



UNITED STATES OFFICE OF PERSONNEL MANAGEMENT
Washington, DC 20415

The Director

Friday, December 3, 2010
CPM 2010-17

MEMORANDUM FOR: Human Resources Directors

FROM: Nancy H. Kichak, Associate Director, Employee Services

Subject: Final Regulations on Sick Leave

I am pleased to announce that the U.S. Office of Personnel Management (OPM) has issued final regulations to address (1) the use of sick leave for exposure to a communicable disease, (2) the purposes for and limitations on the use of advanced sick leave, and (3) the substitution of up to 26 weeks of sick leave for unpaid Family and Medical Leave Act (FMLA) leave to care for a covered servicemember. These changes are incorporated into 5 CFR part 630, subpart D. The regulations are available at <https://www.federalregister.gov/agencies/personnel-management-office>.

Sick leave for exposure to a communicable disease

The final regulations allow an employee to use up to 104 hours of sick leave to provide care for a family member who would, as determined by the health authorities, jeopardize the health of others because of exposure to a communicable disease before it is clear whether the family member has contracted the disease. The regulations also allow an employee who has been exposed to a communicable disease to be advanced sick leave, as outlined below. Examples of communicable disease include cholera, diphtheria; infectious tuberculosis; plague; small pox, yellow fever; viral hemorrhagic fevers; Severe Acute Respiratory Syndrome (SARS); and influenza that cause or has the potential to cause a pandemic. This provides an illustrative, but not exhaustive list of the types of diseases that result in Federal quarantine and may be revised by the President as the need arises. The use of sick leave for exposure to a communicable disease should be used only in very limited circumstances, and agencies should not grant sick leave for this purpose until they receive guidance from the appropriate officials (e.g., Centers for Disease Control (CDC), OPM).

Advanced sick leave

The final regulations clarify the purposes and limitations for the use of advanced sick leave. Advanced sick leave is not an entitlement, but may be granted at an agency's discretion under the following circumstances:

240 Hours. The final regulations authorize an agency to advance up to 240 hours (30 days) of sick leave to a full-time employee—

- who is incapacitated for the performance of his or her duties by physical or mental illness, injury, pregnancy, or childbirth;
- for a serious health condition of the employee or a family member;
- when the employee would, as determined by the health authorities, jeopardize the health of others by his or her presence on the job because of exposure to a communicable disease;
- for purposes relating to the adoption of a child; or
- for the care of a covered servicemember with a serious injury or illness when the employee is using the FMLA leave to care for a covered servicemember.

104 Hours. The final regulations authorize an agency to advance up to 104 hours (13 days) of sick leave to a full-time employee for—

- his or her own medical appointments;
- general care for a family member or to accompany a family member to medical appointments;
- care of a family member who would, as determined by the health authorities, jeopardize the health of others by that family member's presence in the community because of exposure to a communicable disease; or
- making arrangements necessitated by the death of a family member or to attend the funeral of a family member.

Substitution of sick leave for unpaid FMLA leave to care for a covered servicemember

The final regulations address only the sick leave portion of OPM's proposed regulations (74 FR 43064) issued on August 26, 2009, to implement section 585(b) of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2008 (Public Law 110-181, January 28, 2008). The law permits the substitution of up to 26 weeks of sick leave during a single 12-month period for unpaid FMLA leave when an employee invokes FMLA to provide care for a spouse, son, daughter, parent, or next of kin who is a covered servicemember with a serious injury or illness. See 5 U.S.C. 6382(d). We are not able to publish final regulations on the FMLA portion of the proposed regulations since changes to the FMLA statute were passed in the NDAA for FY 2010, and OPM is required to issue FMLA regulations consistent, to the extent appropriate, with the Department of Labor's FMLA regulations. We plan to issue final FMLA regulations after DOL issues its final FMLA regulations implementing the NDAA for FY 2010 changes.

Until OPM issues its FMLA final regulations, guidance on implementing the FMLA provisions to care for a covered servicemember authorized by the NDAA's for FY 2008 and FY 2010 can be found on OPM's website in CPM 2008-04, February 1, 2008, at <https://www.chcoc.gov/content/recent-pay-and-leave-legislative-changes-0>, CPM 2009-26, December 29, 2009, at <https://www.chcoc.gov/content/recent-pay-and-leave-legislative-changes>, and CPM 2010-06 at <https://www.chcoc.gov/content/recent-changes-family-and-medical-leave-act>.

Additional Information

For further information, you may contact your agency's assigned OPM Human Capital Officer. Employees should contact their agency's human resources offices for assistance.