

## OPM Guidance on Workplace Flexibilities and Authorities for Dealing with the Zika Virus

The U.S. Office of Personnel Management (OPM) reminds agencies that a wide range of human resources (HR) policies and flexibilities are available to assist employees and agencies in dealing with the Zika virus. This attachment provides information regarding the leave and other workplace flexibilities and authorities available for these purposes. Agencies are expected to implement policies consistent with laws, regulations, collective bargaining responsibilities and OPM guidance. This guidance is focused on employees who have a significant risk of a severe outcome due to contracting the Zika virus, including women who are pregnant or trying to get pregnant and their sex partners. In making decisions to utilize workplace flexibilities, agencies may consider the level of risk of transmission in a given geographic area, based on guidance provided by the Centers for Disease Control and Prevention (CDC) (<http://www.cdc.gov/zika/geo/active-countries.html>, [www.cdc.gov/zika/intheus/maps-zika-us.html](http://www.cdc.gov/zika/intheus/maps-zika-us.html), and <http://www.cdc.gov/zika/vector/range.html>). Geographic areas where the Zika virus is known to have been spread via mosquito clearly present the highest risk.

### I. Leave and Other Paid Time Off

The Federal Government offers numerous leave and workplace flexibilities to assist employees who are affected by the Zika virus. Under current law and regulations, employees may use sick leave, annual leave, advanced annual and/or sick leave, Family and Medical Leave Act (FMLA) leave, leave without pay, donated leave under the Voluntary Leave Transfer and Leave Bank Programs, and other paid time off such as compensatory time off and credit hours under flexible work schedules (FWS).

**Sick Leave.** An employee is entitled to use an unlimited amount of accrued sick leave when he or she is unable to perform his or her duties due to physical or mental illness or is receiving medical examination or treatment. An employee must be symptomatic (ill) due to the Zika virus to use his or her accrued sick leave. An employee **cannot** use accrued sick leave simply due to exposure to the Zika virus, since sick leave usage by persons exposed to a communicable disease is limited to cases where exposure requires quarantine or confinement, as directed by health care authorities (e.g., CDC). Sick Leave for Personal Needs fact sheet: (<https://www.opm.gov/policy-data-oversight/pay-leave/leave-administration/fact-sheets/personal-sick-leave/>)

**Sick Leave for General Family Care and Bereavement.** An employee is entitled to use a total of up to 104 hours (13 days) of sick leave each leave year to provide care for a family member who is ill or receiving medical examination or treatment or to make arrangements necessitated by the death of a family member or attend the funeral of a family member. An employee's family member must be symptomatic (ill) due to the Zika virus to use his or her accrued sick leave for general family care. An employee **cannot** use accrued sick leave simply due to a family member's exposure to the Zika virus, since sick leave usage is limited to cases where a family member's exposure to a communicable disease requires quarantine or confinement, as directed by health care authorities (e.g., CDC). The amount of sick leave permitted for family care and

bereavement purposes is proportionally adjusted for part-time employees and employees with uncommon tours of duty in accordance with the average number of hours of work in the employee's regularly scheduled administrative workweek.

Sick Leave for Family Care or Bereavement Purposes fact sheet: (<https://www.opm.gov/policy-data-oversight/pay-leave/leave-administration/fact-sheets/sick-leave-for-family-care-or-bereavement-purposes/>)

**Sick Leave To Care for a Family Member with a Serious Health Condition.** An employee is entitled to use up to 12 weeks (480 hours) of sick leave each leave year to care for a family member with a serious health condition. If an employee has already used 13 days of sick leave for general family care and bereavement purposes (discussed above), the 13 days must be subtracted from the 12 weeks. If an employee has already used 12 weeks of sick leave to care for a family member with a serious health condition, he or she cannot use an additional 13 days in the same leave year for general family care purposes. An employee is entitled to no more than a combined total of 12 weeks of sick leave each leave year for all family care purposes. An employee's family member must be symptomatic (ill) due to the Zika virus to use his or her accrued sick leave to care for a family member with a serious health condition. An employee **cannot** use accrued sick leave simply due to a family member's exposure to the Zika virus, since sick leave usage is limited to cases where a family member's exposure to a communicable disease requires quarantine or confinement, as directed by health care authorities (e.g., CDC). The amount of sick leave permitted for family care and bereavement purposes is proportionally adjusted for part-time employees and employees with uncommon tours of duty in accordance with the average number of hours of work in the employee's regularly scheduled administrative workweek. Sick Leave to Care for a Family Member with a Serious Health Condition fact sheet: (<https://www.opm.gov/policy-data-oversight/pay-leave/leave-administration/fact-sheets/sick-leave-to-care-for-a-family-member-with-a-serious-health-condition/>)

**Annual Leave.** An employee may use any or all accrued annual leave for personal needs, such as rest and relaxation, vacations, medical needs, personal business or emergencies, or to provide care for a healthy or sick family member. 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. OPM encourages agencies to be flexible in granting annual leave to employees who wish to be absent for reasons related to the Zika virus. Annual Leave fact sheet: (<https://www.opm.gov/policy-data-oversight/pay-leave/leave-administration/fact-sheets/annual-leave/>)

**Advanced Annual and/or Sick Leave.** An agency may advance annual leave in an amount not to exceed the amount the employee would accrue during the remainder of the leave year. An agency may advance a maximum of up to 30 days (240 hours) of sick leave, subject to limitations, to be used for the same reasons it grants sick leave. An employee may request advanced annual and/or sick leave irrespective of existing leave balances. OPM encourages agencies to be flexible in granting advanced annual leave and/or advanced sick leave to employees who wish to be absent for reasons related to the Zika virus. Advanced Annual Leave fact sheet: (<https://www.opm.gov/policy-data-oversight/pay-leave/leave-administration/fact-sheets/advanced-annual-leave/>)

Advanced Sick Leave fact sheet: (<https://www.opm.gov/policy-data-oversight/pay-leave/leave-administration/fact-sheets/advanced-sick-leave/>)

**Family and Medical Leave.** An employee may invoke his or her entitlement to **unpaid** leave under the Family and Medical Leave Act of 1993 (FMLA) in appropriate circumstances. Under the FMLA, an employee is entitled to a total of up to 12 workweeks of leave without pay for a serious health condition that prevents an employee from performing his or her duties or to care for a spouse, son or daughter, or parent with a serious health condition. An employee may substitute his or her accrued annual and/or sick leave for unpaid leave in accordance with current laws and regulations governing the use of annual and sick leave. An employee or family member who contracts the Zika virus and becomes ill may have a qualifying serious health condition; however, mere exposure to the Zika virus does not qualify as a serious health condition. Family and Medical Leave fact sheet: (<https://www.opm.gov/policy-data-oversight/pay-leave/leave-administration/fact-sheets/family-and-medical-leave/>)

**Leave Without Pay.** If an employee has exhausted his or her available annual or sick leave and other forms of paid time off, he or she may request leave without pay (LWOP). LWOP is a temporary nonpay status and absence from duty that, in most cases, is granted at the employee's request. In most instances, granting LWOP is a matter of supervisory discretion and may be limited by agency internal policy. While FMLA leave is limited to specific purposes, LWOP may be granted for any reason approved by the agency. OPM encourages agencies to be flexible in granting LWOP to employees who wish to be absent from work for reasons related to the Zika virus. In situations where the LWOP is taken for a purpose that would qualify under FMLA, granting LWOP without requiring the employee to invoke FMLA will preserve the employee's entitlement to 12 weeks of FMLA leave. An extended period of LWOP may have an effect on an employee's benefits including health benefits, retirement benefits, and life insurance. Leave Without Pay fact sheet: (<http://www.opm.gov/policy-data-oversight/pay-leave/leave-administration/fact-sheets/leave-without-pay>)

Effect of Extended Leave Without Pay (or Other Nonpay Status) on Federal Benefits and Programs fact sheet: (<https://www.opm.gov/policy-data-oversight/pay-leave/leave-administration/fact-sheets/effect-of-extended-leave-without-pay-lwop-or-other-nonpay-status-on-federal-benefits-and-programs/>)

**Donated Leave.** If an employee has a personal or family medical emergency related to the Zika virus and is absent (or expected to be absent) from duty without available paid leave for at least 24 work hours, he or she may qualify to receive donated annual leave under the Voluntary Leave Transfer Program (VLTP) or Voluntary Leave Bank Program (VLBP).

- **Voluntary Leave Transfer Program** – The VLTP allows an employee to donate annual leave to assist another employee who has a personal or family medical emergency and who has **exhausted his or her own available paid leave**. All agencies must establish a VLTP. Voluntary Leave Transfer Program fact sheet: (<https://www.opm.gov/policy-data-oversight/pay-leave/leave-administration/fact-sheets/voluntary-leave-transfer-program/>)
- **Voluntary Leave Bank Program** – The VLBP allows an employee who is a member of the agency's voluntary leave bank to receive donated annual leave from the leave bank if the employee experiences a personal or family medical emergency and has **exhausted his or her own available paid leave**. An agency is not required to establish a VLBP.

Voluntary Leave Bank Program fact sheet: (<https://www.opm.gov/policy-data-oversight/pay-leave/leave-administration/fact-sheets/voluntary-leave-bank-program/>)

**Other Paid Time Off.** An employee may use earned compensatory time off, compensatory time off for travel, and/or credit hours to be absent from work, including for reasons related to the Zika virus. OPM encourages agencies to be flexible in granting these types of time off to employees who wish to be absent for reasons related to the Zika virus.

- **Compensatory Time Off** – Compensatory time off is earned time off with pay in lieu of overtime pay for overtime work. Compensatory Time Off fact sheet: (<http://www.opm.gov/policy-data-oversight/pay-leave/pay-administration/fact-sheets/compensatory-time-off/>)
- **Compensatory Time Off for Travel** – Compensatory time off for travel is earned time off with pay for time spent in a travel status away from the employee’s official duty station when such time is not otherwise compensable. Compensatory Time Off for Travel fact sheet: (<http://www.opm.gov/policy-data-oversight/pay-leave/pay-administration/fact-sheets/compensatory-time-off-for-travel/>)
- **Credit Hours** – Credit hours are hours an employee elects to work, with supervisory approval, in excess of the employee’s basic work requirement under a **flexible work schedule that provides for credit hours**. Credit Hours fact sheet: (<http://www.opm.gov/policy-data-oversight/pay-leave/work-schedules/fact-sheets/credit-hours-under-a-flexible-work-schedule/>)

## II. **Telework**

The Federal Government uses telework to allow Federal employees to complete their work at an approved alternative worksite when that work does not require onsite presence for performance. The Telework Enhancement Act of 2010 (the Act) defines “telework” or “teleworking” as a work flexibility arrangement under which an employee performs the duties and responsibilities of his or her position, and other authorized activities, from an approved worksite other than the location from which the employee would otherwise work. Over the past few years, telework has become a critical tool during emergency situations.

OPM has strongly encouraged agencies to maintain a viable telework-ready workforce. This requires determining eligibility for employees to telework, encouraging employees to enter into written telework agreements, communicating expectations before an emergency situation occurs, and practicing and testing equipment and procedures regularly throughout the year, not just teleworking during emergencies that may occur infrequently. Telework arrangements may require collective bargaining obligations for employees represented by labor organizations. Agencies also need to implement and maintain a robust information technology system with the necessary infrastructure to accommodate widespread remote usage of agency systems as well as the accompanying technical support personnel to resolve remote connectivity issues.

Agencies should maximize their telework capacity by entering into telework agreements with as many telework-eligible employees as possible and by conducting exercises to test employees’

ability to access agency networks from home. Managers should ensure that there are effective processes in place for communicating efficiently with employees who are teleworking. For additional information on telework, please see [www.telework.gov](http://www.telework.gov).

OPM encourages agencies to be as flexible as possible in approving telework for employees who wish to work at home or an approved alternative worksite for reasons related to the Zika virus.