

Sec.

SUBCHAPTER VI—LEAVE TRANSFER IN  
DISASTERS AND EMERGENCIES

6391. Authority for leave transfer program in disasters and emergencies.

## AMENDMENTS

2016—Pub. L. 114-328, div. A, title XI, §1138(c)(2), (d)(4), (e)(2), Dec. 23, 2016, 130 Stat. 2462, 2469, 2470, which directed amendment of the table of sections for subchapter II of chapter 63 by adding items 6329a to 6329c, was executed to the table of sections for this chapter, to reflect the probable intent of Congress.

2015—Pub. L. 114-75, §2(b), Nov. 5, 2015, 129 Stat. 641, added item 6329.

1999—Pub. L. 106-56, §1(c)(2), Sept. 24, 1999, 113 Stat. 407, added item 6328.

1997—Pub. L. 105-18, title II, §9004(b), June 12, 1997, 111 Stat. 197, added heading of subchapter VI and item 6391.

1994—Pub. L. 103-329, title VI, §629(a)(2)(B), Sept. 30, 1994, 108 Stat. 2423, added item 6327.

1993—Pub. L. 103-103, §5(a)(2), Oct. 8, 1993, 107 Stat. 1023, substituted “Authority to participate in both programs” for “Limitation on employee participation” in item 6373.

Pub. L. 103-3, title II, §201(a)(2), Feb. 5, 1993, 107 Stat. 23, added heading of subchapter V and items 6381 to 6387.

1990—Pub. L. 101-508, title VII, §7202(i)(2), Nov. 5, 1990, 104 Stat. 1388-337, inserted “and nonappropriated fund” after “office” in item 6312.

1988—Pub. L. 100-566, §2(d)(1)(B), Oct. 31, 1988, 102 Stat. 2844, which provided that the table of sections for subchapters III and IV were to be repealed effective 5 years after Oct. 31, 1988, was repealed by Pub. L. 103-103, §2, Oct. 8, 1993, 107 Stat. 1022, effective Oct. 30, 1993.

Pub. L. 100-566, §2(b), Oct. 31, 1988, 102 Stat. 2843, added heading of subchapter III and items 6331 to 6340 and heading of subchapter IV and items 6361 to 6373.

1975—Pub. L. 94-183, §2(27), Dec. 31, 1975, 89 Stat. 1058, struck out item 6309 “Leave of absence; rural carriers”.

1970—Pub. L. 91-563, §1(b), Dec. 19, 1970, 84 Stat. 1476, included witness service and official duty status for certain witness service in item 6322.

1968—Pub. L. 90-588, §1(b), Oct. 17, 1968, 82 Stat. 1151, added item 6326.

Pub. L. 90-367, §2(b), June 29, 1968, 82 Stat. 277, added item 6312.

1967—Pub. L. 90-221, §3(b), Dec. 23, 1967, 81 Stat. 671, added item 6325.

1966—Pub. L. 89-747, §1(3), Nov. 2, 1966, 80 Stat. 1179, inserted reference to leave for crews of vessels in item 6305.

MODERNIZING FEDERAL LEAVE POLICIES FOR CHILDBIRTH,  
ADOPTION, AND FOSTER CARE TO RECRUIT AND RETAIN  
TALENT AND IMPROVE PRODUCTIVITY

Memorandum of President of the United States, Jan. 15, 2015, 80 F.R. 3135, provided:

Memorandum for the Heads of Executive Departments and Agencies

Now more than ever, our Nation’s economic success rests on our ability to empower our citizens to choose jobs that best utilize their talents and interests. All employers, including the Federal Government, should support parents to ensure they can both contribute fully in the workplace and also meet the needs of their families. The availability of paid maternity leave, for example, has been shown to increase the likelihood that mothers return to their jobs following the birth of a child, and paid maternity and paternity leave has been shown to improve the health and development outcomes of the infant. In addition, it is critically important for parents and their newborn or newly adopted child to have the opportunity to form strong family attachments and relationships.

Men and women both need time to care for their families and should have access to workplace flexibilities that help them succeed at work and at home. Offering

family leave and other workplace flexibilities to parents can help achieve the goals of recruiting and retaining talent, lowering costly worker turnover, increasing employee engagement, boosting employee morale, and ensuring a diverse and inclusive workforce. Yet, the United States lags behind almost every other country in ensuring some form of paid parental leave to its Federal workforce; we are the only developed country in the world without it.

My memorandum of June 23, 2014 (Enhancing Workplace Flexibilities and Work-Life Programs), directs the heads of executive departments and agencies (agencies) to more fully utilize workplace flexibilities and work-life programs to promote recruitment, retention, employee engagement, and workforce productivity. My Administration fully supports efforts to align the Federal Government with the parental leave policies of leading private sector companies and other industrialized countries, and will continue to take administrative steps to modernize leave policies to better support Federal employees.

By the authority vested in me as President by the Constitution and the laws of the United States of America, and to further build on these important goals and the work currently underway by the Office of Personnel Management (OPM) and other agencies to review existing personnel policies, I hereby direct as follows:

SECTION 1. *Advanced Sick and Annual Leave.* (a) Agencies shall ensure that, to the extent permitted by law, their policies offer 240 hours of advanced sick leave, at the request of an employee and in appropriate circumstances, in connection with the birth or adoption of a child or for other sick leave eligible uses. This benefit shall be provided for purposes specified in law and regulation irrespective of existing leave balances. Within 60 days of OPM issuing its guidance pursuant to section 3 of this memorandum, agencies shall make any necessary changes to their policies to implement this section.

(b) Agencies shall ensure that their policies offer the maximum amount of advanced annual leave permitted by law, at the request of an employee, for foster care placement in their home or bonding with a healthy newborn or newly adopted child. This benefit shall be provided for purposes specified in law and regulation irrespective of existing leave balances. Within 60 days of OPM issuing its guidance pursuant to section 3 of this memorandum, agencies shall make any necessary changes to their policies to implement this section.

SEC. 2. *Emergency Backup Dependent Care.* Agencies shall consider, consistent with existing resources, providing access to affordable emergency backup dependent care services such as through an Employee Assistance Program.

SEC. 3. *Update Leave Policies.* (a) In coordination with the agency review and related OPM summary report of workplace flexibilities and work-life policies required by sections 4 and 5 of my memorandum of June 23, 2014, agencies shall make necessary changes to their policies and practices to ensure that employees experiencing the birth or adoption of a child, foster care placement in their home, or who have other circumstances eligible for sick or annual leave are aware of the full range of benefits to which they are entitled. These changes shall also ensure that discretionary flexibilities are used to the maximum extent practicable, in accordance with the laws and regulations governing these programs and consistent with mission needs, and that employees understand the benefits for which they may qualify. Any necessary changes to agency policies required by this section shall be made as soon as possible, and no later than January 1, 2016.

(b) For purposes of the changes required by subsection (a) of this section, agencies shall review policies with respect to the following required benefits:

(i) use of accrued sick leave (including period of incapacitation for birth mother, care of birth mother during period of incapacitation, doctor appointments for birth parents or newborn child, or any periods of time

during which adoptive parents are ordered or required by an adoption agency or by a court to take time off from work to care for the adopted child);

(ii) leave pursuant to the Family and Medical Leave Act (including intermittent leave for childbirth, adoption, or foster care placement in the home; and leave without pay or substitution of appropriate paid leave in accordance with law and regulation);

(iii) use of accrued annual leave;

(iv) use of leave without pay for a longer period than what is provided for under the Family and Medical Leave Act; and

(v) break times and private space for nursing mothers.

(c) For purposes of the changes required by subsection (a) of this section, agencies shall ensure those changes provide to the maximum extent practicable the following discretionary benefits:

(i) advancement of sick or annual leave, consistent with the requirements set forth in section 1 of this memorandum;

(ii) donated annual leave under the Voluntary Leave Transfer Program;

(iii) donated annual leave under the Voluntary Leave Bank Program;

(iv) emergency backup dependent care services, such as through an Employee Assistance Program;

(v) telework; and

(vi) flexible work schedules, including part-time schedules and job sharing arrangements.

(d) Within 90 days of the date of this memorandum, OPM shall issue guidance to agencies regarding implementing advanced sick and annual leave policies, including their application to part-time employees. The OPM summary report of workplace flexibilities and work-life policies required by section 4 of my memorandum of June 23, 2014, shall provide further guidance to implement this memorandum.

SEC. 4. *General Provisions.* (a) Nothing in this memorandum shall be construed to impair or otherwise affect:

(i) the authority granted by law to a department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This memorandum shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

(d) The Director of OPM is hereby authorized and directed to publish this memorandum in the Federal Register.

BARACK OBAMA.

SUBCHAPTER I—ANNUAL AND SICK LEAVE

§ 6301. **Definitions**

For the purpose of this subchapter—

(1) “United States”, when used in a geographical sense means the several States and the District of Columbia; and

(2) “employee” means—

(A) an employee as defined by section 2105 of this title; and

(B) an individual first employed by the government of the District of Columbia before October 1, 1987;

but does not include—

(i) a teacher or librarian of the public schools of the District of Columbia;

(ii) a part-time employee who does not have an established regular tour of duty during the administrative workweek;

(iii) a temporary employee engaged in construction work at an hourly rate;

(iv) an employee of the Panama Canal Commission when employed on the Isthmus of Panama;

(v) a physician, dentist, or nurse in the Veterans Health Administration of the Department of Veterans Affairs;

(vi) an employee of either House of Congress or of the two Houses;

(vii) an employee of a corporation supervised by the Farm Credit Administration if private interests elect or appoint a member of the board of directors;

(viii) an alien employee who occupies a position outside the United States, except as provided by section 6310 of this title;

(ix) a “teacher” or an individual holding a “teaching position” as defined by section 901 of title 20;

(x) an officer in the executive branch or in the government of the District of Columbia who is appointed by the President and whose rate of basic pay exceeds the highest rate payable under section 5332 of this title;

(xi) an officer in the executive branch or in the government of the District of Columbia who is designated by the President, except a postmaster, United States attorney, or United States marshal;

(xii) a chief of mission (as defined in section 102(a)(3) of the Foreign Service Act of 1980); or

(xiii) an officer in the legislative or judicial branch who is appointed by the President.

Notwithstanding clauses (x)–(xi) of paragraph (2), the term “employee” includes any member of the Senior Foreign Service or any Foreign Service officer (other than a member or officer serving as chief of mission or in a position which requires appointment by and with the advice and consent of the Senate) and any member of the Foreign Service commissioned as a diplomatic or consular officer, or both, under section 312 of the Foreign Service Act of 1980.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 517; Pub. L. 91-375, §6(c)(17), Aug. 12, 1970, 84 Stat. 776; Pub. L. 95-519, §1, Oct. 25, 1978, 92 Stat. 1819; Pub. L. 96-70, title III, §3302(e)(2), Sept. 27, 1979, 93 Stat. 498; Pub. L. 96-465, title II, §§2312(a), 2314(f)(1), Oct. 17, 1980, 94 Stat. 2166, 2168; Pub. L. 99-335, title II, §207(c)(1), formerly §207(c), June 6, 1986, 100 Stat. 595, renumbered §207(c)(1), Pub. L. 99-556, title II, §201(1), Oct. 27, 1986, 100 Stat. 3135; Pub. L. 102-54, §13(b)(2), June 13, 1991, 105 Stat. 274.)

HISTORICAL AND REVISION NOTES

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
(1) .....	5 U.S.C. 2061(d).	Sept. 6, 1960, Pub. L. 86-707, §402(c), 74 Stat. 800.
(2) .....	5 U.S.C. 2061(a), (b), (c)(1) (less last sentence).	Oct. 30, 1951, ch. 631, §202, 65 Stat. 679. July 2, 1953, ch. 178, §1 “(c)(1) (less last sentence)”, 67 Stat. 136. Sept. 6, 1960, Pub. L. 86-707, §402(a), 74 Stat. 800. Aug. 21, 1964, Pub. L. 88-471, §6(a), 78 Stat. 583.