

this section, the Director of the Office of Personnel Management shall—

(A) prescribe regulations to carry out this section; and

(B) prescribe regulations that provide guidance to agencies regarding—

(i) acceptable agency uses of administrative leave; and

(ii) the proper recording of—

(I) administrative leave; and

(II) other leave authorized by law.

(2) AGENCY ACTION.—Not later than 270 calendar days after the date on which the Director of the Office of Personnel Management prescribes regulations under paragraph (1), each agency shall revise and implement the internal policies of the agency to meet the requirements of this section.

(d) RELATION TO OTHER LAWS.—Notwithstanding subsection (a) of section 7421 of title 38, this section shall apply to an employee described in subsection (b) of that section.

(Added Pub. L. 114-328, div. A, title XI, § 1138(c)(1), Dec. 23, 2016, 130 Stat. 2461.)

REFERENCES IN TEXT

The date of enactment of this section, referred to in subsec. (c)(1), is the date of enactment of Pub. L. 114-328, which was approved Dec. 23, 2016.

SENSE OF CONGRESS

Pub. L. 114-328, div. A, title XI, § 1138(b), Dec. 23, 2016, 130 Stat. 2460, provided that: “It is the sense of Congress that—

“(1) agency use of administrative leave, and leave that is referred to incorrectly as administrative leave in agency recording practices, has exceeded reasonable amounts—

“(A) in contravention of—

“(i) established precedent of the Comptroller General of the United States; and

“(ii) guidance provided by the Office of Personnel Management; and

“(B) resulting in significant cost to the Federal Government;

“(2) administrative leave should be used sparingly;

“(3) prior to the use of paid leave to address personnel issues, an agency should consider other actions, including—

“(A) temporary reassignment; and

“(B) transfer;

“(4) an agency should prioritize and expeditiously conclude an investigation in which an employee is placed in administrative leave so that, not later than the conclusion of the leave period—

“(A) the employee is returned to duty status; or

“(B) an appropriate personnel action is taken with respect to the employee;

“(5) data show that there are too many examples of employees placed in administrative leave for 6 months or longer, leaving the employees without any available recourse to—

“(A) return to duty status; or

“(B) challenge the decision of the agency;

“(6) an agency should ensure accurate and consistent recording of the use of administrative leave so that administrative leave can be managed and overseen effectively; and

“(7) other forms of excused absence authorized by law should be recorded separately from administrative leave, as defined by the amendments made by this section [see section 1138a of Pub. L. 114-328 set out as a Short Title of 2016 Amendment note under section 101 of this title].”

GAO REPORT

Pub. L. 114-328, div. A, title XI, § 1138(d)(2), Dec. 23, 2016, 130 Stat. 2468, provided that: “Not later than 5

years after the date of enactment of this Act [Dec. 23, 2016], and every 5 years thereafter, the Comptroller General of the United States shall submit to the Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Oversight and Government Reform of the House of Representatives a report on the results of an evaluation of the implementation of the authority provided under sections 6329a and 6329b of title 5, United States Code, as added by subsection (c)(1) of this section and paragraph (1) of this subsection, respectively, including—

“(A) the number of times that an agency, under subsection (c)(1) of such section 6329b—

“(i) consulted with the investigator responsible for conducting the investigation to which an employee was subject with respect to the decision of the agency to grant an extension under that subsection; and

“(ii) did not have a consultation described in clause (i), including the reasons that the agency failed to have such a consultation;

“(B) an assessment of the use of the authority provided under subsection (d) of such section 6329b by agencies, including data regarding the number and length of extensions granted under that subsection;

“(C) an assessment of the compliance with the requirements of subsection (f) of such section 6329b by agencies;

“(D) a review of the practice of agency placement of an employee in investigative or notice leave under subsection (b) of such section 6329b because of a determination under subsection (b)(2)(A)(iv) of that section that the employee jeopardized legitimate Government interests, including the extent to which such determinations were supported by evidence; and

“(E) an assessment of the effectiveness of subsection (g) of such section 6329b in preventing and correcting the use of extended investigative leave as a tool of reprisal for making a protected disclosure or engaging in protected activity as described in paragraph (8) or (9) of section 2302(b) of title 5, United States Code.”

§ 6329b. Investigative leave and notice leave

(a) DEFINITIONS.—In this section—

(1) the term “agency”—

(A) means an Executive agency (as defined in section 105 of this title);

(B) includes the Department of Veterans Affairs; and

(C) does not include the Government Accountability Office;

(2) the term “Chief Human Capital Officer” means—

(A) the Chief Human Capital Officer of an agency designated or appointed under section 1401; or

(B) the equivalent;

(3) the term “committees of jurisdiction”, with respect to an agency, means each committee of the Senate or House of Representatives with jurisdiction over the agency;

(4) the term “Director” means the Director of the Office of Personnel Management;

(5) the term “employee”—

(A) has the meaning given the term in section 2105; and

(B) does not include—

(i) an intermittent employee who does not have an established regular tour of duty during the administrative workweek; or

(ii) the Inspector General of an agency;

(6) the term “investigative entity” means—

- (A) an internal investigative unit of an agency granting investigative leave under this section;
- (B) the Office of Inspector General of an agency granting investigative leave under this section;
- (C) the Attorney General; and
- (D) the Office of Special Counsel;
- (7) the term “investigative leave” means leave—
- (A) without loss of or reduction in—
- (i) pay;
- (ii) leave to which an employee is otherwise entitled under law; or
- (iii) credit for time or service;
- (B) that is not authorized under any other provision of law; and
- (C) in which an employee who is the subject of an investigation is placed;
- (8) the term “notice leave” means leave—
- (A) without loss of or reduction in—
- (i) pay;
- (ii) leave to which an employee is otherwise entitled under law; or
- (iii) credit for time or service;
- (B) that is not authorized under any other provision of law; and
- (C) in which an employee who is in a notice period is placed; and
- (9) the term “notice period” means a period beginning on the date on which an employee is provided notice required under law of a proposed adverse action against the employee and ending on the date on which an agency may take the adverse action.
- (b) LEAVE FOR EMPLOYEES UNDER INVESTIGATION OR IN A NOTICE PERIOD.—
- (1) AUTHORITY.—An agency may, in accordance with paragraph (2), place an employee in—
- (A) investigative leave if the employee is the subject of an investigation;
- (B) notice leave if the employee is in a notice period; or
- (C) notice leave following a placement in investigative leave if, not later than the day after the last day of the period of investigative leave—
- (i) the agency proposes or initiates an adverse action against the employee; and
- (ii) the agency determines that the employee continues to meet 1 or more of the criteria described in paragraph (2)(A).
- (2) REQUIREMENTS.—An agency may place an employee in leave under paragraph (1) only if the agency has—
- (A) made a determination with respect to the employee that the continued presence of the employee in the workplace during an investigation of the employee or while the employee is in a notice period, as applicable, may—
- (i) pose a threat to the employee or others;
- (ii) result in the destruction of evidence relevant to an investigation;
- (iii) result in loss of or damage to Government property; or
- (iv) otherwise jeopardize legitimate Government interests;
- (B) considered—
- (i) assigning the employee to duties in which the employee no longer poses a threat described in clauses (i) through (iv) of subparagraph (A);
- (ii) allowing the employee to take leave for which the employee is eligible;
- (iii) if the employee is absent from duty without approved leave, carrying the employee in absence without leave status; and
- (iv) for an employee subject to a notice period, curtailing the notice period if there is reasonable cause to believe the employee has committed a crime for which a sentence of imprisonment may be imposed; and
- (C) determined that none of the available options under clauses (i) through (iv) of subparagraph (B) is appropriate.
- (3) DURATION OF LEAVE.—
- (A) INVESTIGATIVE LEAVE.—Upon the expiration of the 10 work day period described in section 6329a(b)(1) with respect to an employee, and if an agency determines that an extended investigation of the employee is necessary, the agency may place the employee in investigative leave for a period of not more than 30 work days.
- (B) NOTICE LEAVE.—Placement of an employee in notice leave shall be for a period not longer than the duration of the notice period.
- (4) EXPLANATION OF LEAVE.—
- (A) IN GENERAL.—If an agency places an employee in leave under this subsection, the agency shall provide the employee a written explanation of whether the employee was placed in investigative leave or notice leave.
- (B) EXPLANATION.—The written notice under subparagraph (A) shall describe the limitations of the leave placement, including—
- (i) the applicable limitations under paragraph (3); and
- (ii) in the case of a placement in investigative leave, an explanation that, at the conclusion of the period of leave, the agency shall take an action under paragraph (5).
- (5) AGENCY ACTION.—Not later than the day after the last day of a period of investigative leave for an employee under paragraph (1), an agency shall—
- (A) return the employee to regular duty status;
- (B) take 1 or more of the actions under clauses (i) through (iv) of paragraph (2)(B);
- (C) propose or initiate an adverse action against the employee as provided under law; or
- (D) extend the period of investigative leave under subsections (c) and (d).
- (6) RULE OF CONSTRUCTION.—Nothing in paragraph (5) shall be construed to prevent the continued investigation of an employee, ex-

cept that the placement of an employee in investigative leave may not be extended for that purpose except as provided in subsections (c) and (d).

(c) INITIAL EXTENSION OF INVESTIGATIVE LEAVE.—

(1) IN GENERAL.—Subject to paragraph (4), if the Chief Human Capital Officer of an agency, or the designee of the Chief Human Capital Officer, approves such an extension after consulting with the investigator responsible for conducting the investigation to which an employee is subject, the agency may extend the period of investigative leave for the employee under subsection (b) for not more than 30 work days.

(2) MAXIMUM NUMBER OF EXTENSIONS.—The total period of additional investigative leave for an employee under paragraph (1) may not exceed 90 work days.

(3) DESIGNATION GUIDANCE.—Not later than 270 days after the date of enactment of this section, the Chief Human Capital Officers Council shall issue guidance to ensure that if the Chief Human Capital Officer of an agency delegates the authority to approve an extension under paragraph (1) to a designee, the designee is at a sufficiently high level within the agency to make an impartial and independent determination regarding the extension.

(4) EXTENSIONS FOR OIG EMPLOYEES.—

(A) APPROVAL.—In the case of an employee of an Office of Inspector General—

(i) the Inspector General or the designee of the Inspector General, rather than the Chief Human Capital Officer or the designee of the Chief Human Capital Officer, shall approve an extension of a period of investigative leave for the employee under paragraph (1); or

(ii) at the request of the Inspector General, the head of the agency within which the Office of Inspector General is located shall designate an official of the agency to approve an extension of a period of investigative leave for the employee under paragraph (1).

(B) GUIDANCE.—Not later than 270 calendar days after the date of enactment of this section, the Council of the Inspectors General on Integrity and Efficiency shall issue guidance to ensure that if the Inspector General or the head of an agency, at the request of the Inspector General, delegates the authority to approve an extension under subparagraph (A) to a designee, the designee is at a sufficiently high level within the Office of Inspector General or the agency, as applicable, to make an impartial and independent determination regarding the extension.

(d) FURTHER EXTENSION OF INVESTIGATIVE LEAVE.—

(1) REPORT.—After reaching the limit under subsection (c)(2) and if an investigative entity submits a certification under paragraph (2) of this subsection, an agency may further extend a period of investigative leave for an employee for periods of not more than 30 work days each, not later than 5 business days after granting each further extension, the agency sub-

mits to the Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Oversight and Government Reform of the House of Representatives, along with any other committees of jurisdiction, a report containing—

(A) the title, position, office or agency subcomponent, job series, pay grade, and salary of the employee;

(B) a description of the duties of the employee;

(C) the reason the employee was placed in investigative leave;

(D) an explanation as to why—

(i) the employee poses a threat described in clauses (i) through (iv) of subsection (b)(2)(A); and

(ii) the agency is not able to reassign the employee to another position within the agency;

(E) in the case of an employee required to telework under section 6502(c) during the investigation of the employee—

(i) the reasons that the agency required the employee to telework under that section; and

(ii) the duration of the teleworking requirement;

(F) the status of the investigation of the employee;

(G) the certification described in paragraph (2); and

(H) in the case of a completed investigation of the employee—

(i) the results of the investigation; and

(ii) the reason that the employee remains in investigative leave.

(2) CERTIFICATION.—If, after an employee has reached the limit under subsection (c)(2), an investigative entity determines that additional time is needed to complete the investigation of the employee, the investigative entity shall—

(A) certify to the appropriate agency that additional time is needed to complete the investigation of the employee; and

(B) include in the certification an estimate of the amount of time that is necessary to complete the investigation of the employee.

(3) NO EXTENSIONS AFTER COMPLETION OF INVESTIGATION.—An agency may not further extend a period of investigative leave of an employee under paragraph (1) on or after the date that is 30 calendar days after the completion of the investigation of the employee by an investigative entity.

(e) CONSULTATION GUIDANCE.—Not later than 270 calendar days after the date of enactment of this section, the Council of the Inspectors General on Integrity and Efficiency, in consultation with the Attorney General and the Special Counsel, shall issue guidance on best practices for consultation between an investigator and an agency on the need to place an employee in investigative leave during an investigation of the employee, including during a criminal investigation, because the continued presence of the employee in the workplace during the investigation may—

- (1) pose a threat to the employee or others;
- (2) result in the destruction of evidence relevant to an investigation;
- (3) result in loss of or damage to Government property; or
- (4) otherwise jeopardize legitimate Government interests.

(f) REPORTING AND RECORDS.—

(1) IN GENERAL.—An agency shall keep a record of the placement of an employee in investigative leave or notice leave by the agency, including—

(A) the basis for the determination made under subsection (b)(2)(A);

(B) an explanation of why an action under clauses (i) through (iv) of subsection (b)(2)(B) was not appropriate;

(C) the length of the period of leave;

(D) the amount of salary paid to the employee during the period of leave;

(E) the reasons for authorizing the leave, including, if applicable, the recommendation made by an investigator under subsection (c)(1);

(F) whether the employee is required to telework under section 6502(c) during the investigation, including the reasons for requiring the employee to telework; and

(G) the action taken by the agency at the end of the period of leave, including, if applicable, the granting of any extension of a period of investigative leave under subsection (c) or (d).

(2) AVAILABILITY OF RECORDS.—An agency shall make a record kept under paragraph (1) available—

(A) to any committee of jurisdiction, upon request;

(B) to the Office of Personnel Management; and

(C) as otherwise required by law, including for the purposes of the Administrative Leave Act of 2016 and the amendments made by that Act.

(g) RECOURSE TO THE OFFICE OF SPECIAL COUNSEL.—For purposes of subchapter II of chapter 12 and section 1221, placement on investigative leave under subsection (b) of this section for a period of not less than 70 work days shall be considered a personnel action under paragraph (8) or (9) of section 2302(b).

(h) REGULATIONS.—

(1) OPM ACTION.—Not later than 270 calendar days after the date of enactment of this section, the Director shall prescribe regulations to carry out this section, including guidance to agencies regarding—

(A) acceptable purposes for the use of—

- (i) investigative leave; and
- (ii) notice leave;

(B) the proper recording of—

- (i) the leave categories described in subparagraph (A); and
- (ii) other leave authorized by law;

(C) baseline factors that an agency shall consider when making a determination that the continued presence of an employee in the workplace may—

- (i) pose a threat to the employee or others;

(ii) result in the destruction of evidence relevant to an investigation;

(iii) result in loss or damage to Government property; or

(iv) otherwise jeopardize legitimate Government interests; and

(D) procedures and criteria for the approval of an extension of a period of investigative leave under subsection (c) or (d).

(2) AGENCY ACTION.—Not later than 270 calendar days after the date on which the Director prescribes regulations under paragraph (1), each agency shall revise and implement the internal policies of the agency to meet the requirements of this section.

(i) RELATION TO OTHER LAWS.—Notwithstanding subsection (a) of section 7421 of title 38, this section shall apply to an employee described in subsection (b) of that section.

(Added Pub. L. 114–328, div. A, title XI, § 1138(d)(1), Dec. 23, 2016, 130 Stat. 2462.)

REFERENCES IN TEXT

The date of enactment of this section, referred to in subsecs. (c)(3), (4)(B), (e) and (h)(1), is the date of enactment of Pub. L. 114–328, which was approved Dec. 23, 2016.

The Administrative Leave Act of 2016, referred to in subsec. (f)(2)(C), is section 1138 of title XI of div. A of Pub. L. 114–328, Dec. 23, 2016, 130 Stat. 2460. For complete classification of this Act to the Code, see Short Title of 2016 Amendment note set out under section 101 of this title and Tables.

§ 6329c. Weather and safety leave

(a) DEFINITIONS.—In this section—

(1) the term “agency”—

(A) means an Executive agency (as defined in section 105 of this title);

(B) includes the Department of Veterans Affairs; and

(C) does not include the Government Accountability Office; and

(2) the term “employee”—

(A) has the meaning given the term in section 2105; and

(B) does not include an intermittent employee who does not have an established regular tour of duty during the administrative workweek.

(b) LEAVE FOR WEATHER AND SAFETY ISSUES.—An agency may approve the provision of leave under this section to an employee or a group of employees without loss of or reduction in the pay of the employee or employees, leave to which the employee or employees are otherwise entitled, or credit to the employee or employees for time or service only if the employee or group of employees is prevented from safely traveling to or performing work at an approved location due to—

(1) an act of God;

(2) a terrorist attack; or

(3) another condition that prevents the employee or group of employees from safely traveling to or performing work at an approved location.

(c) RECORDS.—An agency shall record leave provided under this section separately from