Leave Flexibilities for Employees Adversely Affected by a Pandemic Health Crisis

Introduction

The Federal Government offers numerous leave programs and policies and other paid time off flexibilities to assist employees prevented from reporting for work and performing their duties because of illness caused by a pandemic health crisis or caring for a family member who is affected by a pandemic health crisis. These programs and policies are summarized in Section I-D of this Guide. Employees should consult with their human resources office for policy guidance on the appropriate use of each program and policy. Section I-D of this Guide applies to Federal employees covered by the Federal annual and sick leave systems established under chapter 63 of title 5, United States Code. Employees of the U.S. Postal Service, the Transportation Security Administration, and certain other Federal entities are not covered by chapter 63. Employees of these organizations should contact their servicing human resources offices for information about leave policies and programs applicable to them.

Questions and Answers

1. *What are my leave options if I have been diagnosed with the flu?*

   An employee who has been diagnosed with the flu may use accrued sick leave or annual leave, request advanced sick leave or annual leave, request donated leave under the agency's voluntary leave transfer or leave bank program or an established emergency leave transfer program, or use any earned compensatory time off, earned compensatory time off for travel, or earned credit hours. In addition, an employee may invoke his or her entitlement to unpaid leave under the Family and Medical Leave Act (FMLA) and take a total of up to 12 weeks of leave without pay for a serious health condition. An employee may substitute his or her accrued annual leave and sick leave, as appropriate, for unpaid leave under the FMLA.

2. *May I take sick leave if I have been exposed to the flu?*

   An employee may use accrued sick leave when he or she would, as determined by the health authorities or a health care provider, jeopardize the health of others because of his or her exposure to a communicable disease. An employee may also take accrued annual leave or other paid time off if he or she was exposed to a communicable disease.

3. *Do I have to use all of my annual and sick leave before requesting donated leave from my coworkers?*

   No, an employee may request donated leave before he or she exhausts available annual and sick leave. However, before an employee may become an approved leave recipient under his or her agency's **voluntary leave transfer or leave bank program**, the employing agency must determine that the employee's absence from duty without available paid leave because of a medical emergency is (or is expected to be) at least 24 hours. (For part-time employees or employees on uncommon tours of duty, the period of

absence without paid leave is prorated.) An employee may receive donated annual leave under an agency's voluntary leave transfer or leave bank program when he or she becomes an approved leave recipient.

Under an **emergency leave transfer program**, an employee is not required to exhaust his or her available paid leave before receiving donated annual leave. See guidance on Donated Leave on page I-D-2.

4. *If I'm afraid of catching the flu and don't want to come to work, what are my leave options?*

   An employee who is healthy may request annual leave for the period of absence from his or her job. An employee has a right to take annual leave, subject to the right of the supervisor to schedule the time at which annual leave may be taken. In addition, an employee may request to use other paid time off, such as earned compensatory time off, earned compensatory time off for travel, or earned credit hours.

5. *[hypothetical] My family was planning to leave for a vacation when my annual leave was canceled because of a pandemic influenza. Can my agency cancel my leave? Will the agency reimburse me for my plane tickets?*

   An agency may cancel an employee's scheduled annual leave. An employee may use annual leave for personal needs, such as vacations, but his or her supervisor has the right to schedule the time at which annual leave may be taken. An agency has no obligation or authority to reimburse an employee for costs incurred by an employee resulting from the cancellation of his or her leave.

6. *[hypothetical] The cafeteria in my building is closed due to the avian flu. The nearest food facility is more than half an hour away. Will I be charged leave because it takes me at least an hour and a half to get to the nearest restaurant, eat, and return to work?*

   An employee must fulfill his or her daily basic work requirement (e.g., 8 hours). For many reasons, an employee in this situation may want to bring a lunch to work. If the employee's agency allows only 30 minutes for lunch, and he or she chooses to take 1.5 hours for lunch, the employee may request annual leave, other paid time off, or leave without pay to account for the additional hour.

   A lunch or other meal period is an agency approved period of time in a nonpay or nonwork status. A lunch or other meal period is not an entitlement.

7. *[hypothetical] I have "use or lose" annual leave, which I scheduled to use before the end of the leave year. My agency has canceled all scheduled annual leave until further notice because employees must be at work due to a pandemic influenza. It looks like this situation will continue through the beginning of the new leave year. Will I be forced to forfeit my "use or lose" annual leave?*

   If an employee schedules "use or lose" annual leave in writing before the third biweekly pay period prior to the end of the leave year, and the leave is canceled due to an exigency of the public business (i.e., an urgent need for the employee to be at work), the employee may request restoration of the forfeited annual leave. See fact sheet on *Restoration of Annual Leave*.

8. *[hypothetical] I have "use or lose" annual leave, which I scheduled to use before the end of the leave year. I know if I take sick leave because of sickness or injury, my scheduled annual leave will be restored if I am unable to use it before the end of the leave year. My wife, however, is the one who is sick with the flu. If I take sick leave to care for my wife, will my "use or lose" annual leave be restored?*

   No. Only "use or lose" annual leave forfeited because of a period of absence due to an employee's own sickness or injury may be restored. Employees who are using sick leave, donated leave, or other paid time off during a pandemic health crisis must be diligent about scheduling and using any excess annual leave ("use or lose" annual leave) by the end of the leave year

9. *[hypothetical] A family member has the flu, or complications from the flu, and I must care for him or her. What are my leave options?*

   An employee may use a total of up to 104 hours (13 days) of sick leave each leave year to provide general medical care to a family member and up to 12 weeks (480 hours) of sick leave to care for a family member who develops a serious health condition. If the employee has already used 13 days of sick leave for general family care and bereavement purposes, that amount must be subtracted from the 12 weeks (480 hours) of sick leave an employee may use to provide care for a family member with a serious health condition. In addition to sick leave, an employee may use annual leave, accrued compensatory time off, compensatory time off for travel, or credit hours. The employee also may request to receive donated annual leave through his or her agency's leave transfer or leave bank programs. Finally, an employee may invoke his or her entitlement to unpaid leave under the Family and Medical Leave Act (FMLA) and take a total of up to 12 weeks (480 hours) of leave without pay to provide care for a spouse, son or daughter, or parent with a serious health condition.

10. *If I exhaust all of my annual and sick leave, what are my options?*

    There are a number of alternatives for an employee who has exhausted his or her accrued annual and sick leave. An employee may request advance annual and/or sick leave. The amount of annual leave that may be advanced may not exceed the amount the employee will accrue during the remainder of the leave year. A maximum of 30 days of sick leave may be advanced for an employee's serious disability or ailment. In addition, an employee who has a personal or family medical emergency and who has exhausted his or her own available paid leave may be eligible to receive donated annual leave from his or her agency's voluntary leave transfer or leave bank program. If OPM has established an emergency leave transfer program, the employee also may be eligible to receive donated leave from the emergency leave transfer program.

11. *[hypothetical] My child's school has been closed because of the flu pandemic. My child is not sick, but I cannot find a babysitter. What are my leave options?*

    An employee who is healthy or is caring for a family member who is healthy may request annual leave for the period of absence from his or her job. An employee has a right to take annual leave, subject to the right of the supervisor to schedule the time at which annual leave may be taken. In addition, an employee may request to use other paid time off, such as earned compensatory time off, earned compensatory time off for travel, or earned credit hours.

12. *[hypothetical] A family member died due to complications from the flu. I have to make arrangements for and attend his/her funeral. What leave can I take?*

    An employee may use a total of up to 104 hours (13 days) of sick leave each leave year to make arrangements necessitated by the death of a family member or attend the funeral of a family member. In addition, an employee may request to use accrued annual leave or other paid time off, such as earned compensatory time off, earned compensatory time off for travel, and earned credit hours.

13. *[hypothetical] My fiancé is very sick with the flu and I am the only person available to take care of him. May I use sick leave?*

    An employee may use a total of up to 12 weeks (480 hours) of accrued sick leave to care for a *family member* with a serious health condition. A *family member* includes any individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship (as determined by each agency).

14. *May I receive donated annual leave from my coworkers to care for a sick family member?*

    An employee with a personal or family medical emergency who has exhausted his or her own available paid leave may be eligible to receive donated annual leave from his or her agency's voluntary leave transfer or leave bank program. If OPM has established an emergency leave transfer program, the employee also may be eligible to receive donated leave from the emergency leave transfer program.