

(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) an employee of the Veterans Health Administration who is covered by a leave system established under section 7421 of title 38;

(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; Pub. L. 116–283, div. A, title XI, §1103(f)(1), Jan. 1, 2021, 134 Stat. 3889.)

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. Aug. 21, 1964, Pub. L. 88–471, §1, 78 Stat. 582.
	5 U.S.C. 2067.	Aug. 21, 1964, Pub. L. 88–471, §1, 78 Stat. 582.
	5 U.S.C. 2358(a) (less applicability to the Federal Employees Pay Act of 1945, as amended).	July 17, 1959, Pub. L. 86–91, §10(a) (less applicability to the Federal Employees Pay Act of 1945, as amended), 73 Stat. 217.

In paragraph (1), the words “when used in a geographical sense” are added for clarity.

In paragraph (2), the words “an employee as defined by section 2105 of this title” are coextensive with and substituted for “civilian officers and employees of the United States . . . including officers and employees of corporations wholly owned or controlled by the United States”. Specific reference to officers and members of the Metropolitan Police force of the District of Columbia, the Fire Department of the District of Columbia, the United States Park Police force, and the White House Police force, as set forth in former section 2067, is omitted as unnecessary in view of the provisions of paragraph (2)(A), (B). The exception for “commissioned officers of the Public Health Service” and “commissioned officers of the Coast and Geodetic Survey” in former section 2061(b)(1)(E), (F) is omitted as unnecessary since these officers are excluded by the definition of the word “employee” in section 2105.

In paragraph (2)(ix), the words “as defined by section 901 of title 20” are added on authority of former section 2351, which section is scheduled for transfer to section 901 of title 20.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

Editorial Notes

REFERENCES IN TEXT

Section 102(a)(3) of the Foreign Service Act of 1980, referred to in par. (2)(xii), was redesignated section 102(3) of that Act by Pub. L. 98-164, which struck out the designation “(a)” and struck out subsec. (b) of section 102. Section 102 is classified to section 3902 of Title 22, Foreign Relations and Intercourse.

Section 312 of the Foreign Service Act of 1980, referred to in text, is classified to section 3952 of Title 22.

AMENDMENTS

2021—Par. (2)(B)(v). Pub. L. 116-283 which directed the general amendment of cl. (v) without specifying the subpar., was executed by amending cl. (v) of subpar. (B) generally to reflect the probable intent of Congress. Prior to amendment, cl. (v) read as follows: “a physician, dentist, or nurse in the Veterans Health Administration of the Department of Veterans Affairs;”.

1991—Par. (2)(v). Pub. L. 102-54 substituted “Veterans Health Administration of the Department of Veterans Affairs” for “Department of Medicine and Surgery, Veterans’ Administration”.

1986—Par. (2)(B). Pub. L. 99-335 amended subpar. (B) generally, substituting “first employed” for “employed” and inserting “before October 1, 1987”.

1980—Pub. L. 96-465, §2312(a), inserted provision at end of par. (2) extending definition of “employee” notwithstanding cls. (x) to (xii) of par. (2).

Par. (2)(xii). Pub. L. 96-465, §2314(f)(1), substituted “a chief of mission (as defined in section 102(a)(3) of the Foreign Service Act of 1980)” for “an officer who receives pay under section 866 of title 22”.

1979—Par. (2)(iv). Pub. L. 96-70 substituted “Panama Canal Commission” for “Canal Zone Government or the Panama Canal Company”.

1978—Par. (2)(xiii). Pub. L. 95-519 added cl. (xiii).

1970—Par. (2)(ii). Pub. L. 91-375 struck out “, except an hourly employee in the postal field service,” after “part-time employee”.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-335 effective Jan. 1, 1987, see section 702(a) of Pub. L. 99-335, set out as an Effective Date note under section 8401 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-465 effective Feb. 15, 1981, except as otherwise provided, see section 2403 of Pub. L. 96-465, set out as an Effective Date note under section 3901 of Title 22, Foreign Relations and Intercourse.

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96-70 effective Oct. 1, 1979, see section 3304 of Pub. L. 96-70, set out as an Effective Date note under section 3601 of Title 22, Foreign Relations and Intercourse.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-519 effective beginning on first day of first applicable pay period beginning on or after Oct. 25, 1978, see section 4(a) of Pub. L. 95-519, set out as a note under section 5551 of this title.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91-375 effective within 1 year after Aug. 12, 1970, on date established therefor by Board of Governors of United States Postal Service and published by it in Federal Register, see section 15(a) of Pub. L. 91-375, set out as an Effective Date note preceding section 101 of Title 39, Postal Service.

SHORT TITLE OF 1999 AMENDMENT

Pub. L. 106-56, §1(a), Sept. 24, 1999, 113 Stat. 407, provided that: “This Act [amending section 6327 of this title and renumbering another section 6327 of this title as section 6328] may be cited as the ‘Organ Donor Leave Act’.”

SHORT TITLE OF 1994 AMENDMENT

Pub. L. 103-388, §1, Oct. 22, 1994, 108 Stat. 4079, provided that: “This Act [amending section 6307 of this title] may be cited as the ‘Federal Employees Family Friendly Leave Act’.”

SHORT TITLE OF 1993 AMENDMENT

Pub. L. 103-103, §1, Oct. 8, 1993, 107 Stat. 1022, provided that: “This Act [amending sections 6331, 6337, 6361, 6362, and 6373 of this title, enacting provisions set out as notes under section 6331 of this title, and repealing provisions set out as a note under section 6331 of this title] may be cited as the ‘Federal Employees Leave Sharing Amendments Act of 1993’.”

SHORT TITLE OF 1988 AMENDMENT

Pub. L. 100-566, §1, Oct. 31, 1988, 102 Stat. 2834, provided that: “This Act [enacting subchapters III and IV of this chapter, amending sections 5724 and 8112 of this title, and enacting provisions set out as notes under section 6331 of this title] may be cited as the ‘Federal Employees Leave Sharing Act of 1988’.”

EMERGENCY FEDERAL EMPLOYEE LEAVE FUND

Pub. L. 117-2, title IV, §4001, Mar. 11, 2021, 135 Stat. 77, provided that:

“(a) ESTABLISHMENT; APPROPRIATION.—There is established in the Treasury the Emergency Federal Employee Leave Fund (in this section referred to as the ‘Fund’), to be administered by the Director of the Office of Personnel Management, for the purposes set forth in subsection (b). In addition to amounts otherwise available, there is appropriated for fiscal year 2021, out of any money in the Treasury not otherwise appropriated, \$570,000,000, which shall be deposited into the Fund and remain available through September 30, 2022. The Fund is available for reasonable expenses incurred by the Office of Personnel Management in administering this section.

“(b) PURPOSE.—Amounts in the Fund shall be available for reimbursement to an agency for the use of paid leave under this section by any employee of the agency who is unable to work because the employee—

“(1) is subject to a Federal, State, or local quarantine or isolation order related to COVID-19;

“(2) has been advised by a health care provider to self-quarantine due to concerns related to COVID-19;

“(3) is caring for an individual who is subject to such an order or has been so advised;

“(4) is experiencing symptoms of COVID-19 and seeking a medical diagnosis;

“(5) is caring for a son or daughter of such employee if the school or place of care of the son or daughter has been closed, if the school of such son or daughter requires or makes optional a virtual learning instruction model or requires or makes optional a hybrid of in-person and virtual learning instruction models, or the child care provider of such son or daughter is unavailable, due to COVID-19 precautions;

“(6) is experiencing any other substantially similar condition;

“(7) is caring for a family member with a mental or physical disability or who is 55 years of age or older and incapable of self-care, without regard to whether another individual other than the employee is available to care for such family member, if the place of care for such family member is closed or the direct care provider is unavailable due to COVID-19; or

“(8) is obtaining immunization related to COVID-19 or is recovering from any injury, disability, illness, or condition related to such immunization.

“(c) LIMITATIONS.—

“(1) PERIOD OF AVAILABILITY.—Paid leave under this section may only be provided to and used by an employee during the period beginning on the date of enactment of this Act [Mar. 11, 2021] and ending on September 30, 2021.

“(2) TOTAL HOURS; AMOUNT.—Paid leave under this section—

“(A) shall be provided to an employee in an amount not to exceed 600 hours of paid leave for each full-time employee, and in the case of a part-time employee, employee on an uncommon tour of duty, or employee with a seasonal work schedule, in an amount not to exceed the proportional equivalent of 600 hours to the extent amounts in the Fund remain available for reimbursement;

“(B) shall be paid at the same hourly rate as other leave payments; and

“(C) may not be provided to an employee if the leave would result in payments greater than \$2,800 in aggregate for any biweekly pay period for a full-time employee, or a proportionally equivalent biweekly limit for a part-time employee.

“(3) RELATIONSHIP TO OTHER LEAVE.—Paid leave under this section—

“(A) is in addition to any other leave provided to an employee; and

“(B) may not be used by an employee concurrently with any other paid leave.

“(4) CALCULATION OF RETIREMENT BENEFIT.—Any paid leave provided to an employee under this section shall reduce the total service used to calculate any Federal civilian retirement benefit.

“(d) EMPLOYEE DEFINED.—In this section, the term ‘employee’ means—

“(1) an individual in the executive branch for whom annual and sick leave is provided under subchapter I of chapter 63 of title 5, United States Code;

“(2) an individual employed by the United States Postal Service;

“(3) an individual employed by the Postal Regulatory Commission; and

“(4) an employee of the Public Defender Service for the District of Columbia and the District of Columbia Courts.”

EMPLOYEES OF THE DISTRICT OF COLUMBIA

Pub. L. 99-335, title II, §207(c)(2), as added by Pub. L. 99-556, title II, §201, Oct. 27, 1986, 100 Stat. 3135, provided that: “The amendment made by paragraph (1) [amending this section] shall not result in the coverage, under subchapter I of chapter 63 of title 5, United States Code, of any individual (or class of individuals) employed by the government of the District of Columbia who would not have been covered under such subchapter if such amendment had not been made.”

Executive Documents

EXECUTIVE ORDER NO. 10540

Ex. Ord. No. 10540, June 29, 1954, 19 F.R. 3983, which related to the designation of certain officers as exempt from the Annual and Sick Leave Act of 1951, was revoked by section 2-201 of Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, set out as a note under section 1101 of this title.

§ 6302. General provisions

(a) The days of leave provided by this subchapter are days on which an employee would otherwise work and receive pay and are exclusive of holidays and nonworkdays established by Federal statute, Executive order, or administrative order.

(b) For the purpose of this subchapter an employee is deemed employed for a full biweekly pay period if he is employed during the days within that period, exclusive of holidays and nonworkdays established by Federal statute, Executive order, or administrative order, which fall within his basic administrative workweek.

(c) A part-time employee, unless otherwise excepted, is entitled to the benefits provided by subsection (d) of this section and sections 6303, 6304(a), (b), 6305(a), 6307, and 6310 of this title on a pro rata basis.

(d) The annual leave provided by this subchapter, including annual leave that will accrue to an employee during the year, may be granted at any time during the year as the head of the agency concerned may prescribe.

(e) If an officer excepted from this subchapter by section 6301(2)(x)-(xiii) of this title, without a break in service, again becomes subject to this subchapter on completion of his service as an excepted officer, the unused annual and sick leave standing to his credit when he was excepted from this subchapter is deemed to have remained to his credit.

(f) An employee who uses excess annual leave credited because of administrative error may elect to refund the amount received for the days of excess leave by lump-sum or installment payments or to have the excess leave carried forward as a charge against later-accruing annual leave, unless repayment is waived under section 5584 of this title.

(g) An employee who is being involuntarily separated from an agency due to a reduction in force or transfer of function under subchapter I of chapter 35 or section 3595 may elect to use annual leave to the employee’s credit to remain on the agency’s rolls after the date the employee would otherwise have been separated if, and only to the extent that, such additional time in a pay status will enable the employee to qualify for an immediate annuity under section 8336, 8412, 8414, or to qualify to carry health benefits coverage into retirement under section 8905(b).

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 517; Pub. L. 93-181, §4, Dec. 14, 1973, 87 Stat. 706; Pub. L. 95-519, §2, Oct. 25, 1978, 92 Stat. 1819; Pub. L. 104-208, div. A, title I, §101(f) [title VI, §634], Sept. 30, 1996, 110 Stat. 3009-314, 3009-363; Pub. L. 105-277, div. A, §101(h) [title VI, §653], Oct. 21, 1998, 112 Stat. 2681-480, 2681-528.)