workday begins.

1. If it is determined before the workday begins that an office will be closed for the day due to an emergency situation, those employees on scheduled leave for that day (annual leave, donated annual leave, restored forfeited annual leave, sick leave, compensatory time, and credit hours; or any combination of the above) will be administratively excused with no charge to leave. Any previously scheduled annual leave will be available for rescheduling to avoid possible forfeiture at the end of the leave year. **Annual leave that is forfeited at the end of the leave year as the result of an office closure may not be restored.**

2. The above guidance for office closures before the workday begins does not apply to employees on LWOP, AWOL, military leave, suspension, or in nonpay status on the workday before and after the office closure. These employees are not entitled to excused absence and should remain in their current status.

3. An employee on an alternative work schedule (AWS) whose AWS day off is the same workday on which the office is closed before the workday begins, is not entitled to another AWS day off "in lieu of" the workday on which the office was closed.

Reporting Office Closings

All emergency office closings will be made a matter of record, with a written notice being furnished promptly to the appropriate Regional Commissioner for field offices; or the Chief Management and Administration in the National Office (D.C. metropolitan area.)

Individual Absences Because of Emergency Conditions

(1) When emergency conditions exist, and the office is not closed, an employee arriving late at her or his place of employment may be excused, without charge to leave or loss of pay, on an individual basis.

(2) If an office is not closed during an emergency situation and an employee remains at home, the employee is charged leave. However, if the employee actually attempts to get to his or her place of employment but is unsuccessful, the employee's supervisor may excuse the employee for all or part of the day. In order to be excused for an entire day, the employee must submit documentation showing that extreme conditions existed all day or practically all day and explaining why she/he was prevented from getting to the place of employment. The documentation will be retained by the supervisor.

(3) Negotiated agreements may impose additional conditions for Bargaining Unit employees.

Participation in Civil Defense Activities

(1) In accordance with Executive Order 10529 (4/22/54), full-time employees who volunteer and are selected by State or local authorities for civil defense assignments, may be made available for participation in pre-emergency training programs and test exercises conducted by State or local governments. Supervisors may make employees available for assignment to these civil defense activities subject to the following conditions:

(a) The employee's participation has been requested by the State or local civil defense authorities;

(b) the employee can be spared from her or his regular duties for the required periods of participation; and

(c) the employee can reasonably be expected to be available for assignment to State and local civil defense activities in the event of an emergency.

(2) Employees who have been designated may be authorized to participate in such training and/or exercises during official duty hours without charge to leave or loss of pay for periods up to forty hours in a calendar year. Upon return to duty, the employee must submit a written statement from the State or local civil defense authorities showing the dates and hours of his or her participation.

(3) Employees who participate in civil defense activities will be granted Annual Leave or Leave Without Pay unless their absence would cause a severe work interruption.

Emergency Rescue or Protective Work

(1) Employees who are called to participate (request for employee participation must be in writing from authorized authority) in Civil Air Patrol searches or who engage in other types of emergency rescue or protective work (e.g., quelling civil disorders) will be excused for such duty or work without loss of pay or charge to leave for each period of such duty up to 7 continuous working days.

(2) The official request for employee participation in the rescue or protective work must be in writing from an authorized official of the rescue organization. Upon return to duty, the employee must submit a written statement from the Civil Air Authority or other State or local organization showing the dates and hours of his/her participation.

Attendance at Employee Organization Training Sessions

(1) Employees who represent employee organizations may be excused for brief periods to attend training sessions conducted by employee organizations on union-management relations, in accordance with negotiated agreements.

(2) With advice from the servicing Personnel office that the particular request for excused absence

would be proper and provided the employee's absence would not create a severe work interruption, the supervisor should grant the leave. Generally, the leave should be granted no more than once a year.

Participation in Credit Union and Employee Welfare and Recreation Association Activities

(1) In connection with credit unions and employee welfare and recreation associations, employees may be excused from duty for a limited amount of time without charge to leave or loss of pay to participate in certain meetings which benefit IRS employees; act on loan applications, either individually or as a member of a committee; make periodic fiscal audits; and engage in other activities which are co-sponsored by the Service.

(2) The meetings may be executive meetings (e.g., board and policy making meetings) or of small groups to plan programs and projects. Employees may also be excused to take and transcribe minutes of such meetings but not to attend as observers. The purpose of a planning meeting would be to discuss the merits of a proposed activity; rules and guidelines for its operations; and ways and means of publicizing and accomplishing it. This is distinguished from a general meeting of employees to ascertain interest in the activity, to sign up participants, or to carry out the purpose of the activity, such as auditioning or playing cards, chess, etc.

(3) Employees are responsible for securing permission from their supervisors to participate in such activities during working hours.

(4) The provisions of this subsection do not apply to union activities.

Leave Flexibilities Available for Family Care Purposes

General

In response to America's changing demographic realities and a renewed commitment to family values, the Federal Government has for some time pursued a range of family friendly employment policies and programs to help Federal employees balance work and family demands. The Federal Employees Family Friendly Leave Act (FFLA), Leave Sharing, and the Family and Medical Leave Act (FMLA) are all family friendly leave policies established to achieve a work place culture that is more family friendly and productive.

Federal Employees Family Friendly Leave Act (FFLA)

Under the current Federal leave system, employees accrue and accumulate annual and sick leave that may be used for paid absences from work. Annual leave accrual rates increase with career

longevity so that full-time employees with more than 15 years of service earn substantially more annual leave (26 days) than full-time employees with less than 3 years of service (13 days). In addition, full-time employees earn 13 days of sick leave each year. In most cases, employees use annual leave for vacations and personal needs, including caring for a family member. Sick leave serves as the primary source of income protection for an employee's own sickness or injury. Under the Federal Employees Family Friendly Leave Act, Federal employees may now use a limited amount of their sick leave to care for a family member and bereavement. In addition, employees may use sick leave for purposes related to the adoption of a child. Employees may also request advance annual leave and advance sick leave. The Office of Personnel Management (OPM) published final regulations implementing the use of sick leave for family care or bereavement purposes on December 2, 1994. These regulations were effective in the IRS on the same date.

Family and Medical Leave Act of 1993

Under the Family and Medical Leave Act of 1993 (FMLA), covered Federal employees are entitled to a total of 12 administrative workweeks of unpaid leave during any 12-month period for (a) the birth of a son or daughter and care of the newborn; (b) the placement of a son or daughter with the employee for adoption or foster care; (c) the care of a spouse, son, daughter, or parent with a serious health condition; and (d) a serious health condition of the employee that makes the employee unable to perform the duties of his or her position. Employees may elect to substitute their annual leave or sick leave, if appropriate for unpaid leave under the FMLA, consistent with current law and regulations. Employees cannot use compensatory time off and credit hours taken under FMLA. Employees can request and managers can approve compensatory time off and credit hours taken in addition to the period of FMLA leave. Federal guidance on the FMLA is provided in 5 CFR 630.1201.

Federal Leave Sharing Program

The Federal Leave sharing program assists employees who have depleted their accumulated annual and sick leave. The Federal leave transfer program allows federal employees to donate annual leave to other federal employees who have personal or family medical emergencies and who have exhausted their own paid leave. Federal leave banks allow employees to contribute a specified amount of annual leave yearly to their agency leave bank(s). Leave bank members affected by personal or family medical emergencies can then withdraw leave from the bank if they exhaust their own paid leave.

Defining the Family Member

(1) The FFLA provides explicitly that the term "family member" must be defined in the same way that the term is defined under the OPM regulations governing the federal leave transfer program.

Under 5 CFR 630.902, "family member" means 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.

(2) The coverage of the Federal Employees Family Friendly Leave Act (in terms of the individuals for whom a federal employee may provide care while on paid sick leave) is somewhat broader than the coverage of the Family and Medical Leave Act of 1993, under which federal employees may use unpaid leave to care for a "spouse, son, daughter or parent."

Family Medical Leave Act (FMLA)

General

The Family and Medical Leave Act (FMLA) is intended to give employees the opportunity to balance their work and family life by taking reasonable amounts of leave for medical reasons, for the birth or adoption/foster care of a child, and for the care of a child, spouse, or parent who has a serious health condition. The Act also intends to balance the demands of the work place with the needs of families, to promote the stability and economic security of families, and to promote the national interest in preserving family integrity. Accommodating employee leave needs will work best and produce the greatest payback in the long term when done in a spirit of cooperation, openness, and in recognition of the fact that both the employer and employee will benefit. Federal regulations on the administration of the FMLA in federal agencies are provided in 5 CFR 630.1201.

Definitions

- (1) Adoption - refers to a legal process in which an individual becomes the legal parent of another's child. The source of an adopted child - e.g., whether from a licensed placement agency or otherwise - is not a factor in determining eligibility for leave under the FMLA.
- (2) Continuing treatment by a health care provider - means one or more of the following situations

where an employee or an employee's spouse, son, daughter, or parent:

(a) is treated two or more times for an illness or injury by a health care provider;

(b) is treated two or more times for an illness or injury by a health care provider under the orders of, or on referral by, the individual's health care provider or is treated for the illness or injury on at least one occasion which results in a regimen of continuing treatment under the supervision of the health care provider; e.g., a course of medication or therapy to resolve the health condition; or

(c) Is under the continuing supervision of the health care provider, but may not necessarily be actively treated by the health care provider, due to a serious long-term or chronic condition or disability which cannot be cured; e.g., Alzheimer's disease, severe stroke, or terminal stages of a disease.

(3) Essential functions - means the fundamental job duties of the employee's position. An employee who must be absent from work to receive medical treatment for a serious health condition is considered to be unable to perform the essential functions of the position during the absence for treatment.

(4) Family and medical leave - means an employee's entitlement to 12 administrative workweeks of unpaid leave for certain family and medical needs, as prescribed under the ACT.

(5) Foster Care - means 24-hour care for children in substitution for, and away from, their parents or guardian. Such placement is made by or with the agreement of the State as a result of a voluntary agreement by the parent or guardian that the child be removed from the home, or pursuant to a judicial determination of the necessity for foster care, and involves agreement, between the State and foster family to take the child. Although foster care may be with relatives of the child, State action is involved in the removal of the child from parental custody.

(6) Health care provider:

(a) A licensed Doctor of Medicine or Doctor of Osteopathy or a physician who is serving on active duty in the uniformed services and is designated by the uniformed service to conduct examinations.

(b) Any health care provider recognized by the Federal Employees Health Benefits Program or who is licensed or certified under federal or state law to provide the service in question;

(c) A health care provider who practices in a country other than the United States, who is authorized to practice in accordance with the laws of that country, and who is performing within the scope of his or her practice as defined under such law;

(d) A Christian Science practitioner listed with the First Church of Christ Scientist, in

Boston, Massachusetts. or;

(e) A Native American, including an Eskimo, Aleut, and Native Hawaiian, who is recognized as a traditional healing practitioner by native traditional religious leaders and who practices traditional healing methods as believed, expressed, and exercised in Indian religions of the American Indian, Eskimo, Aleut, and Native Hawaiians, consistent with Public Law 95-314, August 11, 1978 (92 Stat. 469), as amended by Public Law 103-344, October 6, 1994 (108 Stat. 3125).

(7) Incapacity - means the 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.

(8) In loco parentis - refers to the situation of an individual who has day-to-day responsibility for the care and financial support of a child or, in the case of an employee, who had such responsibility for the employee when the employee was a child. A biological or legal relationship is not necessary.

(9) Intermittent leave or leave taken intermittently - means leave taken in separate blocks of time rather than for one continuous period of time, and may include leave periods of 1 hour (in accordance with IRS minimum charges to leave) to several weeks.

(10) Leave without pay (LWOP) - means an absence from duty in a nonpay status. Leave without pay may be taken only for those hours of duty comprising an employee's basic workweek.

(11) Parent - means a biological parent or an individual who stands or stood in loco parentis to an employee when the employee was a son or daughter. This term does not include parents "in law".

(12) Reduced leave schedule - means a work schedule under which the usual number of hours of regularly scheduled work per workday or workweek of an employee is reduced. The number of hours by which the daily or weekly tour of duty is reduced are counted as leave.

(13) Serious health condition - means an illness, injury, impairment, or physical or mental condition that involves -

(a) Inpatient care (i.e., an overnight stay) in a hospital, hospice, or residential medical care facility, including any period of incapacity or any subsequent treatment in connection with such inpatient care; or

(b) Continuing treatment by a health care provider that includes (but not limited to) examinations to determine if there is a serious health condition and evaluations of such conditions

if the examinations or evaluations determine that a serious health condition exists. Continuing treatment by a health care provider may include one or more of the following:

1. A period of incapacity of more than 3 consecutive calendar days, including any subsequent treatment or period of incapacity relating to the same condition, that also involves -

a. Treatment two or more times by a health care provider, by a health care provider under the direct supervision of the affected individual's health care provider, or by a provider of health care services under orders of, or on referral by, a health care provider; or

b. Treatment by a health care provider on at least one occasion which results in a regimen of continuing treatment under the supervision of the health care provider (e.g., a course of prescription medication or therapy requiring special equipment to resolve or alleviate the health condition).

2. Any period of incapacity due to pregnancy, 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.

3. Any period of incapacity or treatment for such incapacity due to a chronic serious health condition that:

a. Requires periodic visits for treatment by a health care provider or by a health care provider under the direct supervision of the affected individual's health care provider

b. Continues over an extended period of time (including recurring episodes of a single underlying condition); and

c. May cause episodic rather than a continuing period of incapacity (e.g., asthma, diabetes, epilepsy, etc.) The condition is covered 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.

4. A period of incapacity which is permanent or long-term due to a condition for which treatment may not be effective. The affected individual must be under the continuing supervision of, but need not be receiving active treatment by a health care provider (e.g., Alzheimer's, severe stroke, or terminal stages of disease.).

5. Any period of absence to receive multiple treatments (including any period of

recovery) by a health care provider or by a provider of health care services under orders of, or on referral by, a health care provider, either for restorative surgery after an accident or other injury or for a condition that would likely result in a period of incapacity or more than 3 consecutive calendar days in the absence of medical intervention or treatment (e.g., chemotherapy/radiation for cancer, physical therapy for severe arthritis, dialysis for kidney disease).

(c) Serious health condition does not include:

1. Routine physical, eye, or dental examinations; a regimen of continuing treatment that includes the taking of over-the-counter medications, bed rest, exercise, and other similar activities that can be initiated without a visit to the health care provider;

2. a condition for which cosmetic treatments are administered, unless inpatient hospital care is required or unless complications develop;

3. an absence because of an employee's use of an illegal substance, unless the employee is receiving treatment for substance abuse by a health care provider or by a provider of health care services on referral by a health care provider;

4. unless complications arise, the common cold, the flu, earaches, upset stomach, minor ulcers, headaches (other than migraines), routine dental or orthodontia problems, and periodontal disease are not serious health conditions.

5. Allergies, restorative dental or plastic surgery after an injury, removal or cancerous growth, or mental illness resulting from stress may be serious health conditions only if such conditions require inpatient care or continuing treatment by a health care provider.

(14) Son or daughter - means a biological, adopted, or foster child; a stepchild; a legal ward; or a child of a person standing in loco parentis 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. A son or daughter incapable of self-care requires active assistance or supervision to provide daily self-care in three or more of the "activities of daily living" (ADL's) or "instrumental activities of daily living" (IADL's). Activities of daily living include adaptive activities such as caring appropriately for one's grooming and hygiene, bathing, dressing, and eating. Instrumental activities of daily living include cooking, cleaning, shopping, taking public transportation, paying bills, maintaining a residence, using telephones and directories, using a post office, etc.

3. A "physical or mental disability" refers to a physical or mental impairment that substantially limits one or more of the major life activities of an individual.

(15) Spouse - means an individual who is a husband or wife, pursuant to a marriage that is a legal

union between one man and one woman, including common law marriage between one man and one woman in States where it is recognized.

Leave Entitlement - FMLA

(1) An Employee shall be entitled to a total of 12 administrative workweeks of unpaid leave during any 12-month period for one or more of the following reasons:

- (a) The birth of a son or daughter of the employee and the care of such son or daughter;
- (b) The placement of a son or daughter with the employee for adoption or foster care;
- (c) the care of a spouse, son, daughter, or parent of the employee, if such spouse, son, daughter, or parent has a serious health condition; or
- (d) A serious health condition of the employee that makes the employee unable to perform any one or more of the essential functions of his/her position.

(2) An employee shall invoke his /her entitlement to family or medical leave subject to notification and medical certification requirements. An employee may take only the amount of family and medical leave that is necessary to manage the circumstance that prompted the need for the leave.

(3) The 12-month period 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 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.)

(4) The entitlement to leave for the birth of a son or daughter of the employee and the care of such son or daughter; and the placement of a son or daughter with the employee for adoption or foster care, shall expire at the end of the 12-month period beginning on the date of birth or placement. Leave for a birth or placement must be concluded within this 12-month period. Leave taken may begin prior to or on the actual date of birth or placement for adoption or foster care, and the 12-month period begins on that date.

(5) FMLA leave is available to full-time and part-time employees. A total of 12 administrative workweeks will be made available equally for a full-time or part-time employee in direct proportion to the number of hours in the employee's regularly scheduled administrative workweek. The 12 administrative workweeks of leave will be calculated on an hourly basis and will equal 12 times the average number of hours in the employee's regularly scheduled administrative workweek. If the number of hours in an employee's workweek varies from week to

week, a weekly average of the hours scheduled over the 12 weeks prior to the date leave commences shall be used as the basis for this calculation.

(6) If the number of hours in an employee's regularly scheduled administrative workweek is changed during the 12-month period of family and medical leave, the employee's entitlement to any remaining family and medical leave will be recalculated based on the number of hours in the employee's current regularly scheduled administrative workweek.

(7) Managers, in conjunction with local benefits specialists, are responsible for advising employees of their entitlement to leave under the FMLA, as a leave alternative, when employees under their supervision find themselves affected by one of the conditions/situations.

(8) In accordance with 5 CFR 1203(h), an agency may not subtract leave from an employee's entitlement to FMLA leave unless the agency has obtained confirmation from the employee of his/her intent to invoke entitlement to leave under the FMLA. An employee's notice of his/her intent to take leave may suffice as the employee's confirmation. The employee must clearly invoke his/her entitlement to leave under the FMLA before any absence is applied to the employee's 12-week entitlement.

Intermittent Leave or Reduced Leave Schedule

(1) FMLA leave for the birth of a son or daughter of the employee and care of such son or daughter; or the placement of a son or daughter with the employee for adoption or foster care, shall not be taken intermittently or on a reduced leave schedule.

(2) FMLA leave for the care of a spouse, son, daughter, or parent of the employee; or for a serious health condition of the employee, may be taken intermittently or on a reduced leave schedule when medically necessary.

(3) If an employee takes leave for intermittently or on a reduced leave schedule that is foreseeable based on planned medical treatment or recovery from a serious health condition, the employee may be placed temporarily in an available alternative position for which the employee is qualified and that can better accommodate recurring periods of leave. Upon returning from leave, the employee shall be entitled to be returned to his/her permanent position or an equivalent position .

(4) For the purpose of applying an alternative position need not consist of equivalent duties, but must be in the same commuting area and must provide:

(a) An equivalent grade or pay level, including any applicable interim geographic adjustment, special rate of pay for law enforcement officers, or special pay adjustment for law enforcement officers; or any applicable special salary rate or similar provision.

(b) The same type of appointment, work schedule, status, and tenure; and

(c) The same employment benefits made available to the employee in his/her previous position (e.g. life insurance, health benefits, retirement coverage, and leave accrual).

(5) The number of hours of leave taken intermittently or on a reduced leave schedule will be subtracted, on an hour-for-hour basis, from the total amount of leave available to the employee.

Substitution of Paid Leave

(1) Except as provided below, FMLA leave shall be charged to LWOP.

(2) An employee may elect to substitute the following paid leave for any or all of the period of FMLA leave:

(a) Accrued or accumulated annual or sick leave. (In accordance with existing guidance for the approval and use of annual and sick leave, to include limitations for the use of sick leave to care for a family member under the FFLA).

(b) Advanced annual or sick leave (under existing guidelines and limitations for leave advances).

(c) Leave made available to an employee under the Voluntary Leave Transfer Program or the Voluntary Leave Bank Program (under existing guidelines and limitations for these Programs).

(3) An employee may not be denied the right to substitute paid time off for any or all of the period of FMLA leave.

(4) An employee may not be required to substitute paid leave for any or all of the period of (LWOP) to be taken under the FMLA.

(5) An employee must notify his/her supervisor of his/her intent to substitute paid leave for the period of LWOP to be taken under the FMLA prior to the date such paid leave commences. An employee may not retroactively substitute paid leave for LWOP previously taken under the FMLA.

(6) If an employee chooses to substitute paid sick leave for unpaid leave under the FMLA, he/she may do so, but only in those situations where the use of sick leave would otherwise be permitted by law or regulation

(7) Compensatory time off and credit hours may not be counted against an employee's FMLA 12-week entitlement. Such leave may be taken during a period of FMLA leave but such leave may not be applied against the employee's 12-week entitlement.

(8) Example - FMLA and Leave Transfer.

An employee invokes his entitlement to FMLA leave as a result of a medical emergency. The employee does not have any paid leave available and therefore applies for donated leave under the

leave transfer program. Approximately 2-3 weeks later, the employee is approved as a leave recipient and receives donated annual leave. Under the voluntary leave transfer and leave bank programs, the employee may retroactively substitute paid leave for LWOP beginning on the date the emergency began. The 12-month period and the 12-week entitlement to leave under the FMLA begins on the date the employee first invoked FMLA leave. The employee receives the benefits and protections of both the FMLA and the voluntary leave transfer program simultaneously.

Notice of Leave

(1) If leave to be taken under the FMLA is foreseeable based on an expected birth, placement for adoption or foster care, or planned medical treatment, the employee shall provide notice to his/her supervisor of his/her intention to take leave not less than 30 days before the date the leave is to begin. If the date of birth or placement or planned medical treatment requires leave to begin within 30 days, the employee shall provide such notice as is practicable.

(2) If leave taken under the FMLA is foreseeable based on planned medical treatment, the employee shall consult with his/her supervisor and make a reasonable effort to schedule medical treatment so as not to disrupt unduly the operations of his/her office, subject to the approval of the health care provider. The supervisor may, for justifiable cause, request that an employee reschedule medical treatment, subject to the approval of the health care provider.

(3) If the need for leave is not foreseeable (e.g., medical emergency or the unexpected availability of a child for adoption or foster care, and the employee cannot provide 30 days notice of his/her need for leave, the employee shall provide notice within a reasonable period of time appropriate to the circumstances involved. If necessary, notice may be given by an employee's personal representative (e.g., a family member or other responsible party). If the need for leave is not foreseeable and the employee is unable, due to circumstances beyond his/her control, to provide notice of his/her need for leave, the leave may not be delayed or denied.

(4) If the need for leave is foreseeable, and the employee fails to give 30 days notice with no reasonable excuse for the delay of notification, the supervisor may delay the taking of leave until at least 30 days after the date the employee provides notice of his/her need for family and medical leave.

(5) Requests for FMLA for the placement of a son or daughter with the employee for adoption or foster care, must be supported by official documentation from the agency, organization, court, or other regulatory authority overseeing the adoption or placement. Failure to produce such documentation may provide justification for denial of the employee's request for FMLA leave.

Medical Certification

(1) An employee's request for leave to care for a spouse, son, daughter, or parent; or a serious health condition of the employee, must 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, as appropriate. An employee shall provide the written medical certification to his/her supervisor in a timely manner. The requirement for an initial medical certificate in a subsequent 12-month period may be waived by the supervisor if the leave is for the same chronic or continuing condition.

(2) The written 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;

(d) For leave taken to care for a spouse, son, daughter, or parent:

1. 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 arrangement to meet such needs; and would benefit from the employee's care or presence; and

2. 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;

(e) FMLA requires for the employee's serious health condition, a statement that the employee is unable to perform one or more of the essential functions of his/her position or requires medical treatment for a serious health condition, based on written information provided by the employee's supervisor on the essential functions of the employee's position or, if not provided, discussion with the employee about the essential functions of his/her position; and

(f) In the case of certification for intermittent leave or leave on a reduced leave schedule for planned medical, 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) The information on the medical certification shall relate only to the serious health condition for which the current need for FMLA exists. The supervisor may not require any personal or confidential information in the written medical certification other than that required by subsection (2) above. If an employee submits a completed medical certification signed by the health care provider, the supervisor may not request new information from the health care provider. However, a health care provider representing the IRS, including a health care provider employed by the IRS or under administrative oversight of the IRS, may contact the health care provider who completed the medical certification, with the employee's permission, for purposes of clarifying the medical certification.

(4) If the supervisor doubts the validity of the original certification submitted by the employee, he/she may require, at IRS expense, that the employee obtain the opinion of a second health care provider designated or approved by the IRS concerning the medical certification. Any health care provider designated or approved by the IRS may not be employed by the IRS or be under the administrative oversight of the IRS on a regular basis unless the subject office is located in an area where access to health care is extremely limited (e.g., a rural area or an overseas location where no more than one or two health care providers practice in the relevant specialty, or the only health care providers available are employed by the IRS.)

(5) If the opinion of the second health care provider differs from the original certification provided, the supervisor may require, at IRS expense, that the employee obtain the opinion of a third health care provider designated or approved jointly by the supervisor/management and the employee concerning the medical information. The opinion of the third health care provider shall be binding on the IRS and the employee.

(6) To remain entitled to FMLA, an employee or the employee's spouse, son, daughter, or parent must comply with any requirement from the IRS that he/she submit to examination (though not treatment) to obtain a second or third medical certification from a health care provider other than the individual's health care provider.

(7) If the employee is unable to provide the requested medical certification before leave begins, or if the supervisor questions the validity of the original certification provided by the employee and the medical treatment requires the leave to begin, the supervisor shall grant provisional leave pending final written medical certification.

(8) If, after the leave has commenced, the employee fails to provide the requested medical certification, the supervisor may:

(a) Charge the employee as absent without leave (AWOL); or

(b) Allow the employee to request that the provisional leave be charged, as leave without pay (LWOP) or charged to the employee's annual and/or sick leave account, as appropriate.

(9) For leave taken for the purposes of pregnancy, chronic conditions, or long-term conditions under the continuing supervision of a health care provider, the supervisor may require, at IRS expense, subsequent medical recertification from the health care provider on a periodic basis, but not more often than every 30 calendar days. 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 supervisor may not request recertification until that period has passed. The supervisor may require subsequent medical recertification more frequently than every 30 calendar days, or more frequently than the minimum duration of the period of incapacity specified on the medical certification, if the employee request that the original leave period be extended, the circumstances described in the original medical certification have changed significantly, or the supervisor receives information that casts doubt upon the continuing validity of the medical certification.

(10) To ensure the security and confidentiality of any written medical certification, the medical certification about any employee must be properly safeguarded to protect his/her privacy. See also any local or national union agreements to ensure that the related Articles pertaining to privacy and employee illness are strictly adhered to.

Protection of Employment and Benefits

(1) Any employee who takes FMLA leave shall be entitled, upon return from such leave, to be returned to:

(a) The same position held by the employee when the leave commenced; or

(b) An equivalent position with equivalent benefits, pay, status, and other terms and conditions of employment.

(2) An equivalent position must be in the same commuting area and must carry or provide at a minimum:

(a) The same or substantially similar duties and responsibility, which must entail substantially equivalent skill, effort, responsibility, and authority;

(b) An equivalent grade or pay level, including any applicable interim geographic adjustment, special rate of pay for law enforcement officers, or special pay adjustment for law enforcement officers of the Federal Employees Pay Comparability Act of 1990 (Public Law 101-509), respectively; any applicable locality based comparability payment under 5 USC 5304; or any applicable special salary rate under 5 USC 5305 or similar provision of law;

(c) The same type of appointment, work schedule, status, and tenure;

(d) The same employment benefits made available to the employee in his or her previous position (e.g., life insurance, health benefits, retirement coverage, and leave accrual)

(e) The same or equivalent opportunity for a within-grade increase, performance award, incentive award, or other similar discretionary and non-discretionary payment, consistent with applicable laws and regulations, however, the entitlement to be returned to an equivalent position does not extend to intangible or unmeasurable aspects of the job.

(f) The same or equivalent opportunity for premium pay consistent with applicable law and regulations under 5 CFR Part 550, subpart A, or 5 CFR 551, subpart E; and

(g) The same or equivalent opportunity for training or education benefits consistent with applicable laws and regulations, including any training that an employee may be required to complete to qualify for his or her previous position.

(3) As a result of taking FMLA leave, an employee shall not suffer the loss of any employment benefit accrued prior to the date on which the leave commenced.

(4) A restored employee shall not be entitled to:

(a) The accrual of any employment benefits during any period of leave; or

(b) Any right, benefit, or position of employment other than any right, benefit, or position to which the employee would have been entitled had the employee not taken the leave.

(5) The same entitlements and limitations in law and regulations that apply to the position, pay, benefits, status, and other terms and conditions of employment of an employee in a leave without pay status shall apply to any employee taking leave without pay (LWOP), except where different entitlements and limitations are specifically provided in these instructions.

(6) An employee is not entitled to be returned to the same or equivalent position if the employee would not otherwise have been employed in that position at the time the employee returns from leave.

(7) The employee may not be returned to an equivalent position where written notification has been provided that the equivalent position will be affected by a reduction in force (RIF) if the employee's previous position is not affected by a RIF.

(8) It shall be the manager's option to require a returning employee (returning from a serious health condition) to obtain written medical certification from his/her health care provider that he/she is able to perform the essential functions of his/her position. The employee's return to duty may be delayed until the medical certification is provided. Previous guidance (above) on verifying the adequacy of medical certification shall apply to the medical certification to return to work. No second or third opinion on the medical certification to return to work will be required. Medical certification will not be required by the employee if he/she returns to work during the period the employee takes leave intermittently or under a reduced leave schedule.

(9) To ensure that employees meet "return to work medical certification" requirements the employee must be advised of this requirement before the FMLA leave commences and pay the expenses for obtaining the written medical certification. An employee's refusal or failure to provide written medical certification may be grounds for appropriate disciplinary or adverse action. Such medical certification to return to work will not be required unless the employee is advised of this requirement before FMLA leave commences. This requirement may also be waived in the case of emergency situations that did not give the manager an opportunity to advise the employee of this requirement prior to FMLA leave.

(10) Managers/supervisors may require an employee on FMLA leave to report periodically during a period of FMLA leave on his/her status and intention to return to work. Such requirement must take into account all the relevant facts and circumstances of the employee's situation or condition.

Health Benefits

An employee enrolled in a health benefits plan under the Federal Employees Health Benefits Program who is placed in a leave without pay (LWOP) status as a result of entitlement to leave under the FMLA, may continue his/her health benefits enrollment while in the LWOP status and arrange to pay the appropriate employee contributions into the Employees Health Benefits Fund. The employee shall make such contributions consistent with 5 CFR 890.502.

Greater Leave Entitlements

(1) Managers/supervisor of the IRS must comply with any collective bargaining agreement or any employment benefit program or plan that provides greater family or medical leave entitlements to employees than those under the regulations for FMLA leave provided in this Handbook.

(2) The entitlements established for employees under the FMLA may not be diminished by any collective bargaining agreement or any employment benefit program or plan.

(3) IRS leave policies that are developed in the future, may provide more generous leave

entitlement than those currently provided in this Handbook, except that such policies may not provide entitlement to paid time off 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.

(4) Entitlements under the FMLA do not modify or affect any Federal law prohibiting discrimination. If the entitlement under the regulations of the FMLA conflict with any federal law prohibiting discrimination, the Service must comply with whichever statute provides greater entitlements to employees.

Records and Reports

(1) So that the Office of Personnel Management (OPM) can evaluate the use of family and medical leave by IRS employees and provide the Congress and others with information about the use of this entitlement, a file must be established in each IRS office with the records of each FMLA case. Periodically, the OPM will request information from these files for a Servicewide report on the FMLA. This manual file shall suffice until such time as an automated process is developed that will capture the necessary information on FMLA usage from Time and Attendance Records and/or other related documentation. The National Director, Personnel Division will advise all offices of the development and implementation of the automated process.

(2) At a minimum, the following information concerning each employee who takes leave under the FMLA must be maintained in FMLA files, as described in (1) above:

- (a) The employee's rate of basic pay;
- (b) The occupational series for the employee's position;
- (c) The number of hours of FMLA leave taken (to include LWOP, annual, and sick leave);
- (d) Whether FMLA leave was taken for:
 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, daughter, or parent of the employee, if such spouse, son, daughter, or parent has a serious health condition; or
 4. A serious health condition of the employee that makes the employee unable to perform the essential functions of his/her position.

IRS Forms for Application and Administration of the FMLA

(1) IRS Form 9611, Application for Leave Under the Family and Medical Leave Act, (Exhibit 9) is prescribed for use by the employee to invoke his/her entitlement or make application for a leave of absence under the FMLA. Whenever possible, the appropriate medical certification must be presented with the application. In emergency situations, the application may be completed by a family member or other representative of the employee; in such emergency situations, the required medical certification may be provided within a reasonable timeframe.

(2) IRS Form 9610, Record of Approved Leave - Family and Medical Leave Act (Exhibit 10), is to be completed by the employee's manager/supervisor upon approval of the employee's request to invoke his/her entitlement to a leave of absence under the FMLA. Form 9610 is a two-sided Form providing detailed information on leave usage during the period of FMLA leave.

(3) Medical Certification. The U.S. Department of Labor Form, WH 380 - Certification of Physician or Practitioner (Family Medical Leave Act of 1993) has been developed for this purpose. (Exhibit 11). In the absence of the Department of Labor Form, medical certification for IRS employees may be provided in a letter or memorandum on the stationery of the appropriate or designated health care provider or physician. If the Department of Labor Form is not utilized, the certification should provide the following information:

- (a) Employee Name
- (b) Patient's Name (if other than employee)
- (c) Diagnosis
- (d) Date condition commenced
- (e) Probable duration of condition
- (f) Regimen of treatment to be prescribed. (Indicate number of visits, general nature and duration of treatment, including referral to other provider of health services. Include schedule of visits or treatment. Indicate if it is medically necessary for the employee to be off work on an intermittent basis or work less than the employee's normal schedule of hours per day or days per week.)
- (g) Is inpatient hospitalization of the employee required?
- (h) Is employee able to perform work of any kind?
- (i) Is employee able to perform the functions of employee's position? (Supervisor must health care provider with statement of employee's essential functions. If no supervisor statement

provided, response may be based on discussion with employee.)

(j) (If appropriate) Is inpatient hospitalization of the family member (patient) required?

(k) (If appropriate) Does (or will) the patient/family member of the employee require assistance for basic medical, hygiene, nutritional needs, safety or transportation?

(l) (If appropriate) Is the employee's presence necessary or would his/her presence be beneficial for the care (which may include psychological comfort) of the family member?

(m) (If appropriate) Provide an estimate of the period of time care is needed or the employee's presence would be beneficial to the family member.

(n) Statement by the employee as to when FMLA leave is needed to care for a seriously-ill family member, to include the care he or she will provide and an estimate of the time period during which this care will be provided, including a schedule if leave is to be taken intermittently or on a reduced leave schedule.

(o) Employee's signature and date.

(p) Physician or Practitioner's type of Practice (Field of Specialization, if any).

(q) Signature of Physician or Practitioner and date.

Expanded Family and Medical Leave

(1) On April 12, 1997, the Family and Medical leave policies of the federal government were expanded by Executive memorandum. The related OPM guidelines to all Executive Departments and Agencies requested that immediate action be taken to ensure that federal employees may schedule and take up to 24 hours of LWOP each leave year for participation in school activities, routine family medical appointments, and elderly relatives' health needs. Specifically, the Executive Memorandum provides that up to 24 hours of LWOP may be used each leave year for the following:

(a) School and Early Childhood Educational Activities - To allow employees to participate in school activities directly related to the educational advancement of a child. This would include parent-teacher conferences or meetings with child-care providers, interviewing for a new school or child-care facility, or participating in volunteer activities supporting the child's educational advancement. "School" refers to an elementary school, secondary school, Head Start Program, or child care facility.

(b) Routine Family Medical Purposes - To allow parents to accompany children to routine medical or dental appointments, such as annual checkups or vaccinations. Although these

activities are not currently covered by the FMLA (Family Medical Leave Act of 1993) the FEFFLA (Federal Employees Family Friendly Leave Act of 1994) does permit employees to use up to 13 days of sick leave each year for such purposes. Managers should ensure that employees are able to use up to 24 hours of LWOP each year for these purposes in cases when no additional sick leave is available to employees.

(c) Elderly Relatives Health or Care Needs To allow employees to accompany an elderly relative to routine medical or dental appointments or other professional services related to the care of the elderly relative, such as making arrangements for housing, meals, phones, banking services, and other similar activities. Although federal employees can use unpaid or sick leave for certain of these activities under the FMLA or FEFFLA, such as caring for a patient with a serious health condition, managers should ensure employees can use up to 24 hours of unpaid time off each year for this broader range of activities related to elderly relatives' health or care needs.

(2) The Executive Memorandum and related OPM guidance provides support and encouragement to supervisors to allow their employees to take LWOP to participate in children's educational, elderly relatives' health needs, and routine family medical appointments. The FMLA helps families with serious health conditions or special care giving needs, such as birth or adoption. The FFLA helps employees care for family members who are sick and need medical care or supervision, or who have routine medical appointments, but imposes limitations on the amount of sick leave that can be used. Approving the use of up to 24 hours of LWOP for routine medical appointments will help newer employees with low sick leave balance, as well as employees who have exhausted their entitlement to use sick leave for family care as a result of coping with their own illness or that of family members.

(3) Supervisors continue to have discretion to grant employees time off for the purposes described above. However, these expanded policies make it clear that the federal government is supportive of these specific family issues. Each leave request should continue to be evaluated in terms of whether the employee's services are required or can be spared during the time period covered by the leave request. The intent of the expanded family leave policies is to grant employee leave for these purposes unless circumstances exist that would limit an office's ability to accomplish its mission.

(4) Employees should not be restricted to the use of LWOP for these purposes. If available, employees may use annual leave, sick leave (within established limitations), compensatory time, and credit hours.

(5) Elderly Relative. The OPM defines an elderly relative as an individual who is related by blood or marriage to the employee who may require daily care or assistance in making arrangements for housing, meals, telephone, bank services, and other similar activities.

(6) Medical Certification. Supervisors may require evidence that is administratively acceptable, including medical certification, as appropriate, from an employee who requests LWOP (or other leave type) under the new expanded family friendly leave policies. However, as these new

expanded leave policies do not introduce a new leave entitlement or a new leave type, existing local guidelines regarding the submission of evidence or medical certification are applicable for leave requests under the new expanded family friendly leave policies.

(7) The expanded leave policies do not limit or prohibit an employee from requesting and receiving additional leave or other time off for school activities, routine family medical purposes, and elderly relatives' health needs. These needs can be met through the use of annual leave, compensatory time off, credit hours, or additional LWOP.

IRS Leave Sharing Program

Regulations governing the Voluntary Leave Transfer Program are provided in 5 CFR 630.901; regulations on the Voluntary Leave Bank Program are provided in 5 CFR 630.1001. Within the IRS both programs exist under the umbrella of "Leave Sharing"; however, eligibility to obtain leave from these programs is different.

The Leave Transfer Program allows federal employees to transfer annual leave to other federal employees who are affected by a medical emergency. Transfers may be made within the IRS as well as to eligible employees of other federal agencies. Any IRS employees with qualifying illnesses/conditions are eligible to receive leave through this program.

The IRS Voluntary Leave Bank requires individuals to donate leave to obtain membership. Members are then entitled to apply for leave from the appropriate leave bank if they are adversely affected by a personal medical emergency. Leave Bank members may participate in both programs. However, employees who have chosen not to join the Leave Bank may only obtain assistance from the Voluntary Leave Transfer Program.

Reference

(1) Public Law 100-566, the "Federal Employees Leave Sharing Act of 1988", dated October 31, 1988.

(2) Public Law 103-103, the "Federal Employees Leave Sharing Amendments Act of 1993", dated October 8, 1993.

Additional Information

The local Leave Share Coordinator. The Coordinator may be reached through BenefitsLine/ Employee Connection.

SPECIAL INSTRUCTIONS

FEDERAL EMPLOYEES' COMPENSATION ACT

GENERAL

The Federal Employees' Compensation Act, Public Compensation, medical rehabilitation and re-employment rights to Federal employees who sustain disabling injuries as a result of their employment with the Federal Employment.

CONTINUATION OF PAY (COP)

(1) One of the most significant aspects of the FECA program is the concept of continuation of pay. Simply defined, continuation of pay (COP) is the continuation of an employee's regular pay by the employing agency (IRS) with no charge to sick or annual leave when the employee files for benefits under the Public Law. While the claim is being reviewed by the Office of Worker's Compensation Programs (OWCP), Department of Labor (DOL), for employees who assert they have sustained a traumatic, job related injury, their salary will continue for a period not to exceed 45 calendar days. The calendar days do not have to be used consecutively, but must be used within 90 days from the day of the injury or within 90 days of the date the employee first returned to work following the initial disability, whichever is the later date. On the date of termination of the employment (if applicable) all entitlements to FECA stop and the former employee must work directly with OWCP to obtain further payments. In order to qualify for COP, the employee must file a written notice of the claim within 30 days of the date of injury and submit proper medical evidence within 10 workdays of the date of injury.

(2) If the employee does not submit proper medical evidence within 10 workdays the employing agency (IRS) will terminate the COP including retroactive termination of previous record of COP. The employee may request to use Annual or Sick Leave. When proper supporting medical evidence is subsequently submitted the employing agency is required to convert any leave used to COP and restore that leave to the employee's account.

(3) The COP should begin with the date of disability and end with the employment termination for temporary appointments; the date the employee is no longer disabled or when the 45 calendar days of COP have been used, which ever occurs first. The time limit established for the employee to submit medical evidence is applicable for both the initial disability and recurrences of the disability when the employee has not used all of the 45 calendar days of COP or the 90 day expiration date for COP has not occurred, or the date of employment termination has not occurred.

(4) COP also may be suspended if the disabled employee refuses to submit to or obstructs an examination required by the Department of Labor. COP may be resumed after the employee

cooperates. Pay for COP during the period of refusal may be forfeited and if already paid subject to repayment. The employee is entitled to determine if he/she wants the COP days converted to annual and/or sick leave or the COP will be treated as overpayment of pay. With the exception of the employing agencies involvement in the recovery of overpayment of salary by salary offset the authority and responsibility for recovering an overpayment of compensation belongs to the OWCP and not the employing agency.

(5) The employee is entitled to COP which will be charged to the 45 calendar day limit if he/she can return to work, but the effects of the injury necessitated the following actions which resulted in the employee's loss of salary or premium pay:

(a) A personnel action assigning or detailing the employee to an identified position which is classified at a lower salary than that earned by the employee prior to the injury.

(b) A personnel action taken to change the employee to a lower grade or to a lower rate of basic pay.

(c) An action is taken to change the employee to a different work schedule which results in loss of salary or premium pay (e.g. Shift Differential, etc.) authorized by the employee's normal administrative workweek.

(6) If a partially disabled employee, as determined by his/her physician, is offered as suitable work by the employing agency and fails to respond within 5 working days, the COP can be terminated.

(7) When the period of employment expires or the employee's attending physician finds the employee is no longer disabled, the agency may terminate COP. The disabled employee whose employment is terminated is entitled to Compensation payable by OWCP.

(8) It is the responsibility of the employee's supervisor to ensure that all proper forms and procedures are followed relating to the employee's claim for FECA benefits. The supervisor is responsible to accurately recording absences during periods of COP.

DATE OF ELIGIBILITY FOR CONTINUATION OF PAY (COP)

(1) In determining dates of eligibility, it is essential to know that the first day of COP is either the day following the date of injury (DOI) when there is immediate time loss or in cases where there is no immediate time loss, the first time loss following the date of injury (DOI) which is due to the injury. The initial day of COP is almost never the date on which the injury occurred. The one

exception to this is when the employee is injured on IRS property, but his/her official work shift has not begun. In this case, the first day of COP would be the date of injury (DOI). Regulations state that the first day of COP must be taken no later than 90 days from the date of injury (DOI). Example: An employee was injured on January 10, the last day on which the employee would be eligible to begin COP would be April 10. Once the employee has begun taking COP, he/she is eligible for a maximum of 45 calendar days of COP. However, they need not be successive days. The law allows 90 days beginning from the date the employee first returned to work following the date of injury (DOI) to take the full 45 calendar days. If the employee has not used successive days, and has remaining COP days, and is in a disabled status on the 90 day ending date, the employee is eligible to use all the remaining days as long as the employee is medically deemed disabled and has not used in excess of 45 calendar days, or the date of termination of the employment has not occurred. Once the disability stops after the 90 day ending date, the employee is no longer eligible for COP.

(2) Annual or Sick Leave may not be used to delay the start of the COP period or to extend it beyond the 45 calendar days. The employee is required to submit within 10 workdays proper medical evidence of a traumatic disabling injury. If the employee fails to provide this evidence the COP will be terminated. It may be reinstated if later submitted. Therefore, if the employee was permitted to use leave, he/she would be able to avoid the timely submission of the medical evidence. The employee's election to use annual and/or sick leave rather than COP is not irrevocable and the employee may subsequently request COP in lieu of previously requested annual and/or sick leave. This request must be made within the one year from the date the leave was used or the date of OWCP's approval of the claim, whichever is later. If the employee is eligible the employing agency shall subject to the 45 calendar day limit, convert and restore the leave previously used. If any of the 45 calendar days of COP remain, the employee can use them as long as he/she is disabled and the 90 day limit has not occurred (unless the employee was on continuous COP prior to the 90 day limit) or the termination date of employment has not occurred. If leave is used during a period that COP is payable and the employee does not request that such leave be converted to COP and restored, the 45 days will be counted as though the employee had requested COP.

(3) The agency cannot modify the termination date of the employee's scheduled period of employment after the employee has experienced an on the job traumatic-injury. This also applies to "not to exceed appointments". Agencies cannot interrupt or delay COP, because of disciplinary actions such as suspensions without pay. The employee's right to COP, as provided by law, supercedes the agency's right to interrupt or delay COP, because of suspension without pay. This disciplinary action can be accomplished after the 45 calendar days of COP expires or the employee is no longer disabled and is fit to return to duty. Agencies can not terminate COP by terminating employment unless the employee was provided final written notice of termination of employment for cause as part of a disciplinary action, prior to the employee suffering the on the job-traumatic-injury.

COUNTING COP DAYS

(1) In counting COP days, one must use calendar days not workdays. This includes holidays and

weekends (or days off). Two things are important to remember:

(a) only days are counted (e.g., if one hour is used to see a physician and seven hours are worked, it is still counted as one day of COP) and;

(b) the time loss must be properly certified by a physician as being a result of the job related injury. An example of the second element would be when a physician releases an employee on Friday, February 10, the days counted would be the number of days of time loss through the 10th. If the employee did not return to work until Feb. 15, the time loss on Feb. 11-14 could not be counted as COP days, but rather as sick, annual, compensatory time absent, credit hours absent, and/or LWOP time depending upon the circumstances. Additionally, the date of the last visit to the doctor might be Friday, Feb. 10, but the doctor states the employee is not fit for duty until Feb. 15. In this case, Feb. 11 through 14 would be counted as COP days. In the case of a follow up visit that occurs on a Friday, the employee who returns to work on Monday is charged only one day of COP (Friday).

(2) It is important to remember that COP is to start after the date of injury (DOI). If the employee is injured at 10:00 a.m. on Tuesday and remains off work until the following Monday, his/her T/A Record should reflect administratively excused absence if medical documentation is provided on Tuesday and COP starts on Wednesday. As stated above, COP must be charged in one day increments even if the employee worked a portion of the day. For example, the employee reports to work at 8:15 am, goes to the doctor at 10:15 a.m. for a follow up visit and returns at noon and works the rest of the day. One day of COP should be charged.

INSTRUCTIONS FOR THE RECORDING OF INJURY LEAVE/CONTINUATION OF PAY ON THE T/A RECORD

General

(1) The instructions that follow apply only to recording an employee's absence due to a job-related, traumatic injury which has resulted in the employee's submission of a claim to the Department of Labor, Office of Workers' Compensation Programs, Department of Labor, for FECA benefits.

(2) On the day on which the injury occurs (date-of-injury) and the employee files for FECA benefits, and hours of absence resulting from the injury will be entered as administratively excused leave (Transaction Code 66), not to be charged against the 45 calendar day limit (COP). Approval by the supervisor of the absence must be indicated with his/her signature on the T/A Record on the T/A Roster. The employee must either submit a completed EXC. SF-71 for the absence or initial the T/A Record or T/A Roster.

(3) On the initial T/A record for injury leave annotate the following in the Remarks portion:

(a) the employee is on work injury leave;

(b) date leave terminates, if the employee is on work injury leave the last day of the Pay

Period (45 calendar days from the first full day of coverage or the remaining amount from the 45 calendar days if the employee uses part at an earlier date for the same injury);

(c) any entitlement above normal pay (e.g., shift differential, premium pay for administratively uncontrollable overtime (AUO), LEAP, etc.); and

(d) It is the responsibility of each office to establish procedures related to maintaining documentation which supports the employee's claim, as well as adhere to procedures established by WCC.

(4) Post the T/A Record as follows for every pay period that the employee is on work injury leave.

(a) Annotate the number of hours absent under the time in pay status on the T/A Record. Annotate in the Remarks portion, "Employee on" "Days of FECA" (includes nonworkdays and holidays). "Total FECA Days to Date" (includes nonworkdays, holidays; and is an accumulation of all days used to date), and date leave terminates (45 calendar days end date and 90 day ending date (if applicable). The employee must initial the T/A Record, T/A Roster or submit an EXC, SF71.

(b) When the employee is absent for less than the number of hours in his/her specified tour of duty, this partial day of absence will be counted as one (1) calendar day of the 45 calendar days.

(5) If medical documentation indicates the employee is no longer disabled and therefore able to return to work, the employee's supervisor must note in the Remarks portion of the T/A record "Employee Able to Return to Work." The supervisor must indicate approval by signing the T/A Record or the T/A Roster. In addition, supervisors must project the 90 day ending date and enter this date in the Remarks portion of the T/A Record each pay period until the date has expired.

(6) If the employee has yet to use all of the 45 calendar days for FECA benefits and the 90 day ending date has not occurred, he/she is entitled to use the balance of the 45 calendar days for periodic medical examinations or treatments. Annotate the "Total FECA Days to Date" in the remarks portion of the T/A Record each pay period until the 90 day expiration date occurs.

(7) If the employee's injury recurs and proper medical documentation is provided after the employee has returned to work, the supervisor must sign the T/A Record or T/A Roster authorizing the employee to use the balance of FECA benefit days subject to the approval of the

claim and as long as the 90 day ending date or the date of termination of the employment (if applicable) has not occurred. Note in the Remarks portion of the T/A Record, the date the FECA balance of days expires if used consecutively, within the established 90 day period. If a recurrence happens after the 90 day ending date, even if some of the 45 days remain "unused," the employee is only entitled to compensation payable by the OWCP, not to continuation of pay. Refer to (8) through (14) below for posting instructions.

(8) Note in remarks portion of the T/A record "FECA balance is zero" when either of the following situations occur:

(a) the 45 calendar days are used; or;

(b) the 90 day ending date occurs.

(9) Once the employee's 45 calendar days of injury leave has been used the employee's supervisor will post the employee's proper leave or pay status (LWOP, Compensatory Time Absent, Annual, Sick Leave, OWCP - LWOP.)

(10) If an employee has used the 45 Continuation of Pay (COP) days and has no sick leave to use, and decides to use annual leave, the employee should be made aware that if he/she decides to use annual leave in excess of his/her ceiling, he/she may later forfeit the annual leave. This will occur when an employee uses annual leave in one year and OWCP processes the claim in another year and the employee requests a buy-back of the annual leave.

(11) OWCP - LWOP does not affect the WIG. It is important for the supervisor to track the LWOP that is regular hours and the LWOP for OWCP. This may be accomplished with a central file in the office. The supervisor is responsible for notifying the processing clerk of OWCP LWOP when the WIG is due. If the employee is to be placed on OWCP - LWOP to receive FECA benefits (employee is to be paid directly from OWCP Payroll):

(a) There first must be at least a 3 calendar day waiting period between the expiration of the 45 calendar days and the first day of posting for OWCP - LWOP, the employee must be posted on regular LWOP during the entire 3 day waiting period. NOTE: If disability lasts longer than 14 days there is no waiting period.

(b) the supervisor will annotate in the Remarks portion of the T/A Record "Begin OWCP-LWOP on ____ date. "When the employee returns to rtd (returned to duty) from OWCP - LWOP on ____ date."

(12) When an employee has used all of his/her 45 calendar days of injury leave (Continuation of Pay) or a recurrence has resulted, and the employee requests and it is approved to be placed on OWCP - LWOP, the supervisor will annotate in the Remarks portion of the T/A Record "Begin OWCP - LWOP on ____ date." If the employee returns to duty prior to the adjudication, the supervisor should annotate in the Remarks portion of the T/A Record "RTD from OWCP - LWOP

on _____ date." If the case is disapproved by OWCP, the employee may elect compensatory time absent, annual leave, or sick leave to the employees credit.

(13) An employee cannot accrue annual or sick leave while on OWCP- LWOP.

(14) A full-time employee on OWCP - LWOP for part of a pay period is entitled to pro-rata credit for leave for the part of the pay period for which no compensation is received from OWCP, and the employee was working or on paid leave. If this is the case, annotate in the Remarks portion of T/A Record, "Pro Rata A/Lv. accrued = X hours; and S/Lv. accrued = X hours.

(15) Part-time employees earn annual and sick leave based on hours in pay status; therefore, the supervisor does not compute a pro-rata annual leave or sick leave accrual when the employee is on OWCP - LWOP.

(16) Employees awaiting adjudication of their injury claims with OWCP will have the "OWCP LWOP accumulated with regular LWOP for purposes of WGI determination. If the case is adjudicated in favor of the employee, he/she must receive a retroactive adjustment for the WGI, if necessary, because OWCP - LWOP is not credited for WGI purposes.

Full-time Permanent and Seasonal Employees

(1) The administrative leave for the date of the injury is posted with transaction code 66. The 45 days COP is posted with transaction code 67.

(2) For a full-time employee enter the OWCP - LWOP hours with transaction code 71 and manually track these hours to report to personnel processing.

(3) If the employee's regularly scheduled tour of duty includes shift differential premium pay for administratively uncontrollable overtime or holiday pay, the timekeepers must enter this information on the T/A record. However, overtime in any instance must not be recorded on the T/A record while the employee is on injury leave.

Part-time Permanent and Seasonal Employees

(1) The administrative leave for the date of the injury is posted with transaction code 66. The 45 days COP is posted with transaction code 67.

(2) For a part-time employee enter the OWCP - LWOP for the employee's regularly scheduled

daily tour of duty with transaction code 71 and manually track these hours to report to personnel processing.

(3) If the employee's regularly scheduled tour of duty includes night differential, shift differential, premium pay for administratively uncontrollable overtime, or holiday pay, the timekeeper must enter this information on the T/A record. However, overtime in any instance must not be recorded on the T/A record while the employee is on injury leave.

Seasonal Employees in Non-Work Status

A seasonal employee is entitled to 45 calendar days of FECA benefits due to a job-related traumatic injury. The above posting instructions should be followed unless the employee is placed in non-work status after having suffered a job-related traumatic injury. A seasonal employee in nonwork status on FECA benefits is not entitled to accrue annual and sick leave.

Intermittent Employees

Employees are entitled to elect and receive COP. Use CA7A and CA7B to claim the disabilities.

BUY-BACK LEAVE PROCEDURE

(1) Within the IRS, the Workers' Compensation Center (WCC) in Richmond, VA, is the official authority on workers' compensation for all IRS offices which includes the issuance of service-wide guidance and the processing of all aspects of workers' compensation claims.

(2) Leave Buy Back (LBB) - A LBB or leave restoration is a process by which sick and/or annual leave used as a result of an on-the-job injury or occupational disease is repurchased and restored to the claimant's leave account. In the LBB process, the claimant must pay the employing agency (IRS) the difference between the total cost of the LBB and the Department of Labor (DOL) contribution. A claimant is entitled to compensation equivalent to two-thirds of his/her salary if there are no dependents; or three-fourths of the salary if there is one or more dependents. The pay used to compute compensation payments is the one in effect on the date of injury, date of recurrence, or date disability began, whichever is higher.

(3) The subject employee may elect to use annual or sick leave to avoid interruption of pay while his/her claim for FECA benefits is being examined. The employee may not receive compensation under FECA for any period which the employee has drawn a Federal salary. Therefore, the employee must repay the amount for which pay was received for annual and sick leave. The employee must provide a statement requesting sick or annual leave be changed to LWOP (Leave Without Pay) when the claim is approved. The supervisor will have to amend the T/A Records

involved. The employee's supervisor must sign the amended T/A Records or amended T/A Roster for approval of LWOP used.

(4) WCC is the employing agency (IRS) authority on Workers' Compensation Program. In this capacity WCC is entitled to allow the buyback (repurchase) of annual and/or sick leave used to avoid interruption of pay when the employee is entitled to compensation payable by OWCP. The employee may not repurchase leave taken during the 45 calendar day COP period unless he/she was not entitled to COP. If the WCC does not allow the repurchase of leave, the employee will not be paid compensation for the period the leave was used. When the WCC does allow the leave repurchase, the employee must elect to have the compensation paid directly to the employing agency (IRS) to be applied against the dollar value due the agency for the repurchase. The computation of the dollar value due the agency for the leave repurchase or buyback of annual and/or sick leave is the responsibility of the National Finance Center (NFC) and is to be done in accordance with the accounting principles and practices of that agency. Employees are not to calculate their own figures on the CA7B form. WCC will not accept calculations provided by anyone other than NFC.

(5) In advising employees involved in OWCP claims and processing of related T/A records for those cases, consider the significant provisions of the Comptroller General Decision CG-180010.12, dated March 8, 1979.

(a) When an employee's OWCP case is approved authorizing a buyback of leave, the leave is recredited to the leave year in which the leave was used after the indebtedness is liquidated (Reference Page 254 of the CG decision). Example: An employee wanted to buyback 210 hours of annual leave that the employee had used for a traumatic on the job injury. To perform the buy-back, 210 hours of annual leave were converted to LWOP.

(b) In the above example, the employee is not entitled to Restored Forfeited Annual Leave (Reference: Page 254-255 of the CG decision). If the employee elects to retain the buy-back compensation from OWCP, the excess annual leave must be forfeited. Based on the subject Comptroller General Decision, the employee will have to refund the difference between the amount of his/her salary received while on annual leave and the taxfree buy-back compensation from OWCP.

(c) The employee may determine how he/she wants his/her leave handled for these types of buy-backs. The employee has the option to buy-back the annual leave as explained above to receive the benefit of the tax-free buy-back compensation from OWCP; buy-back only that portion that does not exceed the ceiling and therefore would not be forfeited, or to cancel the buy back. If the employee decides to cancel the buy-back, or to buy-back only a portion of the leave, then only the amount repurchased will be converted to LWOP. The other portion of leave will be left in tack and no other OWCP may be claimed. If the employee has decided to buyback only a portion of the leave, OWCP will only adjudicate that portion of the claim.

(6) Donated Leave - Donated leave is emergency leave received from the Leave Bank or Leave

Transfer on a case-by-case basis. Employees are not eligible for donated leave until all annual and sick leave is exhausted. If donated leave is requested and used due to an on-the-job injury or occupational disease, it must be repaid to the Leave Bank or individual leave donor once the claim is approved by the DOL. When applying for donated leave, LBB employees will be required to coordinate the two applications and indicate his/her agreement to repay the donated leave upon approval of the claim by the DOL.

(7) Third-Party Claim - A third-party claim means that an injury is caused by a person or object under circumstances which indicate there is a legal liability on a party other than the U.S. Government to pay the damages. The Government has the right to recover any payments it makes should the claimant collect money from another source. The claimant may be required by the WCC to pursue legal action on all third party claims, except those deemed as *Aminor@* (less than \$1,000) by DOL, and all LBB requests must be initiated and completed prior to the third party settlement.

(8) The period of LBB eligibility will be limited to one year (365 calendar days) from the date the leave is used or within one year of the date the DOL approved the claim (whichever is later).

(9) LBB requests will be accepted only for current on-rolls IRS employees, and will be limited to one (1) per injury. It is a "one shot deal", meaning only one request per injury can be submitted for approval. Once the claimant signs the Form CA-7b, LBB Certification and Election, this document becomes a legally binding contract.

Work Performed While Traveling
Away From Official Duty Station
As "Hours of Work" Under FLSA

| <u>Kind of Travel Involved:</u> | <u>Is travel time "hours of work"? 1/</u> |
|--|---|
| Driver of an automobile, truck, bus, or other vehicle | Yes |
| Pilot of an airplane, helicopter, or other aircraft | Yes |
| Pilot of a boat, barge, or other vessel (not subject to the semen exemption) | Yes |
| Assistant driver or crew member assisting in the operation of a vehicle, aircraft, or boat | Yes |
| Passenger riding in a vehicle (not otherwise entitled to hours worked for travel as a passenger) | No 2/ |
| Any other employee required to perform work while traveling; | Yes |
| - Courier carrying classified documents | |
| - Guard escorting a prisoner | |
| - Security specialist guarding classified or valuable equipment in transit | |

1/ Bona fide meal periods are deducted from hours worked. Under certain conditions sleeping periods or periods when an employee is relieved from duty are not included in hours worked (See paragraph E.1, of this instruction).

2/ If a passenger shares the driving of a vehicle with the driver, each is considered to be performing work while traveling only for that portion of the trip during which he/she is actually driving the vehicle.

Travel As A Passenger On A One-Day Assignment
 Away From Official Duty Station
As "Hours Of Work" Under FLSA 1/

| Kind of Travel Involved: | Is travel time <u>outside</u> regular working hours <u>"hours of work"? 2/</u> |
|--|--|
| <u>A. Travel by Common Carrier</u> | |
| Travel time from home to common carrier terminal | No 3/ |
| <u>Normal waiting time</u> at the terminal prior to scheduled Departure time of the common carrier | Yes 4/ |
| Travel time from scheduled departure time from the <u>terminal</u> to arrival time at the <u>terminal</u> at point of destination | Yes |
| Usual waiting time which interrupts travel | Yes 5/ |
| Travel time from terminal at the point of destination to <u>temporary duty station</u> | Yes |
| <u>B. Travel by Automobile</u> | |
| Travel time from <u>official duty station to temporary duty station</u> | Yes |
| Travel time from <u>home</u> directly to <u>temporary duty station</u> | Yes 6/ |

(The same rules apply for travel time and waiting time on the return trip from the temporary duty station to the employee's official duty station or directly to the employee's home.)

NOTE: For the purposes of this table, the term "temporary duty station" means a duty station outside the limits of the employee's official duty station.

1/ All travel time during regular working hours (excluding bona fide meal periods) is hours worked.

2/ Bona fide meal periods are deducted from hours worked.

3/ Since, except for the one-day assignment, the employee would have had to report to his/her normal duty location, the travel time between the employee's home and the common carrier terminal is not included in hours worked. However, if (1) the common carrier terminal is located outside the limits of the official duty stations and (2) the employee's travel time from home to common carrier terminal is in excess of normal home work travel, the employee shall be credited with the excess travel time as hours worked.

4/ Normal waiting time at the terminal from designated pre-departure time until scheduled departure time of the common carrier is hours worked. Any waiting time in excess of normal waiting time is not hours worked.

5/ When an employee travels to an intervening common carrier terminal and has to wait for a connecting flight to continue traveling to a temporary duty station, the usual waiting time at the intervening common carrier terminal is normal waiting time and is hours worked.

6/ The employee shall be credited with the lesser of (1) the actual hours worked for the time spent traveling to the temporary duty station (excluding normal home to work travel), or (2) the estimated hours worked for such travel had the employee traveled directly from official duty station to the temporary duty station.

Home To Work Travel As "Hours of Work" Under FLSA

| <u>Kind of Travel Involved:</u> | Is travel time "hours of work"? |
|--|------------------------------------|
| A. Home to Work - Normal Situation | |
| Normal home to work (work to home) travel | No |
| Employee <u>drives</u> a Government vehicle home (<u>asa require- ment</u> of the employing agency) to respond to emergency calls immediately from his/her home. | Yes 1/ |
| Employee <u>drives</u> a Government vehicle home (<u>as a requirement</u> of the employing agency) to transport other employees home to work (or job site). | Yes 1/ |
| Employee reports at a designated meeting place and drives a vehicle (<u>as a requirement</u> of the employing agency) to transport other employees or equipment to a job site. | Yes 2/ |
| Employee reports at a designated meeting place and is transported (as a <u>passenger</u>) by Government vehicle to a job site. | No |
| Employee reports at a designated meeting place (receives instructions, performs other work, or picks up and carries tools) and is transported (as a <u>passenger</u>) by government vehicle to job site. | Yes 2/ |
| B. Home to Work - Emergency Situation | |
| Employee (at home) receives an emergency call outside regular working hours to return (travel) to normal duty location (or another job site <u>within the limits of the official duty station</u>). | No |
| Employee (at home) receives an emergency call outside regular working hours to travel to a temporary duty station (<u>outside the limits of the official duty station</u>) and the distance traveled is greater than normal home to work travel. | Yes 3/ |

1/ All time spent driving the vehicle home to work (work to home) is hours worked.

2/ The travel from home to the designated meeting place (and return) is normal home to work travel. However, the performance of work or other activity which is an integral part of the employee's job (e.g., picking up tools or receiving instructions) at the designated meeting place constitutes the commencement of the employee's workday. All subsequent travel (to a job site and return) is hours worked.

3/ If the distance to the temporary duty location (outside the limits of the official duty station) is in excess of the distance from the employee's home to normal duty location, the entire time spent traveling from the employee's home to the temporary duty location and return is hours worked. Conversely, if the distance to the temporary duty location is equal to or less than the distance from the employee's home to normal duty location, the time spent traveling to the temporary duty location and return is not hours worked.

Travel Within The Limits
Of The Official Duty Station
As "Hours Of Work" Under FLSA 1/

| <u>Kind of Travel Involved:</u> | <u>Is travel time "hours of work" 2/</u> | |
|---|--|---|
| | <u>During regular working hours</u> | <u>Outside regular working hours 3/</u> |
| <u>From</u> home directly <u>to</u> job site before regular working hours | Not applicable | No 4/ |
| <u>From</u> normal duty location <u>to</u> job site | Yes | Yes |
| <u>From</u> job site <u>to</u> job site | Yes | Yes |
| <u>From</u> job site <u>to</u> normal duty location | Yes | Yes |
| <u>From</u> job site directly <u>to</u> home after regular working hours | Not applicable | No 4/ |

NOTE: For purposes of this table, the term "job site" means a duty location within the limits of the official duty station other than the employee's normal duty location.

1/ these rules apply to travel either as a driver of a vehicle or as a passenger in a vehicle within the limits of the official duty station during the same day.

2/ normal home to work (work to home) travel and bona fide meal periods are not included in hours worked.

3/ for travel time outside regular working hours to be compensable under this basic principle the time spent traveling must be continuous with and serve to extend the employee's regular tour of duty.

4/ Travel from home directly to a job site within the limits of the official duty station is viewed as normal home to work travel. The same applies for travel from a job site directly to the employee's home after regular working hours.

Travel As A Driver Of A Passenger Vehicle To A Temporary Duty Station
As "Hours Of Work" Under FLSA

Travel as a Driver on a One-Day Assignment (to and return from a temporary duty station during the same day)

| <u>If</u> an employee drives a vehicle: 1/ | <u>and, if:</u> | <u>is</u> the travel time outside regular working hours "hours of work"? 2/ |
|--|--|---|
| <u>From</u> home directly to TDY station/job site | the job site is located within the limits of the official duty station | No |
| | the TDY station is located outside the limits of the official duty station | Yes 3/ |
| <u>From</u> a TDY station/job site directly <u>to</u> his/her home | the job site is located within the limits of the official duty station | No |
| | the TDY station is located outside the limits of the official duty station | Yes 3/ |

Travel as a Driver that keeps an Employee Away from Official Duty station Overnight

Travel to the First Temporary Duty Station (and Return from the Last Temporary Duty Station) 4/

| | |
|-------------------------------------|--|
| If an employee drives a vehicle: 1/ | is the travel time outside regular working hours "hours of work"? 2/ |
|-------------------------------------|--|

| | |
|--|--------|
| From home directly to a TDY station | Yes 3/ |
| From home directly to temporary lodging | Yes |
| From temporary lodgings to TDY station (or return) | No |
| From a TDY station directly to his/her home | Yes 3/ |
| From temporary lodgings directly to his/her home | Yes |

| Travel to a <u>Second</u> (or <u>Subsequent</u>) Temporary Duty Station(s) | | | |
|---|---|--|-----------|
| If an employee 1/ drives <u>and, if the (2d) TDY station is located:</u> and, if the employee: is the travel time outside a vehicle: <u>regular hours?</u> 2/ | | | |
| From (1 st) temporary lodgings to (2d) TDY station/job site | within limits of the (1 st) TDY station | N/A | No |
| | outside limits of (1 st) TDY station | returns to (1 st) TDY station same day | Yes 5/ 6/ |
| | | remains overnight at (2d) TDY station | Yes 5/ 7/ |
| From (1 st) temporary lodgings to (2d) temporary lodgings | within limits of (1 st) TDY station | N/A | No |
| | outside limits of (1 st) TDY station | remains overnight at (2d) TDY station | Yes |
| From (1 st) TDY station to (2d) temporary lodgings | within limits of (1 st) TDY station | N/A | No |
| | outside limits of (1 st) TDY station | remains overnight at (2d) TDY station | Yes 5/ |

1/ In contrast to home to work situations covered herein, it should be noted that if an employee drives a vehicle from his/her official duty station directly to a TDY station (or from the (1st) TDY station directly to a subsequent TDY station), the travel time is hours worked regardless of whether the TDY station (job site) is located within or outside the limits of the official duty station. The same rule applies for the return trip.

2/ All travel time as a driver of a vehicle during regular hours is hours worked.

3/ The employee shall be compensated for the time spent driving which is in excess of normal home to work travel. (Note: This deduction of normal home to work travel from the total travel time involved is appropriate only when the home to work portion of the travel is performed outside regular working hours, which also means outside corresponding hours on non-work days.)

4/ If the employee, for personal reasons, does not use temporary lodgings provided at the temporary duty station and commutes daily from home, the daily home to work travel is not working time. Only the employee's travel time in excess of normal home to work travel to the first temporary duty assignment and from the last temporary assignment is considered hours worked.

5/ The employee shall be compensated for the time spent driving which is in excess of normal commuting time at the first temporary duty station (i.e., travel time in excess of normal travel from first temporary lodgings to the first temporary duty station).

6/ The excess travel time, to the employee's temporary lodgings on the return trip is also hours worked.

7/ If the employee, for personal reasons, does not use temporary lodgings provided at the second temporary duty station, the daily commuting time on the second day (and subsequent days) is not compensable hours worked.

EXHIBIT 7

COMPTROLLER DECISIONS - OVERTIME UNDER THE FLSA

- 62 Comp. Gen 447 (1983)
B-211007, September 25, 1984
2. Burden of Proof/
Suffered and Permitted 62 Comp. Gen. 42 (1982)
62 Comp. Gen. 187 (1983)
60 Comp. Gen. 354 (1981)
B-214880, September 25 1984
3. Fitness for Duty Exam B-209768, July 15, 1983
4. Travel:
- a. General 61 Comp. Gen. 115 (1981)
B-163654, April 13, 1977
B-210697, September 29, 1983
- a. Commuting 55 Comp. Gen. 1009 (1976)
68 Comp. Gen. 535 (1989)
B-189883, November 7, 1978
- b. Transporting Equipment B-163450.12, September 20, 1978
- c. Time at Airport B-226191.2, January 4, 1989
- d. Work while traveling B-178458, June 22, 1973
B-146288, January 3, 1975
- e. Escorts/Couriers 47 Comp. Gen. 607 (1968)
61 Comp. Gen. 626 (1982)
B-178458, June 22, 1973
B-181632, April 1, 1975
- f. Arduous Conditions 41 Comp. Gen. 82 (1961)
57 Comp. Gen. 43 (1977)
B-163654, June 22, 1971
B-207795, February 6, 1985
B-179003, August 24, 1973
- g. Event that could not be
controlled administratively B-179035, October 4, 1973
B-210065, April 2, 1984
B-202694, January 4, 1982
B-190494, May 8, 1978
B-193127, May 31, 1979
66 Comp. Gen. 620 (1987)
5. Preliminary Duties 67 Comp. Gen. 247 (1988)
6. Training B-211696, September 23, 1983

Employee Absences for Court or Court-Related Services

| Nature of Services | Type of absence | | | Fees | | | Government travel expenses | |
|--|-----------------|---------------|----------------------|------|--------|-------------------|----------------------------|-------|
| | Court leave | Official duty | Annual leave or LWOP | No | Yes | | No | Yes* |
| | | | | | Retain | Turn in to agency | | |
| I. Jury Service | | | | | | | | |
| (A) U.S. or D.C. court----- | X | ----- | ----- | X | ----- | ----- | | ----- |
| (B) State or local court----- | X | ----- | ----- | ---- | ----- | ----- | X | ----- |
| II. Witness Service | | | | | | | | |
| (A) On behalf of U.S. or D.C. government---- | ----- | X | ----- | X | ----- | ----- | X | ----- |
| (B) On behalf of State or Local government | | | | | | | | |
| (1) in official capacity---- | ----- | X | ----- | ---- | ----- | X | ----- | X |
| (2) not in official capacity | X | ----- | ----- | ---- | ----- | X | X | ----- |
| (C) On behalf of private party | | | | | | | | |
| (1) in official capacity---- | ----- | X | ----- | ---- | ----- | X | ----- | X |
| (2) not in official capacity | | | | | | | | |
| (a) when a party is U.S., D.C., or State or local government. | X | ----- | ----- | ---- | ----- | X | X | ----- |
| (b) when a party is not U.S., D.C., or State or local government-- | ----- | ----- | X | ---- | X | ----- | X | ----- |

* Offset to the extent paid by C the court, authority, or party which caused the employer to be summoned.

Record of Approved Leave —Family and Medical Leave Act

| | | | | | |
|--------------------------------------|--|---------------------------|--------------|--|--|
| 1. Name | | 2. Social Security Number | | | |
| | | - | | | |
| 3. Position (<i>Title, Series</i>) | | 4. Grade | 5. Basic Pay | | |

TIMEKEEPER INFORMATION

| | | | | | |
|---------------|--|--|--|------------------|--|
| 6. Name | | | | | |
| 7. Office | | | | 8. Phone Number | |
| 9. Supervisor | | | | 10. Phone Number | |

11. Approved by: (*Name and Title*)

12. Approved for purpose of (*Check appropriate category*):

a. Birth of son or daughter and care of such child.

b. Placement of son or daughter with employee for adoption or foster care.

c. Care of employee's:

spouse
 son
 daughter
 parent with serious condition.

d. Personal serious health condition which prohibits employee from performing the essential functions of his/her position.

| | | |
|------------------------------------|---|--------------------------------|
| 13. If medical condition involved: | a. Certification Received (<i>Date</i>) | b. Received by (<i>Name</i>) |
| 14. Dates of FMLA | a. Beginning Date | b. Ending Date |

| Date Used | Hours (<i>From - To</i>) | Type of Leave | Daily Total | Hours Used To Date | Available Hours |
|-----------|----------------------------|---------------|-------------|--------------------|-----------------|
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |

Table continued on reverse.

Total Hours Used (below) includes all table entries on both sides of this form.

Total Hours Used: _____ Annual _____ Sick _____ LWOP _____ Other _____

| | | | |
|---|--|--|--|
| Certification of Physician or Practitioner (Family and Medical Leave Act of 1983) | | U.S. Department of Labor Employment Standards Administration Wage and Hour Division | |
| 1. Employee's Name | | 2. Patient's Name (if other than employee) | |
| 3. Diagnosis | | | |
| 4. Date condition commenced | | 5. Probable duration of condition | |
| 6. Regimen of treatment to be prescribed (indicate number of visits, general nature and duration of treatment, including referral to other provider of health services. Include schedule of visits or treatment, if it is medically necessary for the employee to be off work on an intermittent basis or to work less than the employee's normal schedule of hours per day or days per week.) a. By Physical or Practitioner: | | | |
| b. By another provider of health services, if referred by r Practitioner: | | | |
| If this certification relates to care for the employee's seriously-ill family member, skip items 7, 8, and 9 and proceed to Items 13 thru 20 on reverse side. Otherwise, continue below. | | | |
| Check Yes or No in the boxes below, as appropriate | | | |
| 7. Is inpatient hospitalization of the employee required? [] Yes [] No | | | |
| 8. Is employee able to perform work of any kind? (If "NO", skip to item 9) [] Yes [] No | | | |
| 9. Is employee able to perform the functions of employee's position? (Answer after reviewing statement from employer of essential functions of employee's position, or, if none provided, after discussing with employee) [] Yes [] No | | | |
| 10. Signature of Physical or Practitioner | | 11. Date | 12. Type of Practice (Field of Specialization, if any) |

For certification relating to care for the employee's seriously-ill family member, complete items 13 thru 17 below as they apply to the family member and proceed to item 20.

13. Is inpatient hospitalization of the employee required? Yes No

14. Does (or will) the patient require assistance for basic medical, hygiene, nutritional needs, safety or transportation? Yes No

15. After review of the employee's signed statement (See item 17 below), is the employee's presence necessary or would it be beneficial for the care of the patient? (This may include psychological comfort.) Yes No

16. Estimate the period of time care is needed or the employee's presence would be beneficial.

Item 17 is to be completed by the employee needing family leave.

17. When Family Leave is needed to care for a seriously-ill family member, the employee shall state the care he or she will provide and an estimate of the time period which this care will be provided, including a schedule if leave is to be taken intermittently or on a reduced leave schedule.

18. Employee Signature

19. Date

20. Signature of Physician or Practitioner

21. Date

22. Type of Practice (Field of Specialization, if any)