

A Message from the Director of the U.S. Office of Personnel Management

On January 15, 2015, President Obama issued a memorandum entitled: “Modernizing Federal Leave Policies for Childbirth, Adoption and Foster Care to Recruit and Retain Talent and Improve Productivity.” In his January 20, 2015 State of the Union address, the President mentioned this memorandum and his belief that all employers, including the Federal Government, should support parents to ensure that they can contribute fully in the workplace, while also meeting the needs of their families. The President’s memorandum aligns the Federal Government with the parental leave policies of leading private sector companies and other industrialized countries.

As part of his effort to ensure that all employees have paid time off available for childbirth, adoption and foster care, the President has directed all Federal agencies, to the extent permitted by law, to ensure that discretionary benefits are used to the maximum extent practicable, including advancement of sick or annual leave, donated annual leave under the voluntary leave transfer and leave bank programs, and leave without pay. Further, to the extent permitted by law, the President has directed all Federal agencies to (1) 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, and (2) offer the maximum amount of advanced annual leave, at the request of an employee, for foster care placement in their home or bonding with a healthy newborn or newly adopted child. Agencies have been directed to provide this advanced leave for purposes specified in law and regulation irrespective of existing leave balances. All Federal agencies must update their advanced sick and annual leave policies to be in compliance with the President’s memorandum by no later than Monday, June 15, 2015.

The President’s memorandum also requires that by April 15, 2015, the U.S. Office of Personnel Management (OPM) provide guidance to all Federal agencies to help them implement the revised advanced leave policies, including how to apply these policies to part-time employees.

To meet the President's requirement, OPM held a series of interagency working group meetings with representatives from more than 40 agencies. These working group meetings revealed that many agencies believe that their employees are simply unaware of the wide array of leave and workplace flexibilities available for childbirth, adoption, and foster care purposes. Agency working group representatives requested that OPM's forthcoming guidance focus on all current existing leave flexibilities that employees could use for childbirth, adoption, and foster care purposes (including advanced sick and annual leave policies).

As a result, OPM determined that a new Handbook focusing on leave and workplace flexibilities available to employees for childbirth, adoption, and foster care purposes would be the most appropriate guidance to provide to the agencies. OPM’s Handbook contains guidance to the agencies on advanced sick and annual leave policies as required by the President’s memorandum while emphasizing the various leave entitlements and flexibilities available to assist employees.

The Handbook is divided into three distinct sections to fully assist agencies depending on the specific circumstance of the employee. The sections are: (1) Pregnancy and Childbirth, (2) Adoption and Foster Care, and (3) Interaction of the Various Leave Programs and Workplace

Flexibilities. OPM believes that this new Handbook will allow agencies to be in a better position to assist employees or their family members who are experiencing childbirth, adoption, and foster care. In doing so, the Federal Government will continue to support parents to ensure they can both contribute fully in the workplace and also meet the needs of their families.

Katherine Archuleta
Director

Handbook on Leave and Workplace Flexibilities for Childbirth, Adoption and Foster Care

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Introduction

In order to attract and retain a talented, engaged, and productive workforce, the Federal Government must ensure that Federal employees are provided an opportunity to use workplace flexibilities that will enable them to thrive both at work and at home. The Federal Government recognizes the importance of family and is committed to assisting Federal employees in balancing their work and family responsibilities. When an agency permits an employee to use leave and other workplace flexibilities for purposes of childbirth, adoption, and foster care, the agency is fostering goodwill that can improve recruitment of new employees and strengthen retention of the existing workforce. Providing employees with the support they need to balance their professional and personal responsibilities is not only good for employees and their families, it is also good for agencies and the integrity of the Federal workforce. As a result, OPM is committed to working with our agency partners to encourage the full utilization of leave flexibilities, including advanced sick and annual leave, to the maximum extent practicable.

History of the Evolution and Expansion of Federal Leave Programs Related to Childbirth, Adoption and Foster Care

The Federal leave system is a dynamic system that has evolved over the years to better meet the needs of employees as well as those of Federal agencies. Combined with other workplace flexibilities, the program has progressed to serve the contemporary workforce in a manner that meets the needs of employees and is responsive to agency mission requirements. The Federal leave system dates back to 1893, with our current leave system enacted in 1951 that included annual leave, sick leave, and leave without pay (LWOP). Over the years, the leave system has evolved and expanded in a variety of ways, all of which have focused on responding to changing needs of both employees and agencies. The following provides a brief history of the Federal leave programs as they relate to childbirth, adoption and foster care:

- **Federal Leave Sharing Act of 1988.** Authorized Federal agencies to participate in pilot voluntary leave transfer and leave bank programs allowing employees to donate their annual leave to an employee with a personal or family medical emergency who had exhausted their available paid leave. The Federal Employee Leave Sharing Amendments Act of 1993 made the program permanent.
- **Family and Medical Leave Act (FMLA) of 1993.** Entitled an employee to a total of up to 12 workweeks of unpaid leave during any 12-month period for the following purposes: the birth of a son or daughter of the employee and the care of such son or daughter; the placement of a son or daughter with the employee for adoption or foster care; a serious health condition of the employee; or for the employee to care for a spouse, son, daughter, or parent with a serious health condition.
- **Federal Employees Family-Friendly Leave Act of 1994.** Authorized up to 13 days of sick leave per leave year to care for a family member and to make arrangements necessitated by

the death of, or attend the funeral of, a family member. Prior to 1994, employees were only able to use sick leave to care for themselves.

- **Sick Leave for Adoption (1994).** Authorized an employee to use sick leave for purposes related to the adoption of a child.
- **Implementation of *U.S. v. Windsor* (2013).** Supreme Court decision (*United States v. Windsor*) determined Section 3 of the Defense of Marriage Act (DOMA) to be unconstitutional, thereby allowing Federal employees with same-sex spouses to use FMLA leave in the same manner as Federal employees with opposite-sex spouses.

Roles and Responsibilities

- **OPM's Role.** OPM provides leadership on Federal leave policies and programs by developing and maintaining Governmentwide rules and regulations on annual leave, sick leave, the Family and Medical Leave Act, Federal leave sharing programs, and other leave and workplace flexibilities and programs.
- **Agencies' Role.** Federal agencies are responsible for complying with the law and OPM's Governmentwide regulations and guidance. Agencies are also responsible for developing agency-specific policies dealing with the administration of leave programs, including any discretionary benefits, in accordance with any applicable collective bargaining agreements.
- **Employees' Role.** Employees must review both OPM and agency-specific rules and regulations on leave and workplace flexibilities to understand the options available for childbirth, adoption, or foster care. It is equally important for employees to consult with their agency's servicing human resources office.

This handbook provides various tools for employees to use in preparing and planning for time off for childbirth, adoption, and foster care. It must be read in conjunction with agency and component-specific leave policies and any applicable collective bargaining agreements.

Employee Checklist for Planning for Time Off for Childbirth, Adoption, and Foster Care

The following checklist should be used as an organizational tool before meeting with your manager or servicing human resource office. (Note: Check with your servicing human resource office to confirm what flexibilities are available at your agency.)

Things to Do:

- Read the OPM Handbook on Leave and Workplace Flexibilities for Childbirth, Adoption, and Foster Care
- Review relevant OPM fact sheets using the links in the Handbook

- Know your internal agency policies and guidelines for requesting and using leave and workplace flexibilities
- Determine the amount of time off you would like to take
 - Hours needed: _____
- Determine your projected leave/paid time off balances at the time leave will be needed
 - Available sick leave hours: _____
 - Available annual leave hours: _____
 - Other available paid time off (compensatory time, credit hours): _____
 - Amount of unpaid time off (LWOP) you wish to take: _____
- Determine the gap, if any, between the amount of leave/paid time off you would like to take, versus the amount of leave/paid time off you will have available at the time leave will be needed
 - Hours of leave/paid time off hours wanted minus hours of leave/paid time off accrued: _____
- Ask questions of your coworkers
 - How much time did you take off and how did you structure that time off?
 - How did you transition back to work afterward?
 - Is there anything you would have done differently?

Know Your Options:

- Advanced Sick Leave and Advanced Annual leave* –
 - What options does my agency provide to repay advanced leave?
 - How will I repay the advanced leave?
 - Can I apply for donated annual leave to repay advanced leave?
 - How long will it take to repay my advanced leave?
- Voluntary Leave Transfer or Voluntary Leave Bank Programs* – familiarize yourself with your agency’s policies and rules for participation well in advance of needing donated/transferred annual leave
 - Will I be eligible to become a leave recipient? If so, how/when should I apply?
 - If your agency has a leave bank, when is the open enrollment period?
Will you use donated annual leave to repay any potential advanced leave indebtedness?
- Family Medical Leave Act (FMLA) leave* –
 - Are you eligible for FMLA? If so, when will you be invoking it?
 - Will you be substituting paid leave for unpaid FMLA leave? If so, what type and how much?
 - Do you want to use your FMLA leave intermittently? If so, speak with your manager about your work schedule.
- Telework*
 - Is situational telework an option? Discuss with your HR office and your manager.
- Work Schedules*
 - Is an alternative work schedule (AWS) an option?
 - If your agency offers AWS, what type of schedule do they offer (flexible work schedules versus compressed work schedules)?
 - Does your agency allow part-time employment or job sharing?

II: Leave and Workplace Flexibilities for Pregnancy and Childbirth

The Federal Government offers various leave and work scheduling flexibilities to assist employees in meeting their work and family obligations. This chapter explains the available leave options that can be used separately or in combination to help an employee balance his or her work and family life related to pregnancy and childbirth. An employee who is pregnant needs time off from work for her own pregnancy-related issues and recovery from childbirth, or to care for and bond with her baby. An employee may need time off from work to care for a spouse who is pregnant or has just given birth, or to care for and bond with his or her baby. Note that an employee may also want to take leave to care for a variety of family members who are birth mothers—not just spouses—including a same or opposite sex domestic partner, a daughter or daughter-in-law, a mother, sister, or granddaughter, or also to care for new babies such as grandchildren.

A. Sick Leave

An employee is entitled to use sick leave for personal medical needs while pregnant or recovering from childbirth, to care for a family member who is pregnant or recovering from childbirth, to care for a family member with a serious health condition, or for general family care purposes such as well-baby doctor visits or illnesses. An agency may request administratively acceptable evidence indicating the duration of the employee's or family member's recovery from childbirth. Most health care providers certify that the recovery period following childbirth is about 6-8 weeks.

Tip: Sick leave is an entitlement that may be used without invoking leave under the Family Medical Leave Act (FMLA). See Section E. for information on FMLA.

Sick Leave for Employee's Own Care

An employee who is the birth mother is entitled to use any accumulated or accrued sick leave for prenatal care, any period of incapacity due to her pregnancy—including periods of morning sickness or medically prescribed bed rest—childbirth, and recovery from childbirth. There is no limit on the amount of sick leave that an employee may use for her own personal medical needs, however an employee has no entitlement to use sick leave except for authorized sick leave purposes.

Scenario: Jody has given birth and has requested 12 weeks of sick leave. Is she entitled to use 12 weeks of sick leave?

Jody is only entitled to use sick leave for her period of incapacitation following childbirth. In most cases, this is 6-8 weeks for a normal pregnancy, unless complications arise.

For more information, see our fact sheets on [Sick Leave \(General Information\)](#) and [Sick Leave for Personal Medical Needs](#).

Sick Leave to Care for a Family Member

An employee is entitled to a total of 12 weeks (480 hours) of sick leave each leave year to care for a family member with a serious health condition.

The individual for whom the employee is providing care must meet the definition of *family member* used for sick leave, voluntary leave transfer program (VLTP), and voluntary leave bank program (VLBP) purposes.

A *family member* is an individual with any of the following relationships to the employee:

- 1) Spouse, and parents thereof;
- 2) Sons and daughters, and spouses thereof;
- 3) Parents, and spouses thereof;
- 4) Brothers and sisters, and spouses thereof;
- 5) Grandparents and grandchildren, and spouses thereof;
- 6) Domestic partner and parents thereof, including domestic partners of any individual in 2 through 5 of this definition; and
- 7) Any individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship.

The agency determines whom they consider to be an “individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship.” For important associated definitions, please see our fact sheet entitled [Definitions Related to Family Member and Immediate Relative](#).

For more information on the definition of *serious health condition*, which has the same meaning as used in OPM's regulations for administering the Family and Medical Leave Act (FMLA) of 1993, please see our fact sheet entitled [Sick Leave to Care for a Family Member with a Serious Health Condition](#). Examples of authorized sick leave uses for a serious health condition are caring for the birth mother for prenatal care, any period of morning sickness or medically prescribed bed rest, childbirth, and recovery from childbirth, and care of the baby if the baby has a serious health condition. The employee may also use 13 days (104 hours) of sick leave for general family care—including well-baby visits or minor illnesses. If the employee previously has used any portion of the 13 days of sick leave for general family care or bereavement purposes in a leave year, that amount must be subtracted from the 12-week entitlement. 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.

When an employee requests sick leave to care for a family member, the agency may require the employee to document his or her relationship with that family member. Agencies should establish consistent rules and follow the same documentation requirements for all relationships, but agencies have authority to request additional information in cases of suspected leave abuse.

Sick Leave to Care for Birth Mother

An employee caring for a family member who is a birth mother is entitled to use sick leave for the mother's prenatal care, any period of incapacity due to her pregnancy—including severe morning sickness or medically prescribed bed rest—childbirth, or for the mother's recovery from childbirth. As mentioned above, most health care providers certify that the recovery period is about 6-8 weeks.

Scenario: Demont's wife, Sharise, is hospitalized because she is experiencing an extremely high risk pregnancy. Demont wants to use some of his 600 hours of sick leave to be with her in the hospital. His supervisor denies his request for sick leave for the period of hospitalization, stating that since Demont's wife will be in the hospital, Demont will not be "caring for her" and is not entitled to sick leave for that period. Can Demont's supervisor deny Demont's invocation of his sick leave entitlement?

OPM's sick leave regulations allow sick leave to be used if the family member of the employee requires psychological comfort and the family member would benefit from the employee's care or presence, therefore, Demont's sick leave request cannot be denied. However, the agency could request certification from the health care provider concerning the family member's need for psychological comfort and that the family member would benefit from the employee's care or presence.

Sick Leave to Care for a Newborn

Employees may not use sick leave to be absent from work to bond with or care for a healthy newborn. There is no provision in law or regulation that permits the use of sick leave to care for a healthy newborn, bond with a healthy child, or for other child care responsibilities. However, an employee is entitled to use sick leave for general family care purposes, i.e., to care for a child who has a routine illness or to take a child to medical, dental, or optical appointments or well-baby doctor visits, or if the baby has a serious health condition. See previous discussion of the time limits on use of sick leave for family care purposes. An agency may request administratively acceptable evidence of a child's illness or treatment.

The child must meet the definition of *family member* (see above), or if applicable, the definition of *son or daughter* for sick leave, VLTP, and VLBP purposes.

Son or daughter means:

- 1) A biological, adopted, step, or foster son or daughter of the employee;
- 2) A person who is a legal ward or was a legal ward of the employee when that individual was a minor or required a legal guardian;
- 3) A person for whom the employee stands *in loco parentis* or stood *in loco parentis* when that individual was a minor or required someone to stand *in loco parentis*; or
- 4) A son or daughter, as described in paragraphs (1) through (3) of this definition, of an employee's spouse or domestic partner.

Tip: Based on the definition of *family member*, an employee could take sick leave to care for a grandchild. Or based on the definition of *son or daughter*, a same-sex domestic partner could care for the son or daughter of his or her partner for whom the employee will stand *in loco parentis*, even if the employee is not the child's genetic parent or is not adopting the child.

For more information, see our fact sheets on [Sick Leave \(General Information\)](#), [Sick Leave for Family Care and Bereavement](#), and [Sick Leave to Care for a Family Member with a Serious Health Condition](#).

B. Advanced Sick Leave

Upon an employee's request, an employee must be granted advanced sick leave to the maximum extent practicable, in accordance with sick leave laws and regulations and consistent with mission needs. Employees are eligible for a maximum of 240 hours (30 days) of advanced sick leave for purposes of a *serious health condition* and a maximum of 104 hours (13 days) for general family care purposes (see previous discussion of what types of activities are covered). An agency may grant advanced sick leave for the same reason it grants sick leave as specified in law and regulation, irrespective of the employee's existing annual leave balance.

Tip: Advanced sick leave may be especially beneficial to new employees within their first year of Federal service who have little or no sick leave accumulated.

Repayment of Advanced Sick Leave

An employee is required to repay advanced sick leave, except in very limited circumstances—e.g., disability retirement or death. Therefore, an employee requesting advanced sick leave should think carefully about whether he or she wants to incur this debt and how the debt will be repaid. Note that generally advanced sick leave is repaid by subsequently earned sick leave, so if an employee were to use 13 days of advanced sick leave, it would take him or her a full year without using another hour of sick leave to repay the sick leave debt. Because advanced sick leave must be repaid, an agency should not advance sick leave when it is known (or reasonably expected) that the employee will not return to duty.

Tip: Donated annual leave under the Voluntary Leave Transfer Program (VLTP) or Voluntary Leave Bank Program (VLBP) may be used to liquidate an indebtedness incurred by the leave recipient for advanced sick leave used because of a *medical emergency*, such as medically prescribed bed rest or recovery from childbirth. Before using donated annual leave, however, the employee must first exhaust all his or her own annual and sick leave. See Section F. on Leave Sharing Programs.

For more information, including information on repayment options, see our fact sheet on [Advanced Sick Leave](#).

C. Annual Leave

Annual leave may be used for any purpose, subject to the right of the supervisor to approve a time when the annual leave may be taken. Annual leave may be used for pregnancy, childbirth and recovery from childbirth, bonding with or caring for a baby, or for other child care responsibilities including taking the child to medical, dental, or optical appointments or well-baby doctor visits, or any other purpose.

Scheduling of Annual or Advanced Annual Leave

Employees have the right to request annual leave, subject to the right of the supervisor to approve the time when the employee takes the annual leave. For pregnancy and childbirth, agencies are encouraged to grant the leave to the maximum extent practicable consistent with mission needs.

Tip: An employee has an entitlement to substitute annual leave for any unpaid FMLA leave during any period approved under FMLA. See section E. on Family and Medical Leave.

D. Advanced Annual Leave

Advanced annual leave should be granted to the maximum extent practicable, in accordance with annual leave laws and regulations and consistent with mission needs. An agency may advance the amount of annual leave an employee would accrue during the remainder of the leave year. Note that this means that the later in the leave year the employee requests advanced annual leave, the smaller the amount that may be advanced. Agencies are advised to advance annual leave to the maximum extent practicable for purposes related to pregnancy and childbirth. An agency may grant advanced annual leave for the same reasons it grants annual leave as specified in law and regulation, irrespective of the employee's existing annual leave balance. New employees are eligible to receive advanced annual leave.

Tip: Advanced annual leave may be especially beneficial to new employees, within their first year of Federal service, who have little or no leave accumulated.

Repayment of Advanced Annual Leave

An employee is required to repay advanced annual leave, except in very limited circumstances—e.g., disability retirement or death. Therefore, an employee requesting advanced annual leave should think carefully about whether he or she wants to incur this debt and how the debt will be repaid. Note that generally advanced annual leave is repaid by subsequently earned annual leave, although there are other options for repayment.

Tip: Donated annual leave under the Voluntary Leave Transfer Program (VLTP) or Voluntary Leave Bank Program (VLBP) may be used to liquidate an indebtedness incurred by the leave recipient for advanced annual leave used because of a *medical emergency*, such as medically prescribed bed rest or recovery from childbirth. Before using donated annual leave, however, the employee must first exhaust all his or her own annual and sick leave. See

Section F. on Leave Sharing Programs.

Because advanced annual leave must be repaid, an agency should not advance annual leave when it is known (or reasonably expected) that the employee will not return to duty. For more information, including information on repayment options, see our fact sheet on [Advanced Annual Leave](#).

E. Family and Medical Leave

Under the Family and Medical Leave Act (FMLA), Federal employees are entitled to a total of up to 12 workweeks of unpaid leave during any 12-month period for **one or more** of these purposes related to childbirth:

- the birth of a son or daughter of the employee and the care of such son or daughter;
- the care of spouse, son or daughter, or mother of the employee who has a *serious health condition*; or
- a *serious health condition* of the employee that makes the employee unable to perform the essential functions of his or her position.

Tip: An employee must have completed at least 12 months of service (not required to be consecutive and not required to be at the same agency) as a covered Federal employee (generally, an employee at an executive agency) in order to be entitled to FMLA leave. However, an agency may still provide a new employee not eligible for FMLA with a FMLA-like benefit.

FMLA for Employee's Own Care

An employee who must be absent from work because of a *serious health condition* is entitled to unpaid FMLA leave for prenatal care or any period of incapacity due to pregnancy, childbirth, or recovery from childbirth. This is because, according to the definition of *serious health condition* (see discussion of *serious health condition* under Section A. on Sick Leave), any period of incapacity due to pregnancy or childbirth, or for prenatal care, is considered a *serious health condition*, even if the employee does not receive active medical treatment from a health care provider during the period of incapacity or the period of incapacity does not last more than 3 consecutive calendar days.

Tip: Since sick leave and FMLA leave are two separate entitlements, an employee does not need to invoke FMLA to use sick leave for her period of recovery from childbirth. She can use 6-8 weeks of sick leave for recovery from childbirth, then later invoke FMLA to bond with her baby.

FMLA to Care for Birth Mother

An employee is entitled to use FMLA leave to care for a wife, daughter (generally under 18 years of age, see definition of *son or daughter* used for FMLA below), or mother for prenatal care or any period of incapacity due to pregnancy, childbirth, or recovery from childbirth. Note

that the broad definition of *family member* used for sick leave, VLTP and VLBP purposes does **not** apply to the FMLA, therefore an employee can only use FMLA leave to provide care for the individuals specified in law.

Spouse. The definition of *spouse* currently found in OPM’s FMLA regulations is being amended in response to the Supreme Court’s June 26, 2013 decision in *United States v. Windsor*, which determined Section 3 of the Defense of Marriage Act (DOMA) to be unconstitutional. In OPM’s [CPM 2013-14](#) entitled “Family and Medical Leave Act (FMLA) Coverage of Same-Sex Spouses” we explained that the ruling provides employees with same-sex spouses the same FMLA entitlements as those with opposite-sex spouses. **Spouse** now means a partner in any legally recognized marriage, regardless of the employee’s State of residency.

Tip: The definition of *spouse* for FMLA purposes is not as broad as the definition of *family member* for sick leave and leave sharing purposes. Therefore, an employee cannot take FMLA leave to care for a same-sex or opposite-sex domestic partner who gives birth to a child unless the domestic partner is a common law spouse according to the State of residence.

Son or Daughter. An employee may not invoke FMLA leave to care for a daughter over 18 years of age who has given birth unless she is incapable of self-care due to a mental or physical disability. That definition reads as follows—

Son or daughter means a biological, adopted, or foster child; a step child; a legal ward; or a child of a person standing *in loco parentis* who is:

- 1) Under 18 years of age; or
- 2) 18 years of age or older and incapable of self-care because of a mental or physical disability. A son or daughter incapable of self-care requires active assistance or supervision to provide daily self-care in three or more of the “activities of daily living” or “instrumental activities of daily living.” Activities of daily living include adaptive activities such as caring appropriately for one’s grooming and hygiene, bathing, dressing, and eating. Instrumental activities of daily living include cooking, cleaning, shopping, taking public transportation, paying bills, maintaining a residence, using telephones and directories, using a post office, etc. A “physical or mental disability” refers to a physical or mental impairment that substantially limits one or more of the major life activities of an individual as defined in 29 CFR 1630.2 (h), (i) and (j).

Scenario: Marguerite is a Federal employee whose healthy 22-year old daughter Rose is pregnant. The daughter’s husband has been called up for active duty in the Middle East. Marguerite has requested 6 weeks of unpaid leave under the FMLA to care for Rose after she gives birth because her son-in-law will not be there to care for Rose. Is Marguerite entitled to this leave?

No. The FMLA regulations provide entitlement to care for a *son or daughter* who is 18 years

of age or older and incapable of self-care because of a mental or physical disability. Based on this description, Rose does not meet this definition. However, Marguerite may use sick leave to care for Rose during the daughter's period of recovery from childbirth, since the sick leave regulations do not include any age restrictions on use of sick leave to care for a son or daughter.

FMLA to Care for a Newborn

Each parent is entitled to use FMLA leave for the birth of a child and care of the newborn. An employee may elect to substitute annual leave and/or sick leave for any or all of the leave without pay used under the FMLA, consistent with the laws and regulations for using annual and sick leave. (See Sections A. on Sick Leave and C. on Annual Leave.) An employee's entitlement to FMLA leave expires 12 months following the date of birth of a child.

Scenario: Jonathan used 6 weeks of sick leave to care for his wife after she gave birth to their son. He then invokes his FMLA entitlement, and requests unpaid FMLA leave, but the supervisor says that Jonathan is not entitled to FMLA leave because Jonathan's baby is not sick and his wife has recovered. What leave is Jonathan entitled to take?

Jonathan is entitled to use both sick leave and FMLA leave. He does not need to invoke FMLA to use sick leave; they are separate entitlements. Jonathan is entitled to invoke FMLA as he requested for the birth of and care for his son. The 12 weeks must be concluded by the end of the 12-month period following the baby's birth. If he wants to substitute paid leave for unpaid leave, he may only substitute annual leave, not sick leave, since he is not using the FMLA leave for a serious health condition of his wife or son.

Intermittent Use of FMLA Leave or Use on a Reduced Leave Schedule

An employee is entitled to take FMLA leave on an intermittent basis or on a reduced leave schedule for absences in connection with a serious health condition. A reduced leave schedule is a special kind of intermittent leave that amounts to a change in an employee's usual number of working hours in a workweek or workday, in many cases reducing an employee's full-time schedule to a part-time schedule for the period of FMLA leave. Therefore, an employee is entitled to take FMLA leave for her own or an eligible birth mother's prenatal appointments, for any period of incapacity due to pregnancy, childbirth, or recovery from childbirth (including for "morning sickness"), or to care for his or her child with a serious health condition. Eligibility and medical certification for the serious health condition are established only at the time of the employee first invokes FMLA for a serious health condition—a medical note is not required for each absence related to the serious health condition.

Upon mutual agreement between the agency and the employee, an employee may use FMLA leave intermittently or on a reduced leave schedule to bond with or care for his or her healthy baby. Agencies are encouraged to approve requests for intermittent FMLA leave for bonding to the maximum extent practicable. In fact, it may be to the benefit of the agency to have the employee take FMLA leave intermittently or on a reduced leave schedule basis and return to work sooner rather than being away from the job for the full 12-week block. It is important for employees to consult with their supervisors regarding scheduling requests in order to minimize

the impact on agency operations. In other words, employees should schedule intermittent FMLA leave in advance and be flexible about their intermittent or reduced work schedule in consideration of agency needs.

Scenario: Eduardo and his wife are having a baby and he would like to take time off to care for his wife and new baby. His job provides the sole source of income for the family; therefore, Eduardo needs to return to work soon after the baby is born. He first uses sick leave to care for his wife during her recovery from childbirth. Eduardo would like to return to work, but wants to know if he can he take FMLA leave intermittently on Tuesdays and Thursdays to continue to bond with his baby.

Eduardo would have to discuss his work schedule with his manager in advance to minimize the impact of his absence on agency operations. However, subject to the agency’s policy and any applicable collective bargaining agreement, Eduardo may request the use of FMLA on an intermittent basis. This would allow Eduardo to use FMLA intermittently for bonding.

Parents’ Eligibility

For FMLA purposes, a *parent* means a biological parent or an individual who stands or stood *in loco parentis* to an employee when the employee was a son or daughter. This term does not include parents “in law.” *In loco parentis* refers to the situation of an individual who has day-to-day responsibility for the care and financial support of a child or, in the case of an employee, who had such responsibility for the employee when the employee was a child. A biological or legal relationship is not necessary. See OPM’s [CPM 2010-15](#) entitled, “Interpretation of “Son or Daughter” Under the Family and Medical Leave Act,” dated August 31, 2010, for more information and examples.

Tip: Any employee who will stand *in loco parentis* (see definition above) to a baby is considered a *parent* for FMLA purposes and is entitled to use FMLA leave to bond with or care for the child, even if the employee is not the child’s biological parent (see FMLA definition of *parent* above). For example, an employee whose same or opposite sex domestic partner is having a child, but the employee is not the child’s biological parent, or a grandparent who will raise a child, is entitled to use FMLA leave to bond with the child or to care for the child if the employee will stand *in loco parentis* to the child. For more examples, please see the OPM memo cited above.

FMLA Facts Related to Pregnancy and Childbirth

- An employee must invoke his or her entitlement to FMLA leave—an agency may not place an employee on FMLA leave. Generally, an employee may not retroactively invoke FMLA.
- An employee taking FMLA leave based on an expected birth of a child should provide not less than 30 calendar days’ notice to the agency of his or her intention to take FMLA leave—or as much notice as is practicable if the leave is to begin sooner.
- The 12-month period begins on the date an employee first takes FMLA leave for any purpose and continues for 12 months.

- An employee's entitlement to FMLA leave based on the birth of a son or daughter and care of the child expires 12 months after the child's birth.

Substitution of Paid Leave under FMLA

Tip: When one hears the word “leave” generally people think that means a type of paid leave. But did you know that FMLA leave is actually a type of leave without pay? The main purpose of FMLA leave is to provide a period of job-protected time away from the agency for employees for certain purposes. FMLA leave ensures that an employee's job is protected even if he or she does not have enough paid leave to cover his or her absence.

FMLA leave is unpaid leave. However, in order to remain in a pay status during FMLA leave, an employee may elect to substitute accrued, accumulated, or advanced annual or sick leave or annual leave donated under the VLTP or VLBP, for any unpaid leave under the FMLA, consistent with current laws and OPM's regulations for using such leave.

Note: “*Consistent with current laws and regulations*” means that sick leave and donated annual leave under the VLTP or VLBP may only be substituted for *medical emergencies*, such as the birth mother's recovery from childbirth or care of a baby with a serious health condition. Annual leave may be substituted for any period of unpaid FMLA leave. Agencies are encouraged to grant advanced sick and advanced annual leave to an employee with no available paid leave who has invoked FMLA so the employee can receive pay by substituting advanced leave for unpaid FMLA leave.

Effect of Unpaid FMLA Leave on Leave Accrual and other Benefits

Being in a leave without pay (or unpaid FMLA leave) status affects various employee entitlements, including the accrual of annual and sick leave. For example, when a full-time employee with an 80-hour biweekly tour of duty accumulates a total of 80 hours of nonpay status (either in one pay period, or over the course of several pay periods), the employee will not earn annual and sick leave in the pay period. If the employee again accumulates 80 hours of nonpay status, he or she will again not earn leave in the pay period in which that new 80-hour total is reached. Employees who will be on FMLA LWOP or other LWOP should consult our [Effect of Extended Leave Without Pay \(LWOP\) \(or Other Nonpay Status\)](#) fact sheet for important information.

F. Leave Sharing Programs

An employee may be eligible to apply for and receive donated annual leave under an agency's leave sharing programs if the employee or the employee's family member is experiencing a *medical emergency* and if the employee will exhaust his or her own annual and sick leave (referred to as the employee's “available paid leave”). Donated annual leave may be provided to the birth mother or a family member caring for the birth mother during her period of incapacitation. There are two leave sharing programs that can be used during a birth mother's period of incapacitation or to care for a child with a medical emergency—the Voluntary Leave Transfer Program (VLTP) and Voluntary Leave Bank Program (VLBP).

Medical Emergency

The term *medical emergency* means a medical condition of either the employee or the employee's family member that is likely to require an employee to be absent or expected to be absent from duty for a prolonged period and to result in a substantial loss of income (expected absence without available paid leave of at least 24 work hours for a full-time employee) because of the employee's lack of available paid leave. An employee's or family member's incapacity of at least 24 hours due to pregnancy and/or recovery from childbirth would therefore constitute a *medical emergency* for purposes of the VLTP or VLBP. Care of an employee's child with a serious health condition would also constitute a *medical emergency*.

Tip: The *medical emergency* related to pregnancy and childbirth is for the birth mother's period of incapacitation related to the birth of the child. Donated annual leave under the VLTP and VLBP cannot be used for bonding with a newborn.

Scenario: Amina, an employee of the African Development Foundation, is pregnant and has 60 hours of sick leave. Her doctor has informed her that she will need to be off from work at least 6 weeks. Does Amina's routine maternity leave qualify as a *medical emergency* under the leave sharing regulations?

Yes. A *medical emergency* for the purposes of the leave sharing programs means a medical condition of an employee or family member that is likely to require an employee's absence from duty for a prolonged period of time (i.e., at least 24 work hours) and to result in a substantial loss of income to the employee because of the unavailability of paid leave.

Voluntary Leave Transfer Program

The VLTP allows an employee to donate annual leave *directly* to another employee who has a personal or family *medical emergency*. Generally, employees receive donated annual leave under the VLTP from other employees in their agency. However, family members are entitled to donate annual leave to an approved leave recipient who works at another Federal agency. The agency may allow donations from Federal employees at other agencies if it believes that the employee may not otherwise receive enough donated annual leave to meet his or her needs.

Scenario: Amina's husband works at the Department of Commerce and wants to donate 40 hours of annual leave to her. A coworker has volunteered to donate 80 hours of sick leave to her. In addition, two other carpool members have volunteered to donate annual leave to her, one works for the U.S. Postal Service and the other for OPM. How much leave may Amina's husband and the carpool members donate to Amina?

Sick leave may not be donated under the VLTP or VLBP. Generally, leave recipients may receive donations of annual leave only from employees of the same agency. However, any *family member* employed by another agency covered by the leave sharing programs in chapter 63 of title 5, of the United States Code is entitled to donate annual leave to a leave recipient, so Amina may receive donated annual leave from her husband. If the African Development

Foundation believes Amina may not receive enough donations from coworkers in her agency, it may decide to allow donations from employees at other agencies covered by the leave sharing programs. Since the U.S. Postal Service is not covered by the title 5 leave system, Amina may not receive donated annual leave from the carpool member who is an employee of the U.S. Postal Service.

Voluntary Leave Bank Program

Each agency may establish a voluntary leave bank program (VLBP) under which an employee may contribute unused annual leave for use by a leave bank member who is experiencing a personal or family *medical emergency*. Agencies are strongly encouraged to establish a leave bank program. The agency's leave bank board operates the leave bank and determines how much donated annual leave an employee may receive from the leave bank. Any unused donated annual leave is returned to the leave bank.

Tip: Every agency is required to have a voluntary leave transfer program. To ensure employees are eligible for the maximum benefits possible, agencies are also encouraged to establish a voluntary leave bank program.

Definition of Family Member for VLTP and VLBP

The definition of *family member* is the same for VLTP and VLBP purposes as it is for sick leave. See Section A. on Sick Leave.

Retroactive Substitution of Donated Annual Leave

Donated annual leave may be—

- Substituted retroactively by the employee for any period of leave without pay used because of a *medical emergency*; or
- Used by the employee to liquidate an indebtedness incurred by the leave recipient for advanced annual or sick leave used because of a medical emergency.

Set-Aside Accounts

While using donated leave, a leave recipient accrues annual and sick leave into what are called “set-aside accounts” so that the employee has some available leave when the medical emergency is over. An employee may accrue no more than 40 hours of annual leave and 40 hours of sick leave in the set-aside accounts. The leave in these accounts will be transferred to the employee's regular leave accounts **either** when the medical emergency ends **or** if the employee exhausts all donated annual leave but the employee or his or her family member is still experiencing the *medical emergency*. Leave in set-aside accounts is not available for use by the employee until transferred to the employee's regular leave accounts.

Scenario: How does Amina, whom we met earlier, accrue annual and sick leave while using donated leave?

Amina may accrue up to a maximum of 40 hours of sick leave and 40 hours of annual leave in set-aside accounts. Annual leave and sick leave in the set-aside accounts will become available for use after it is transferred to Amina's regular leave accounts when the *medical emergency* terminates or when she exhausts all donated leave but still needs more time to recover from childbirth.

Leave Sharing Facts Related to Pregnancy and Childbirth

- Donated annual leave may be used only for a *medical emergency*—e.g., any period of incapacitation of the mother or illness of the baby that will last at least 24 work hours—and may not be used to care for a healthy child.
- There is no limit on the amount of donated annual leave a leave recipient may receive from the leave donor(s)/bank. However, any unused donated annual leave must be returned to the leave donor(s)/bank when the *medical emergency* ends.
- Donated annual leave may not be used to bond with or care for a healthy newborn, to care for a child with a routine illness, or to take the child to medical, dental, or optical appointments or well-baby doctor visits.
- An employee who returns to work part-time and who uses donated leave part-time to care for a family member recovering from childbirth accrues leave in his or her regular annual and sick leave accounts for the time spent in work status and in his or her set-aside annual and sick leave accounts when using donated leave.

Tip: An employee is not required to use advanced annual leave or advanced sick leave before receiving donated annual leave under the leave transfer programs.

For more information, see our fact sheets on the [Voluntary Leave Transfer Program](#) and the [Voluntary Leave Bank Program](#).

G. Leave Without Pay

An employee may request leave without pay (LWOP) to be absent from work for purposes related to pregnancy and childbirth. An employee may request LWOP without invoking FMLA, even if he or she has available paid leave. Supervisors should refer to agency internal policy and collective bargaining and/or union agreements prior to granting approval. However, agencies are encouraged to offer leave without pay for a longer period than what is provided for under the FMLA, to the maximum extent practicable for pregnancy and childbirth.

LWOP can be used in addition to the flexibilities that are already available, subject to agency policy and any applicable collective bargaining agreement.

Tip: For new employees who are not yet eligible for FMLA, an agency can provide the employee with a LWOP benefit that would mirror a FMLA benefit.

Effect of LWOP on Leave Accrual and Other Benefits

Being in a leave without pay (or unpaid leave) status affects various employee entitlements, including the accrual of annual and sick leave. For example, when a full-time employee with an 80-hour biweekly tour of duty accumulates a total of 80 hours of nonpay status (either in one pay period, or over the course of several pay periods), the employee will not earn annual and sick leave in the pay period. If the employee again accumulates 80 hours of nonpay status, he or she will again not earn leave in the pay period in which that new 80-hour total is reached.

For more information on leave without pay and the impact it has on Federal benefits, see our fact sheets on [Leave Without Pay](#) and the [Effect of Extended Leave Without Pay \(LWOP\) \(or Other Nonpay Status\) on Federal Benefits and Programs](#).

H. Compensatory Time Off

Three types of compensatory time off may be earned and used: compensatory time off in lieu of overtime pay; compensatory time off for travel; and religious compensatory time off.

Compensatory time off in lieu of overtime pay. This is time off with pay for (1) irregular or occasional overtime work; or (2) regularly scheduled or irregular or occasional overtime work, when permitted under agency flexible work schedule programs. It is subject to agency policy and the premium pay limitation, and there are separate Fair Labor Standards Act (FLSA) rules for employees who are covered (i.e., FLSA non-exempt) or not covered (i.e., FLSA exempt). Accrued compensatory time off must generally be used by the end of the 26th pay period after the pay period during which it was earned. One hour of compensatory time off is granted for each hour of overtime work.

Scenario: Vivek and his wife Sunita are expecting a baby in October. Vivek works as a FLSA exempt Budget Analyst, and it is near the end of the fiscal year. His office is short-handed and his supervisor asks if he could work extra time to make sure they close out all fiscal year end tasks on time. They agree that Vivek will work this time as compensatory time that he can take off once the baby is born and have more paid time off with his new baby.

Compensatory time off for travel. This type of compensatory time may be earned by an employee for time spent in a travel status away from the employee's official duty station when such time is not otherwise compensable, and be used as paid time off during an expected future absence. There is no limitation on the amount of compensatory time off for travel an employee may earn, but it is generally forfeited if not used by the end of the 26th pay period after the pay period during which it is earned.

Scenario: Noor is helping with agency efforts to recruit STEM students to come work at NASA. It is January, and she is in her first trimester of pregnancy. She is traveling a lot to campus recruiting fairs and earning a lot of comp time for travel. She and her supervisor have discussed how she can use this time once she gives birth because she will not have enough sick leave to cover her full period of recovery from childbirth.

Religious compensatory time off. This authority permits an employee to rearrange work hours to fulfill his or her religious obligations. Employees may earn and use religious compensatory time off to the extent that doing so does not interfere with the efficient carrying out of agencies' missions. Employees interested in earning compensatory time off should speak with their supervisors.

Scenario: Aaron and Rachel's son is due next month. Aaron has gotten approval to work some religious compensatory time that he will take for his son's "bris," a Jewish religious circumcision ceremony for an infant male.

For more information, see our fact sheets on [compensatory time off in lieu of overtime pay](#), [compensatory time off for travel](#), and [religious compensatory time off](#).

I. Alternative Work Schedules

Alternative Work Schedules (AWS) permit an employee to complete an 80-hour biweekly pay period in less than 10 days. Employees have a right to request an alternative work schedule without fear of retaliation in accordance with agency policy and any collective bargaining agreements. These schedules enable managers and supervisors to meet their program goals while, at the same time, helping employees to better balance work, personal, and family responsibilities. There are two categories of Alternative Work Schedules—compressed work schedules and flexible work schedules.

Compressed Work Schedules. These are fixed work schedules that enable full-time employees to complete the basic 80-hour biweekly work requirement in less than 10 workdays. These schedules must be negotiated through collective bargaining or, when not applying to a bargaining unit, voted on by a majority of the employees to be covered by the schedule.

Example: An employee is required to work 4 days a week, 10-hours each day. This is a fixed schedule that cannot be changed without taking leave.

Flexible Work Schedules. These are flexible work schedules that enable employees to select and alter their work schedules to better fit their personal needs and help balance work, personal, and family responsibilities. There are various types of flexible work schedules that provide different degrees of flexibility within the 80-hour biweekly work requirement:

- **Flexitour** – employees elect start/stop times, which then become fixed.
- **Gliding** – employees may vary start/stop times daily.
- **Variable Day** – employees may vary the length of the workday.
- **Variable Week** – employees may vary the number of hours worked each week.
- **Maxiflex** – employees may work less than 10 workdays biweekly.

Credit Hours. Some agencies permit employees who work under a flexible work schedule to earn credit hours, which can assist employees in better managing family responsibilities, including childbirth. Based on agency policy and any applicable collective bargaining agreement, employees may request to work additional hours to use at a later time. A total of 24

credit hours may be carried over to be used in a later pay period. For more information, see our fact sheet on [Credit Hours Under a Flexible Work Schedule](#).

Alternative Work Schedule Facts Related to Pregnancy and Childbirth

- Alternative Work Schedules may permit employees to work fewer than 10 days in a pay period, freeing up a day or more for family responsibilities, medical appointments, and bonding.
- Employees who work under Flexible Work Schedules often may adjust working hours to accommodate medical appointments, saving earned leave for other times when needed.
- Flexible work schedules can help parents arrange work hours in line with daycare hours.

J. Telework

Telework provides employees the flexibility to better manage their work, family, and personal responsibilities. Under an agency's telework policy, an employee may be permitted to work at home or other worksites geographically convenient to the employee's residence. Telework is a valuable tool that can be used when an employee transitions back to work after the birth of a child. Telework is often used in conjunction with paid leave during the transition period between childbirth and the return to full time official duties.

Telework must be approved by the employee's supervisor based on the agency telework policy and the ability of the employee to accomplish his or her work.

Tip: It is important to remember that an employee may not care for a newborn while engaged in the performance of official duties. However, when making a determination about telework eligibility following childbirth, the focus should remain on the work and the ability of the employee to perform official duties, not on the proximity of the newborn in the home. Decisions should be made on a case-by-case basis.

Expectations to Consider in a Telework Agreement for Childbirth

Requests for telework related to an employee's recovery from childbirth or care for a family member recovering from childbirth and transition back to work should be accompanied by a formal written telework agreement that spells out expectations. Such telework agreements should, for example, outline a work schedule that indicates the days and hours of the week the employee will be working, outline any additional requirements (e.g., technology needs) beyond requisites laid out by law, clarify any assumptions regarding the frequency and modes of communication (e.g., email vs. telephone, core hours for contact, or speed or expected timeframe for returning calls and emails) and establish terms under which the agreement can be modified or terminated.

It is important for the manager and the employee to establish a dialogue to determine whether the employee can accomplish at least some part of his or her duties from home while caring for a

newborn. The focus should remain on the work, while striking a balance with the employee's caregiving responsibilities. The open dialogue should occur throughout the transition period.

Scenario: Mason's son Mahlon was born several months ago. He and his wife have a nanny caring for Mahlon at home each day. Mason discussed with his supervisor the fact that he has a home office on the third floor, and that the nanny cares for the baby on the first and second floors. So his supervisor has approved Mason to telework on Tuesdays. As a sleep deprived young parent, Mason appreciates the extra sleep he can get on Tuesdays when he is not commuting, and also enjoys the extra time he has to decompress after work and prepare a nice dinner for the family on Tuesday evenings.

Telework Facts Related to Childbirth

- Telework can provide employees with valuable additional time to spend with family members by reducing commuting time.
- Telework is not a substitute for dependent care and an employee may not care for a newborn while working from the home or an alternative worksite. To support work accomplishment, the employee cannot be expected to effectively accomplish work while actively caring for a newborn.
- Telework is a valuable tool that can be used when the employee transitions back to work following the birth of a child.

For more information, please see OPM's telework webpage at www.telework.gov.

K. Part-time Employment and Job Sharing Arrangements

Agencies are encouraged to offer part-time schedules to employees who are pregnant or have given birth, or to care for a newborn, to the maximum extent practicable. Agencies are also encouraged to develop job sharing programs in partnership with their unions and other stakeholders. Furthermore, when job sharing programs are planned for organizations where employees are represented by a labor organization with exclusive recognition, by law, agencies must notify the union and bargain in good faith on any negotiable proposals the union submits.

Part-time

A part-time employee works between 16 and 32 hours each week (or between 32 and 64 hours a pay period) on a prearranged schedule, and is eligible for benefits. Part-time employees are eligible, on a prorated basis, for the same benefits as full-time employees: leave, retirement, and health and life insurance coverage.

Scenario: Anna and her husband, Corey, have recently had their second child and now have an infant and a toddler. Anna started back to work full time, but her schedule is too stressful. Anna discusses her situation with her supervisor, and he approves her to work a part-time schedule of 30 hours a week. The extra ten hours are just what Anna needs to get both

children to their respective daycares. The extra time also provides a cushion that allows Anna to be less rushed with breastfeeding the baby.

Job Sharing

Job sharing is a form of part-time employment in which the schedules of two or more part-time employees are arranged to cover the duties of a single full-time position. Generally, a job sharing team means two employees at the same grade level but other arrangements are possible. Job sharers are subject to the same personnel policies as other part-time employees. Job sharing does not necessarily mean that each job sharer works half-time, or that the total number of hours is 40 per week.

Tip: Employees should carefully consider all the personal issues involved in switching to a part-time or job sharing schedule, such as a reduction in pay, increased share of health insurance premiums, and the change in leave earnings. Although procedures for requesting such schedules vary from agency to agency, the first step is usually to discuss the idea with the immediate supervisor.

For more information, see our [Part-time and Job Sharing](#) fact sheet.

III. Leave and Workplace Flexibilities for Adoption and Foster Care

The Federal Government offers various leave and work scheduling flexibilities to assist employees in meeting their work and family obligations. This chapter explains the available leave options that can be used separately or in combination to help the employee balance his or her work and family life for adoption and foster care.

Note: Guidance must be read in conjunction with agency and component-specific leave policies and any applicable collective bargaining agreements.

A. Sick Leave

Sick Leave for Adoption

An employee is entitled to use sick leave when he or she must be absent from work for purposes related to his or her adoption of a child.

Examples of such adoption-related purposes may include but are not limited to:

- Appointments with adoption agencies, social workers, and attorneys;
- Court proceedings;
- Required travel;
- Any periods of time during which the employee is *ordered or required* by the adoption agency or by the court to take time off from work to care for the adopted child; and
- Any other activities *necessary to allow the adoption to proceed*.

Sick Leave for Care of the Child

Employees may not use sick leave to be absent from work to bond with or care for a healthy child. There is no provision in law or regulation that permits the use of sick leave to care for a healthy newborn, bond with a healthy child, or for other child care responsibilities. An employee is also entitled to 12 weeks of sick leave each leave year to care for his or her adopted or foster child with a serious health condition. For more information on the definition of *serious health condition*, which has the same meaning as used in OPM's regulations for administering the Family and Medical Leave Act of 1993 (FMLA), please see our fact sheet entitled [Sick Leave to Care for a Family Member with a Serious Health Condition](#). The employee may also use up to 13 days of the 12 weeks of sick leave for general family care purposes, i.e., to care for a child who has a routine illness or to take a child to medical, dental, or optical appointments or well-baby doctor visits. 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.

The child must meet the definition of *son or daughter* for sick leave, VLTP, and VLBP purposes:

Son or daughter means:

- 1) A biological, adopted, step, or foster son or daughter of the employee;
- 2) A person who is a legal ward or was a legal ward of the employee when that individual was a minor or required a legal guardian;

- 3) A person for whom the employee stands *in loco parentis* or stood *in loco parentis* when that individual was a minor or required someone to stand *in loco parentis*;
or
- 4) A son or daughter, as described in paragraphs (1) through (3) of this definition, of an employee's spouse or domestic partner.

Tip: Based on the definition of *son or daughter*, an employee with a domestic partner could care for the son or daughter of his or her partner for whom the employee will stand *in loco parentis*, even if the employee is not adopting or fostering the child.

Facts Related to Sick Leave for Adoption

- An employee who is fostering a child is not entitled to use sick leave for adoption-related purposes, unless the employee is adopting the foster child.
- An employee who is accompanying a family member to activities related to the placement of a child for adoption is not entitled to use sick leave for adoption.

Example: If the employee's spouse or domestic partner is adopting a child, but the employee is not adopting the child, the employee would not be entitled to use sick leave for adoption-related purposes to accompany the spouse or domestic partner to appointments with adoption agencies, social workers, and attorneys, even if the employee will help raise the child, because the entitlement to sick leave for adoption is limited to purposes related to the **employee's** adoption of a child.

- An employee may not use sick leave to bond with his or her healthy adopted child unless ordered or required by the adoption agency or by the court.
- An agency may request administratively acceptable evidence for the use of sick leave for adoption-related purposes, general family care, or care of the child if the child has a serious health condition.
- There is no limitation on the amount of sick leave that may be used for adoption-related purposes. Sick leave for adoption-related purposes does not count towards the 104-hour (13 days) limit of sick leave each leave year for family care and bereavement purposes or the overall limit of 12 weeks of sick leave each leave year for all family care purposes.

For more information, see our fact sheets on [Sick Leave \(General Information\)](#), [Sick Leave for Adoption](#), [Sick Leave for Family Care and Bereavement](#), and [Sick Leave to Care for a Family Member with a Serious Health Condition](#).

B. Advanced Sick Leave

Upon an employee's request, an employee must be granted advanced sick leave to the maximum extent practicable, in accordance with the sick leave laws and regulations and consistent with mission needs. An employee is eligible for a maximum of 240 hours (30 days) of advanced sick leave for purposes related to his or her adoption of a child or to care for his or her adopted or foster child with a serious health condition, and a maximum of 104 hours (13 days) to care for his or her adopted or foster child with a routine illness or to take the child to medical, dental, or

optical appointments or well-baby doctor visits (if applicable). Two hundred forty (240) hours is the maximum amount of advanced sick leave a full-time employee may have to his or her credit at any one time. An agency may grant advanced sick leave for the same reason it grants sick leave as specified in law and regulation, irrespective of the employee's existing annual leave balance.

Tip: Advanced sick leave may be especially beneficial to new employees who may have little or no sick leave accumulated.

Repayment of Advanced Sick Leave

An employee is required to repay advanced sick leave, except in very limited circumstances—e.g., disability retirement, or death. Therefore, an employee requesting advanced sick leave should think carefully about whether he or she wants to incur this debt and how the debt will be repaid. Note that generally advanced sick leave is repaid by subsequently earned sick leave, so if an employee were to use 13 days of advanced sick leave, it would take a full year without using another hour of sick leave to repay the sick leave debt. Because advanced sick leave must be repaid, an agency should not advance sick leave when it is known (or reasonably expected) that the employee will not return to duty.

For more information, including information on repayment options, see our fact sheet on [Advanced Sick Leave](#).

C. Annual Leave

Annual leave may be used for any purpose, subject to the right of the supervisor to approve a time when the annual leave may be taken. Annual leave may be used for adoption or foster care purposes, for bonding with or caring for an adopted or foster child, or other child care responsibilities including taking the child to medical, dental, or optical appointments or well-baby doctor visits (if applicable), or any other purpose.

Scheduling of Annual or Advanced Annual Leave

Employees have the right to request annual leave, subject to the right of the supervisor to approve the time when the employee takes the annual leave. For adoption or foster care, agencies are encouraged to grant annual leave to the maximum extent practicable consistent with mission needs.

Tip: An employee has an entitlement to substitute annual leave for any unpaid FMLA leave during any period approved under FMLA. See section E. on Family and Medical Leave.

D. Advanced Annual Leave

Advanced annual leave should be granted to the maximum extent practicable, in accordance with annual leave laws and regulations and consistent with mission needs. An agency may advance the amount of annual leave an employee would accrue during the remainder of the leave year.

Note that this means that the later in the leave year the employee requests advanced annual leave, the smaller the amount that may be advanced. Agencies are advised to advance annual leave to the maximum extent practicable for purposes related to adoption or foster care. An agency may grant advanced annual leave for the same reasons it grants annual leave as specified in law and regulation, irrespective of the employee's existing annual leave balance. New employees are eligible to receive advanced annual leave.

Tip: Advanced annual leave may be especially beneficial to new employees who may have little or no leave accumulated.

Repayment of Advanced Annual Leave

An employee is required to repay advanced annual leave, except in very limited circumstances—e.g., disability retirement or death. Therefore, an employee requesting advanced annual leave should think carefully about whether he or she wants to incur this debt and how the debt will be repaid. Because advanced annual leave must be repaid, an agency should not advance annual leave when it is known (or reasonably expected) that the employee will not return to duty. For more information, including information on repayment options, see our fact sheet on [Advanced Annual Leave](#).

E. Family and Medical Leave

Under the Family and Medical Leave Act (FMLA), Federal employees are entitled to a total of up to 12 workweeks of unpaid leave during any 12-month period for **one or more** of these purposes related to adoption and foster care:

- the placement of a son or daughter with the employee for adoption or foster care; or
- the care of a son or daughter of the employee who has a *serious health condition*.

Tip: An employee must have completed at least 12 months of service (not required to be consecutive and not required to be at the same agency) as a covered Federal employee (generally, an employee at an executive agency) in order to be entitled to FMLA leave. However, an agency may still provide a new employee not eligible for FMLA with a FMLA-like benefit.

An employee is entitled to FMLA leave for purposes of adoption or placement of a child with the employee for adoption or foster care and care of the child.

Scenario: Ralph is a Federal employee working for the Department of Veterans Affairs. He and his wife are adopting a baby from Kazakhstan. Ralph plans to use sick leave for “activities necessary for the adoption to proceed,” including travel to and from Kazakhstan and time spent there. When he returns home, he plans to invoke his entitlement to unpaid leave under the FMLA and spend 12 weeks with his new daughter. His supervisor maintains it is critical that Ralph return to work as soon as possible. May the supervisor count the time spent in Kazakhstan towards Ralph’s 12-week entitlement?

No. Ralph is entitled to use his sick leave, independent of his FMLA entitlement, for his time in Kazakhstan. Congress was very specific that, for Federal employees, FMLA leave is in addition to any other paid or unpaid leave granted by the agency. Therefore, Ralph is entitled to use his sick leave for adoption-related activities and then to invoke his entitlement to unpaid leave under FMLA for an additional 12 weeks.

Scenario: Upon their return to the U.S., the baby spikes a high fever and is diagnosed with a blood infection. What type of leave is Ralph now entitled to use?

Ralph is entitled to use up to 12 administrative workweeks (480 hours) of sick leave to provide care for his daughter because of her serious health condition. In addition, he still has an entitlement to any unused portion of the 12 weeks of unpaid leave under the FMLA to care for his daughter because of her serious health condition.

Intermittent Use of FMLA Leave or Leave on a Reduced Leave Schedule

An employee is entitled to take FMLA leave on an intermittent basis or on a reduced leave schedule for absences in connection with a serious health condition. A reduced leave schedule is a special kind of intermittent leave that amounts to a change in an employee's usual number of working hours in a workweek or workday, in many cases reducing an employee's full-time schedule to a part-time schedule for the period of FMLA leave. Therefore, an employee is entitled to take FMLA leave to care for his or her adopted or foster child if the child has a serious health condition. Eligibility and medical certification for the serious health condition are established only at the time the employee first invokes FMLA for a serious health condition—a medical note is not required for each absence related to the serious health condition.

Upon mutual agreement between the agency and the employee, an employee may use FMLA leave intermittently or on a reduced leave schedule for the placement of a son or daughter with the employee for adoption or foster care. Agencies are encouraged to approve requests for intermittent FMLA leave for placement of an adopted or foster child to the maximum extent practicable. In fact, it may be to the benefit of the agency to have the employee take FMLA leave intermittently or on a reduced leave schedule basis and return to work sooner rather than being away from the job for the full 12-week block.

It is important for an employee to consult with his or her supervisor regarding scheduling requests in order to minimize the impact on agency operations. In other words, employees should schedule intermittent FMLA leave in advance and be flexible about their intermittent or reduced work schedule in consideration of agency needs.

Scenario: Anna is becoming a foster parent to two sisters. She is a single-mother and has no other source of income besides her Federal job. Anna would like to take some time to bond with her daughters but cannot afford to skip a full paycheck. How can she use intermittent FMLA to return to work on a reduced schedule?

Anna would have to discuss her work schedule with her manager in advance to minimize the impact of her absence on agency operations. She could use intermittent FMLA to work a reduced schedule. For example, Anna could work 4 hours in the morning when the girls are at school and use intermittent FMLA to take off 4 hours in the afternoon. Anna could work this reduced schedule throughout her 12-week FMLA bonding period and would still receive a full paycheck by substituting annual leave or advanced annual leave for unpaid intermittent FMLA leave.

FMLA Facts Related to Adoption and Foster Care

- An employee who is accompanying a family member to activities related to the placement of a child for adoption is not entitled to unpaid leave under FMLA.
- An employee must invoke his or her entitlement to FMLA leave—an agency may not place an employee on FMLA leave.
- Generally, an employee may not retroactively invoke his or her entitlement to FMLA leave. The 12-month period begins on the date an employee first takes FMLA leave for any purpose and continues for 12 months.
- Leave may begin prior to or on the actual date of placement for adoption or foster care, and the 12-month period begins on that date.
- An employee's entitlement to FMLA leave based on adoption or foster care expires 12 months after the placement of the child with the employee.
- An employee taking FMLA leave based on an expected placement of a child should provide not less than 30 calendar day notice—or as much notice as is practicable if leave is to begin sooner—to the agency of his or her intention to take FMLA leave.
- If the need for leave is not foreseeable—for example, if a child is unexpectedly available for adoption or for emergency foster care—and the employee is unable to provide advance notice of his or her need for leave—the leave may not be delayed or denied.

Scenario: Carol has been absent from work for the past two days and has failed to call in. When her supervisor contacts her, she says she is invoking her entitlement to FMLA leave as an “emergency” foster care parent. She says she never knows when the courts will contact her to pick up a child, and she will therefore be unable to notify the agency in advance of her schedule. May the agency deny the FMLA leave?

Yes. Even though an employee can provide notice at the last minute because of an unexpected placement for foster care, the employee must still follow agency leave requesting procedures and contact her supervisor to invoke her FMLA entitlement. She cannot invoke her FMLA entitlement retroactively.

Substitution of Paid Leave under FMLA

Tip: When one hears the word “leave” generally people think that means a type of paid leave. But did you know that FMLA leave is actually a type of leave without pay? The main purpose of FMLA leave is to provide a period of job-protected time away from the office for employees for certain purposes. FMLA leave ensures that an employee’s job is protected even

if he or she does not have enough paid leave to cover his or her absence.

FMLA leave is unpaid leave. However, in order to remain in a pay status during FMLA leave, an employee may elect to substitute accrued, accumulated, or advanced annual leave or sick leave or annual leave donated under the VLTP or VLBP, for any unpaid leave under the FMLA, consistent with the laws and regulations for using annual and sick leave. (See section A. on Sick Leave for Adoption of a Child, for the limitations on the use of sick leave for adoption and family care.)

“Consistent with current laws and regulations” means that sick leave may only be substituted for purposes necessary for an adoption to proceed or care of an adopted or foster child with a serious health condition. Annual leave may be substituted for any period of unpaid FMLA leave. Agencies are encouraged to grant advanced sick and advanced annual leave to an employee with no available paid leave who has invoked FMLA so the employee can receive pay by substituting advanced leave for unpaid FMLA leave. Donated annual leave may only be substituted for medical emergencies (e.g., care of an adopted or foster child with a serious health condition).

Effect of Unpaid FMLA Leave on Leave Accrual and other Benefits

Being in a leave without pay (or unpaid leave) status affects various employee entitlements, including the accrual of annual and sick leave. For example, when a full-time employee with an 80-hour biweekly tour of duty accumulates a total of 80 hours of nonpay status (either in one pay period, or over the course of several pay periods), the employee will not earn annual and sick leave in the pay period. If the employee again accumulates 80 hours of nonpay status, he or she will again not earn leave in the pay period in which that new 80-hour total is reached. Employees who will be on FMLA LWOP or other LWOP should consult our [Effect of Extended Leave Without Pay \(LWOP\) \(or Other Nonpay Status\)](#) fact sheet for important information.

F. Leave Sharing Programs

An employee may be eligible to apply for and receive donated annual leave under an agency’s leave sharing programs if the employee’s adopted or foster child experiences a *medical emergency* and if the employee will exhaust his or her own annual and sick leave (referred to as the employee’s “available paid leave”). There are two leave sharing programs that can be used to care for an adopted or foster child with a *medical emergency*—the Voluntary Leave Transfer Program (VLTP) and the Voluntary Leave Bank Program (VLBP).

Medical Emergency

The term *medical emergency* means a medical condition of either the employee or the employee's family member that is likely to require an employee to be absent or expected to be absent from duty for a prolonged period and to result in a substantial loss of income (expected absence without available paid leave of at least 24 work hours for a full-time employee) because of the employee's lack of available paid leave.

Tip: Donated leave under the VLTP and VLBP cannot be used for purposes related to the

adoption or foster placement of a child or for bonding with the child.

Scenario: One of Anna's foster daughters will be in the hospital for two weeks to have surgery following a serious accident. Does this qualify as a *medical emergency* under the leave sharing regulations?

Yes. A *medical emergency* for the purposes of the leave sharing programs means a medical condition of an employee's family member, such as a foster or adopted child, that is likely to require an employee's absence from duty for a prolonged period of time (i.e., at least 24 work hours) and to result in a substantial loss of income to the employee because of the unavailability of paid leave.

Voluntary Leave Transfer Program

The VLTP allows an employee to donate annual leave *directly* to another employee who has a personal or family *medical emergency*. Generally, employees receive donated annual leave under the VLTP from other employees in their agency. However, family members are entitled to donate annual leave to an approved leave recipient who works at another Federal agency. The agency may allow donations from Federal employees at other agencies if it believes that the employee may not otherwise receive enough donated annual leave to meet his or her needs.

Scenario: Anna's sister works at the Department of Commerce and wants to donate 40 hours of annual leave to her. A coworker has volunteered to donate 80 hours of sick leave to her. How much leave may Anna's sister and her coworker donate to Anna?

Sick leave may not be donated under the VLTP or VLBP. Generally, leave recipients may receive donations of annual leave only from employees of the same agency. However, any *family member* employed by another agency covered by the leave sharing programs in chapter 63 of title 5, of the United States Code is entitled to donate annual leave to a leave recipient, so Anna may receive donated annual leave from her sister. If Anna's agency believes she may not receive enough donations from coworkers in her agency, it may decide to allow donations from employees at other agencies covered by the leave sharing programs.

Voluntary Leave Bank Program

Each agency may establish a voluntary leave bank program (VLBP) under which an employee may contribute unused annual leave for use by a leave bank member who is experiencing a personal or family *medical emergency*. Agencies are strongly encouraged to establish a leave bank program. The agency's leave bank board operates the leave bank and determines how much donated annual leave an employee may receive from the leave bank. Any unused donated annual leave is returned to the leave banks.

Tip: Every agency is required to have a voluntary leave transfer program. To ensure employees are eligible for the maximum benefits possible, agencies are also encouraged to establish a voluntary leave bank program.

Definition of Family Member for VLTP and VLBP

The definition of *family member* is the same for VLTP and VLBP purposes as it is for sick leave purposes. See the definition in Section A. on Sick Leave.

Retroactive Substitution of Donated Annual Leave

Donated annual leave may be—

- Substituted retroactively by the employee for any period of leave without pay used because of a *medical emergency*; or
- Used by the employee to liquidate an indebtedness incurred by the leave recipient for advanced annual or sick leave used because of a *medical emergency*.

Set-Aside Accounts

While using donated annual leave, a leave recipient accrues annual and sick leave into what are called “set-aside” accounts so that the employee has some available leave when the *medical emergency* is over. An employee may accrue no more than 40 hours of annual leave and 40 hours of sick leave in set-aside accounts. The leave in these set-aside accounts will be transferred to the employee's regular leave accounts **either** when the *medical emergency* ends **or** if the employee exhausts all donated annual leave but the employee's adopted or foster child is still experiencing the *medical emergency*. Leave in set-aside accounts is not available for use by the employee until transferred to the employee's regular leave accounts.

Scenario: How does Anna, whom we met earlier, accrue annual and sick leave while using donated leave?

Anna may accrue up to a maximum of 40 hours of sick leave and 40 hours of annual leave in special set-aside accounts. Annual leave and sick leave in the set-aside accounts will become available for use after it is transferred to Anna's regular leave accounts when the *medical emergency* terminates or when she exhausts all donated leave but still needs more time to care for her foster daughter.

Leave Sharing Facts Related to Adoption and Foster Care

- Donated annual leave may be used only for a *medical emergency*—e.g., any period of illness of the adopted or foster child that will last at least 24 work hours—and may not be used to care for a healthy child.
- There is no limit on the amount of donated annual leave a leave recipient may receive from the leave donor(s)/bank. However, any unused donated leave must be returned to the leave donor(s)/bank when the *medical emergency* ends.
- Donated annual leave may not be used for activities related to the placement of a child for adoption or foster care purposes, to bond with or care for a healthy child, to care for a

child with a routine illness, or to take the child to medical, dental, or optical appointments.

- An employee who returns to work part-time and who uses donated leave part-time accrues leave in his or her regular annual and sick leave accounts for the time spent in work status and in his or her set-aside annual and sick leave accounts when using donated leave.

Tip: An employee is not required to use advanced annual or advanced sick leave before receiving donated annual leave under the leave transfer programs.

For more information, see our fact sheets on the [Voluntary Leave Transfer Program](#) and the [Voluntary Leave Bank Program](#).

G. Leave Without Pay

An employee may request leave without pay (LWOP) to be absent from work for adoption or foster care purposes or to bond with or care for a newly-adopted child or newly-placed foster child. An employee may request LWOP without invoking FMLA, even if he or she has available paid leave. Supervisors should refer to agency internal policy and negotiated bargaining union agreements prior to approval. However, agencies are encouraged to offer leave without pay for a longer period than what is provided for under the FMLA, to the maximum extent practicable for pregnancy and childbirth.

Tip: For new employees who are not yet eligible for FMLA, an agency can provide the employee with a LWOP benefit that would mirror a FMLA benefit.

Effect of LWOP on Leave Accrual and other Benefits

Being in a leave without pay (or unpaid leave) status affects various employee entitlements, including the accrual of annual and sick leave. For example, when a full-time employee with an 80-hour biweekly tour of duty accumulates a total of 80 hours of nonpay status (either in one pay period, or over the course of several pay periods), the employee will not earn annual and sick leave in the pay period. If the employee again accumulates 80 hours of nonpay status, he or she will again not earn leave in the pay period in which that new 80-hour total is reached.

For more information on leave without pay and the impact it has on Federal benefits, see our fact sheets on [Leave Without Pay](#) and the [Effect of Extended Leave Without Pay \(LWOP\) \(or Other Nonpay Status\) on Federal Benefits and Programs](#).

H. Compensatory Time Off

Three types of compensatory time off may be earned and used: compensatory time off in lieu of overtime pay, compensatory time off for travel, and religious compensatory time off.

Compensatory time off in lieu of overtime pay. This is time off with pay for (1) irregular or occasional overtime work; or (2) regularly scheduled or irregular or occasional overtime work,

when permitted under agency flexible work schedule programs. It is subject to agency policy and the premium pay limitation, and there are separate Fair Labor Standards Act (FLSA) rules for employees who are covered (i.e., FLSA non-exempt) or not covered (i.e., FLSA exempt pay). Accrued compensatory time off must generally be used by the end of the 26th pay period after the pay period during which it was earned. One hour of compensatory time off is granted for each hour of overtime work.

Scenario: Donald and his husband Antony are adopting a two year old in October. Donald works as a FLSA exempt Budget Analyst, and it is near the end of the fiscal year and his office is short-handed and his supervisor asks if he could work extra time to make sure they close out all fiscal year end tasks on time. They agree that Donald will work this time as compensatory time that he can take off once the baby is placed with them so he can have more paid time off with his new child.

Compensatory time off for travel. This type of compensatory time may be earned by an employee for time spent in a travel status away from the employee's official duty station when such time is not otherwise compensable, and be used as paid time off during an expected future absence. There is no limitation on the amount of compensatory time off for travel an employee may earn, but it is generally forfeited if not used by the end of the 26th pay period after the pay period during which it is earned.

Scenario: Noor and her husband Saad have just been approved to serve as foster parents. Noor is helping with agency efforts to recruit STEM students to come work at NASA and she is traveling a lot to campus recruiting fairs and earning a lot of comp time for travel. She and her supervisor have discussed how she can use this time once a child is placed with them for foster care so she will not need to use as much annual leave to be able to stay home and bond with her new foster child.

Religious compensatory time off. This authority permits an employee to rearrange work hours to fulfill his or her religious obligations. Employees may earn and use religious compensatory time off to the extent that doing so does not interfere with the efficient carrying out of agencies' missions. Employees interested in earning compensatory time off should speak with their supervisors.

Scenario: Avram and Leah are adopting a baby girl next month. Avram has gotten approval to work some religious compensatory time that he will take for his daughter's "b'rit bat," a Jewish religious naming ceremony for a girl.

For more information, see our fact sheets on [compensatory time off in lieu of overtime pay](#), [compensatory time off for travel](#), and [religious compensatory time off](#).

I. Alternative Work Schedules

Alternative Work Schedules (AWS) permit an employee to complete an 80-hour biweekly pay period in less than 10 days. Employees have a right to request an alternative work schedule without fear of retaliation in accordance with agency policy and any collective bargaining

agreement. These schedules enable managers and supervisors to meet their program goals while, at the same time, helping employees to better balance work, personal, and family responsibilities. There are two categories of Alternative Work Schedules – compressed work schedules and flexible work schedules.

Compressed Work Schedules. These are fixed work schedules that enable full-time employees to complete the basic 80-hour biweekly work requirement in less than 10 workdays. These schedules must be negotiated through collective bargaining or, when not applying to a bargaining unit, voted on by a majority of the employees to be covered by the schedule.

Example: An employee is required to work 4 days a week, 10-hours each day. This is a fixed schedule that cannot be changed without taking leave.

Flexible Work Schedules. These are flexible work schedules that enable employees to select and alter their work schedules to better fit their personal needs and help balance work, personal, and family responsibilities. There are various types of flexible work schedules that provide different degrees of flexibility within the 80-hour biweekly work requirement:

- **Flexitour** – employees elect start/stop times, which then become fixed.
- **Gliding** – employees may vary start/stop times daily.
- **Variable Day** – employees may vary the length of the workday.
- **Variable Week** – employees may vary the number of hours worked each week.
- **Maxiflex** – employees may work less than 10 workdays biweekly.

Credit Hours. Some agencies permit employees who work under a flexible work schedule to earn credit hours, which can assist employees in better managing family responsibilities, including adoption and foster care. Based on agency policy and any applicable collective bargaining agreement, employees may request to work additional hours to use at a later time. A total of 24 credit hours may be carried over to be used in a later pay period. For more information, see our fact sheet on [Credit Hours Under a Flexible Work Schedule](#).

Alternative Work Schedule Facts Related to Adoption and Foster Care

- Alternative Work Schedules may permit employees to work fewer than 10 days in a pay period, freeing up a day or more for family responsibilities, medical appointments, and bonding.
- Employees who work under Flexible Work Schedules often may adjust working hours to accommodate medical appointments, saving earned leave for other times when needed.
- Flexible work schedules can help parents arrange work hours in line with daycare hours.

J. Telework

Telework provides employees the flexibility to better manage their work, family, and personal responsibilities. Under an agency's telework policy, an employee may be permitted to work at home or other worksites geographically convenient to the employee's residence. Telework is a

valuable tool that can be used when an employee transitions back to work after the adoption of a child or placement of a child in foster care. Telework is often used in conjunction with other forms of paid leave during the transition period between placement of the child for adoption or foster care and the return to full-time official duties.

Telework must be approved by the employee's supervisor based on the agency telework policy and the ability of the employee to accomplish his or her work.

Tip: It is important to remember that an employee may not care for a child while engaged in the performance of official duties. However, when making a determination about telework eligibility following an adoption or placement of a child in foster care, the focus should remain on the work and the ability of the employee to perform official duties, not on the proximity of the child in the home. Decisions should be made on a case-by-case basis.

Expectations to Consider in a Telework Agreement for Adoption or Foster Care

Requests for telework related to an employee transitioning back to work following the placement of a child with the employee for adoption or foster care should be accompanied by a formal written telework agreement that spells out expectations. Such telework agreements should, for example, outline a work schedule that indicates the days and hours of the week the employee will be working, outline any additional requirements (e.g., technology needs) beyond requisites laid out by law, clarify any assumptions regarding frequency and modes of communication (e.g., email vs. telephone, core hours for contact, or speed for expected timeframe for returning calls and emails) and establish terms under which the agreement can be modified or terminated.

It is important for the manager and the employee to establish a dialogue to determine whether the employee can accomplish at least some part of his or her duties from home while caring for a newly-placed adopted or foster child. The focus should remain on the work, while striking a balance with the employee's caregiving responsibilities. The open dialogue should occur throughout the transition period.

Scenario: Mark and his wife adopted a new baby, Doris, several months ago. They have a live-in au pair caring for Doris at home each day. Mark discussed with his supervisor the fact that he has a home office on the third floor, and that the au pair cares for Doris on the first and second floors. His supervisor has approved Mark to telework on Wednesdays. As a new parent adjusting to life with an infant and the demands of parenthood, Mark appreciates the extra sleep he can get on Wednesdays when he is not commuting, and also enjoys the extra time he has to prepare a nice dinner for the family on Wednesday evenings.

Telework Facts Related to Adoption or Foster Care

- Telework can provide employees with valuable additional time to spend with family members by reducing commuting time.

- Telework is not a substitute for dependent care and an employee may not care for a child while working from the home or an alternative worksite. To support work accomplishment, the employee cannot be expected to effectively accomplish work while actively caring for a young child.
- Telework is a valuable tool that can be used when the employee transitions back to work following the placement of a child with the employee for adoption or foster care.

Scenario: Ed becomes a foster parent to Ricardo, who is in the 5th grade, in the winter. The adjustment has been a little difficult. Ricardo has little league games in the afternoon on Wednesdays, so Ed has asked for and been approved to switch his telework days from Fridays to Wednesdays so he can take Ricardo to little league games after he comes home from school. Spending this weekly time together this spring is significantly helping with the bonding process between foster father and foster son.

For more information, please see OPM's telework webpage at www.telework.gov.

K. Part-time Employment and Job Sharing Arrangements

Agencies are encouraged to offer part-time schedules to employees who are adopting or fostering a child, to the maximum extent practicable. Agencies are also encouraged to develop job sharing programs in partnership with their unions and other stakeholders. Furthermore, when job sharing programs are planned for organizations where employees are represented by a labor organization with exclusive recognition, by law, agencies must notify the union and bargain in good faith on any negotiable proposals the union submits.

Part-time

A part-time employee works between 16 and 32 hours each week (or between 32 and 64 hours a pay period) on a prearranged schedule, and is eligible for benefits. Part-time employees are eligible, on a prorated basis, for the same benefits as full-time employees: leave, retirement, and health and life insurance coverage.

Scenario: Tonya and her husband, David, have recently adopted their second child and now have an infant and a toddler. Tonya started back to work full time, but her schedule is too stressful. Tonya discusses her situation with her supervisor, and he approves her to work a part-time schedule of 30 hours a week. The extra ten hours are just what Tonya needs to balance her work and family life.

Job Sharing

Job sharing is a form of part-time employment in which the schedules of two or more part-time employees are arranged to cover the duties of a single full-time position. Generally, a job sharing team means two employees at the same grade level but other arrangements are possible. Job sharers are subject to the same personnel policies as other part-time employees. Job sharing

does not necessarily mean that each job sharer works half-time, or that the total number of hours is 40 per week.

Tip: Employees should carefully consider all the personal issues involved in switching to a part-time or job sharing schedule, such as a reduction in pay, increased share of health insurance premiums, and the change in leave earnings. Although procedures for requesting such schedules vary from agency to agency, the first step is usually to discuss the idea with the immediate supervisor.

For more information, see our [Part-time and Job Sharing](#) fact.

IV. Interaction of Leave Programs and Workplace Flexibilities

Sections II and III of this Handbook provide information regarding the leave programs and workplace flexibilities available for childbirth, adoption, and foster care. This section provides a brief summary of benefits and is designed to demonstrate interactions among the various leave programs and other workplace flexibilities to help employees understand how these options can be used together.

A. Leave for Family Care: Differences between Sick Leave/Leave Transfer and FMLA

The following chart highlights the key differences in the individual for whom an employee may provide care for purposes related to sick leave, leave transfer and FMLA. The sick leave and leave transfer programs entitle an employee to care for anyone who meets the definition of *family member*. The definition of *family member* is shown in the chart below. The term *family member* is not used in the FMLA regulations. Under FMLA, an employee can only care for the individuals mentioned in the FMLA statute, as shown in the chart below. It is important to consider the employee’s relationship to the individual for whom he or she will be providing care in order to properly advise the employee which program or programs he or she can use to care for that individual.

An employee may care for the following individuals using these leave programs	
Sick Leave/Leave Transfer	FMLA
<p>An individual with any of the following relationships to the employee:</p> <ul style="list-style-type: none"> • Spouse, and parents thereof; • Sons and daughters, and spouses thereof; • Parents, and spouses thereof; • Brothers and sisters, and spouses thereof; • Grandparents and grandchildren, and spouses thereof; • Domestic partner and parents thereof, including domestic partners of any individual in the 2nd to 5th bullets of this definition; or • Any individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship 	<p>An individual with any of the following relationships to the employee:</p> <ul style="list-style-type: none"> • Spouse (same-sex or opposite-sex); • Son or daughter (under the age of 18 or incapable of self-care because of a mental or physical disability); or • Parent

Note: The definition of *spouse* for FMLA purposes is not as broad as the definition of *family member* for sick leave, voluntary leave transfer (VLTP), and voluntary leave bank (VLBP)

purposes, and does not include unmarried domestic partners, unless they meet the requirements of being spouses in a common-law marriage in States where such marriages are recognized. Therefore, an employee cannot take FMLA leave to care for a same-sex or opposite-sex domestic partner who gives birth to a child or who has a serious health condition unless the domestic partner is a common law spouse. This means employees must pay close attention to whom they want to care for, and only choose the program(s) applicable to care for that family member.

B. Summary of Leave Programs Available for Childbirth

The following provides a quick summary of the various leave programs available for childbirth purposes, broken out by programs used specifically because of pregnancy, childbirth, and recovery from childbirth, and programs used to bond with a healthy baby. Leave programs to care for the health needs of the baby and other workplace flexibilities are not shown here, but are discussed throughout the handbook text. An employee may be able to use some or all of these leave programs, depending on his or her leave balances, family association, and interests and needs of the individual employee.

A new employee who is pregnant and is not eligible for FMLA may:

For prenatal care and any period of incapacity during pregnancy, and/or recovery from childbirth (usually 6-8 weeks) (Note: incapacity lasting at least 24 work hours meets the requirements for use of donated annual leave under VLTP and VLBP):

- Use **sick leave** entitlement
- Request **advanced sick leave**
- Request **donated annual leave** under VLTP/VLBP—may only be used if employee has exhausted her annual and sick leave (her available paid leave). Donated annual leave may be used to repay advanced sick or advanced annual leave taken during a medical emergency once the employee is approved for a leave sharing program
- Request **annual leave**
- Request **advanced annual leave**
- Request **leave without pay** outside of FMLA

To bond with her baby after her period of recovery from childbirth:

- Request **annual leave**
- Request **advanced annual leave**
- Request **leave without pay** outside of FMLA

An employee who is pregnant and is FMLA eligible may:

For prenatal care and any period of incapacity during pregnancy, and/or recovery from childbirth (usually 6-8 weeks) (Note: these purposes all meet the requirements for FMLA leave for a serious health condition, and, if an incapacity lasts at least 24 work hours, meet the requirements for use of donated annual leave under VLTP and VLBP):

- Use **sick leave** entitlement
- Request **advanced sick leave** (agency may require invocation of FMLA)
- Request **donated annual leave** under VLTP/VLBP—may only be used if employee has exhausted her annual and sick leave (her available paid leave) and if period of incapacity lasts at least 24 work hours; agency may require invocation of FMLA). Donated annual leave may be used to repay advanced sick or advanced annual leave taken during the medical emergency once the employee is approved for a leave transfer sharing program
- Request **annual leave** (agency may require invocation of FMLA)
- Request **advanced annual leave** (agency may require invocation of FMLA)
- Invoke **FMLA** entitlement for up to 12 weeks—unpaid leave
 - May substitute sick leave for unpaid FMLA leave
 - May substitute advanced sick leave for unpaid FMLA leave
 - May substitute annual leave for unpaid FMLA leave
 - May substitute advanced annual leave for unpaid FMLA leave
 - May substitute donated annual leave for unpaid FMLA leave
 - May take on an intermittent basis
- Request **leave without pay** outside of FMLA

To bond with baby after period of recovery from childbirth:

- Request **annual leave** (agency may require invocation of FMLA)
- Request **advanced annual leave** (agency may require invocation of FMLA)
- Invoke **FMLA** entitlement for remainder of the 12 week period—unpaid leave
 - May substitute annual leave for unpaid FMLA leave
 - May substitute advanced annual leave for unpaid FMLA leave
 - May take on an intermittent basis, if approved
- Request **leave without pay** outside of FMLA

An employee who will care for a family member who is pregnant, during recovery from childbirth, and to bond with the baby may:

Accompany a family member to prenatal care appointments and care for her during any period of incapacity during pregnancy, and/or recovery from childbirth (usually 6-8 weeks) (Note that these purposes all meet the requirements for sick leave and FMLA leave for a serious health condition):

- Use **sick leave** entitlement—limited to 12 weeks per leave year to care for a family member with a serious health condition and a total of 12 weeks per leave year for all family care purposes
- Request **advanced sick leave** (agency may require invocation of FMLA if employee is FMLA eligible and caring for a wife, mother, or daughter under 18 or over 18 but incapable of self-care because of a mental or physical disability)
- Request **donated annual leave** under VLTP—may only be used if employee has exhausted his or her annual and sick leave (his or her available paid leave) (agency may require invocation of FMLA if employee is FMLA eligible and caring for a wife,

mother, or daughter under 18 or over 18 but incapable of self-care because of a mental or physical disability). Donated annual leave may be used to repay advanced sick or advanced annual leave taken during the medical emergency once the employee is approved for the leave transfer program in question

- Request **annual leave** (agency may require invocation of FMLA if employee is FMLA eligible and caring for a wife, mother, or daughter under 18 or over 18 but incapable of self-care because of a mental or physical disability)
- Request **advanced annual leave** (agency may require invocation of FMLA if employee is FMLA eligible and caring for a wife, mother, or daughter under 18 or over 18 but incapable of self-care because of a mental or physical disability)
- Invoke **FMLA** if employee is FMLA eligible and caring for a wife, mother, or daughter under 18 or over 18 but incapable of self-care because of a mental or physical disability for up to 12 weeks—unpaid leave
 - May substitute sick leave for unpaid FMLA leave
 - May substitute advanced sick leave for unpaid FMLA leave
 - May substitute annual leave for unpaid FMLA leave
 - May substitute advanced annual leave for unpaid FMLA leave
 - May substitute donated annual leave for unpaid FMLA leave
 - May take on an intermittent basis
- Request **leave without pay** outside of FMLA

To bond with baby after period of recovery from childbirth:

- Request **annual leave** (agency may require invocation of FMLA if employee is FMLA eligible and is the parent or standing *in loco parentis*)
- Request **advanced annual leave** (agency may require invocation of FMLA if employee is FMLA eligible and is the parent or standing *in loco parentis*)
- Invoke **FMLA** entitlement to bond with baby for the remainder of the 12-week period if employee is FMLA eligible and is the parent or standing *in loco parentis*—unpaid leave
 - May substitute annual leave for unpaid FMLA leave
 - May substitute advanced annual leave for unpaid FMLA leave
 - May take on an intermittent basis, if approved
- Request **leave without pay** outside of FMLA

C. Sample Leave Calendars for Childbirth Purposes

An employee planning to be absent from the workplace for childbirth purposes may find it helpful to prepare a calendar indicating the amount of time he or she wishes to be absent from the workplace. The calendar should reflect the type of leave and work scheduling flexibilities the employee wishes to use each day. Having a well-thought-out calendar will facilitate a meaningful discussion with the employee's manager. We encourage employees to review all of the following calendars, which provide various examples of how leave and workplace flexibilities may be used in combination to meet employees' specific needs.

Scenario 1

Childbirth - Self, New Employee, not FMLA-Eligible, Limited Leave

Jordan is a new Federal employee who has 6 months of service and, therefore, does not qualify for FMLA. She would like to stay home with her baby for 3 months before returning to work. She has 40 hours of sick leave and 40 hours of annual leave.

Jordan is put on medically-prescribed bed rest for two weeks prior to the birth of her child. She uses 40 hours of sick leave for bed rest and prenatal appointments from March 9 through March 13. Jordan then requests and is granted 40 hours of annual leave which she uses from March 16 through March 20.

On March 23, Jordan gives birth to her baby boy. Following the birth of her son, Jordan requests and is granted 240 hours of advanced sick leave to cover her period of recovery from childbirth from March 23 through May 1.

Tip: As soon as Jordan can demonstrate that she will exhaust her available paid leave (sick and annual leave), she may apply to receive donated annual leave under the VLTP/VLBP for her period of her recovery from childbirth. She can use the donated annual leave to repay the advanced sick leave taken during her recovery from childbirth.

Next, Jordan requests and is granted 64 hours of advanced annual leave (the amount of annual leave she would accrue through the remainder of the leave year) for bonding with her son between May 4 and May 13.

Finally, Jordan requests and the agency approves Jordan's request for LWOP for bonding with her baby from May 14 through June 23. She is not in a pay status the workday before or after the Memorial Day holiday so she will not be paid for the holiday.

In Summary:

- March 9 – March 13: SICK LEAVE for bed rest/prenatal appointments (5 days)
- March 16 – March 20: ANNUAL LEAVE for bed rest/prenatal appointments (5 days)
- March 23: BABY BORN
- March 23 – May 1: ADVANCED SICK LEAVE for recovery from childbirth (30 days maximum)
- May 4 – May 13: ADVANCED ANNUAL LEAVE for bonding with baby (8 days)
- May 14 – June 23: LWOP for bonding with baby, if approved. Employee would not be in a pay status on the day before or after the Memorial Day holiday (May 25) so will not be paid for the holiday.

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Sick Leave
Annual Leave
Advanced Sick Leave and/ or Donated Annual Leave
Advanced Annual Leave
Leave without Pay
Holiday

Scenario 2

Childbirth - Self, Sufficient Leave

Amina is pregnant and, after her baby is born, would like to stay home with her baby for 5 months before returning to work. She has been a Federal employee for 1½ years, so she qualifies for FMLA. She has 160 hours of sick leave and 40 hours of annual leave.

Amina is put on medically prescribed bed rest for two weeks prior to the birth of her child. She uses 80 hours of sick leave for bed rest and prenatal appointments from March 9 through March 20.

On March 23, Amina gives birth to her baby girl and her healthcare provider certifies that she will need 6 weeks to recover from childbirth. Amina uses 80 hours of sick leave towards her recovery from March 23 through April 3. Then, since she has no more available sick leave, she invokes her FMLA entitlement on April 6. She substitutes 40 hours of annual leave for unpaid FMLA leave to cover the week of April 6 through April 10. She requests and is granted 120 hours (the maximum number she can request is 240 hours) of advanced sick leave to cover the remainder of her of recovery from childbirth. Amina substitutes the advanced sick leave for unpaid FMLA leave for recovery from childbirth from April 13 through May 1.

Tip: As soon as Amina can demonstrate that she will exhaust her available paid leave (sick and annual leave), she may apply to be a leave recipient under the VLTP (and/or VLBP if applicable) for the remainder of the 6 weeks she will need to recover from childbirth. She can use the donated annual leave to repay the advanced sick leave taken for recovery from childbirth from April 13 through May 1.

Next, Amina requests and is granted 64 hours (the amount of annual leave she would accrue through the remainder of the leave year) of advanced annual leave for bonding with her baby. She substitutes the advanced annual leave for unpaid FMLA leave from May 4 through May 13.

Beginning on May 14, Amina remains on FMLA but no longer substitutes paid leave for unpaid FMLA leave. She is on FMLA leave without pay (LWOP) throughout the remainder of her 12-week FMLA entitlement, which expires on June 29. (Her FMLA period is extended by one day because Federal holidays are excluded from the 12-week calculation.)

Tip: Employees must be in a pay status or a paid time off status on their scheduled workday either before or after a holiday in order to be paid for the holiday, so Amina can choose to use paid leave on May 22 or May 26 in order to be paid for the Memorial Day holiday. (She chooses May 22.)

Tip: Amina has exhausted her FMLA entitlement but, if approved, can take off more time from work by requesting LWOP outside of FMLA.

Finally, the agency approved Amina's request for LWOP outside of FMLA for bonding with her baby from June 30 through August 21. Amina would not be in a pay status or paid time off status on July 2 or July 6, so she is not entitled to be paid for the Independence Day holiday, which falls on July 3. Amina returns to work on August 24.

In Summary:

- March 9 – March 20: SICK LEAVE for bed rest/prenatal appointments (10 days)
- March 23: BABY BORN
- March 23 – April 3: SICK LEAVE for recovery from childbirth (10 days)
- April 6 – April 10: FMLA w/ substitution of ANNUAL LEAVE for recovery from childbirth (5 days)
- April 13 – May 1: FMLA w/ substitution of ADVANCED SICK LEAVE or DONATED ANNUAL LEAVE for recovery from childbirth (15 days)
- May 4 – May 13: FMLA w/ substitution of ADVANCED ANNUAL LEAVE for bonding with baby (8 days)
- May 14 – June 29: FMLA LWOP for bonding with baby (31 days)
- May 22: FMLA w/ substitution of ANNUAL LEAVE for bonding with baby (1 day). Uses annual leave accrued while on paid leave to be in a pay status on the day prior to the Memorial Day holiday so will be paid for the holiday.
- June 30 – August 21: LWOP for bonding with baby (38 days). Will not be in a pay status on workday before or after Independence Day holiday so will not be paid for the holiday.

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- Sick Leave**
- FMLA – Substitution of Annual Leave**
- FMLA – Substitution of Advanced Sick Leave and/or Donated Annual Leave**
- FMLA – Substitution of Advanced Annual Leave**
- FMLA – LWOP**
- Leave without Pay**
- Holiday**

Scenario 3

Childbirth - Self, Limited Leave

Isabelle is pregnant and would like to stay home with her baby for her full 12-week period of FMLA entitlement before returning to work on a reduced schedule. She has been a Federal employee for four years and qualifies for FMLA. She has 40 hours of sick leave and 8 hours of annual leave.

Isabelle is put on medically-prescribed bed rest for two weeks prior to the birth of her child. She uses 40 hours of sick leave for bed rest and prenatal appointments from March 9 through March 13. At this time, she no longer has any more sick leave, so Isabelle invokes her FMLA entitlement on March 16. She chooses to substitute 8 hours of annual leave for unpaid FMLA leave to cover one day of bed rest. She requests and is granted 240 hours of advanced sick leave to cover her expected needs. Isabelle substitutes advanced sick leave for unpaid FMLA leave for the period of her bed rest from March 17 through March 20.

On March 23, Isabelle gives birth to her baby girl. Her healthcare provider certifies she will need up to 6 weeks to recover from childbirth. Following the birth of her daughter, Isabelle continues to take FMLA leave to cover her full period of recovery from childbirth. She substitutes the remaining 208 hours of advanced sick leave for unpaid FMLA leave for the period of recovery from childbirth from March 23 through April 27.

Tip: As soon as Isabelle can demonstrate that she will exhaust her available paid leave (sick and annual leave), she may apply to be a leave recipient under her agency's VLTP and/or VLBP (if applicable) for the period of her medically prescribed bed rest and recovery from childbirth. She can use the donated annual leave to repay the advanced sick leave taken during these periods.

Next, Isabelle requests and is granted 80 hours of advanced annual leave for the last three days of her recovery from childbirth and bonding with her baby. She substitutes 72 hours of advanced annual leave for unpaid FMLA leave from April 28 through May 8 and keeps the remaining 8 hours for a potential future need.

Beginning on May 11, Isabelle remains on FMLA but no longer substitutes paid leave for unpaid FMLA leave. She is on FMLA leave without pay (LWOP) throughout the remainder of her 12-week FMLA entitlement, which expires on June 9. (Her FMLA period is extended by one day because Federal holidays are excluded from the 12-week calculation.)

Tip: Employees must be in a pay status or a paid time off status on their scheduled workday either before or after a holiday in order to be paid for the holiday, so Isabelle can choose to use paid leave on May 22 or May 26 in order to be paid for the Memorial Day holiday. She chooses to use annual leave on May 22.

Isabelle returns to work on June 9. She has been approved, on a permanent basis, to work an alternative work schedule, specifically a fixed 5-4/9 schedule, and to telework on Mondays while Isabelle's parents watch the baby at their home. With this schedule, Isabelle would have a fixed AWS day off every other Friday.

In Summary:

- March 9 – March 13: SICK LEAVE for bed rest/prenatal appointments (5 days)
- March 16: FMLA w/ substitution of ANNUAL LEAVE for bed rest/prenatal appointments (1 day)
- March 17 – March 20: FMLA w/substitution of ADVANCED SICK LEAVE and/or DONATED ANNUAL LEAVE for bed rest/prenatal appointments (4 days)
- March 23: BABY BORN
- March 23 – April 27: FMLA w/ substitution of ADVANCED SICK LEAVE and/or DONATED ANNUAL LEAVE for recovery from childbirth (26 days)
- April 28 – May 8: FMLA w/substitution of ADVANCED ANNUAL LEAVE for bonding with baby (9 days)
- May 11 – June 9: FMLA LWOP for bonding with baby (21 days)
- May 22: FMLA w/substitution of ANNUAL LEAVE for bonding with baby (1 day). Uses annual leave accrued while on paid leave to be in a pay status on the day prior to the Memorial Day holiday so will be paid for the holiday.
- June 10 and on: Returns to work. Approved to work a fixed 5-4/9 schedule and telework on Mondays. Fixed AWS day off every other Friday.

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Sick Leave
FMLA – Substitution of Annual Leave
FMLA – Substitution of Advanced Sick Leave and/or Donated Annual Leave
FMLA – Substitution of Advanced Annual Leave
FMLA – LWOP
AWS Day Off
Telework Day
Holiday

Scenario 4

Childbirth - Self, Using Intermittent FMLA Leave to Extend Bonding Time

Latonya is a Federal employee who is having a baby and would like to use intermittent FMLA leave (for as long as she is eligible) once she returns to work so that she can have a reduced schedule and still have time to bond with her baby. She has been a Federal employee for more than 4½ years and qualifies for FMLA. She has 320 hours of sick leave and 80 hours of annual leave.

On March 23, Latonya gives birth to a healthy baby girl. Following the birth of her daughter, Latonya uses 6 weeks of sick leave for her recovery from childbirth from March 23 through May 1.

At this time, since she is now recovered from childbirth, she no longer has an entitlement to take sick leave, so Latonya invokes her FMLA entitlement on May 4. Latonya returns to work on a part-time basis—not as a part-time employee, but using FMLA intermittently to work part time and be on FMLA leave part time to bond with her baby. She also has been approved to telework on Friday mornings. Because Latonya lives very close to her job and since her husband can care for their daughter in the mornings, Latonya works for 4 hours each morning and uses FMLA intermittently to take off for 4 hours each afternoon. She substitutes annual leave for unpaid intermittent FMLA leave from May 4 through May 29. Then she remains on intermittent FMLA but no longer substitutes paid leave for unpaid leave. Latonya is on intermittent FMLA without pay (LWOP) for the period of June 1 through the expiration of her 12-week FMLA entitlement, on October 22.

Latonya is eligible for the holidays as she is in a pay status either before or after each holiday.

In Summary:

- March 23: BABY BORN
- March 23 – May 1: SICK LEAVE for recovery from childbirth (6 weeks)
- May 4 – May 29: Intermittent FMLA w/ substitution of ANNUAL LEAVE to take off 4 hours per day to bond with baby. Employee would work 4 hours in the morning and have 4 hours off in the afternoon each day. Employee approved to Telework on Friday mornings.
- June 1 – October 22: Intermittent FMLA LWOP to take off 4 hours per day to bond with baby. Employee would work 4 hours in the morning and have 4 hours off in the afternoon each day through the expiration of the FMLA period, which is October 22. FMLA is extended by 3 days because Federal holidays do not count towards the 12 weeks of FMLA leave.

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Sick Leave
Intermittent FMLA – Substitution of Annual Leave
Intermittent FMLA - LWOP
Holiday

Scenario 5

Childbirth - Family Member, Using Intermittent FMLA and Annual Leave to Extend Bonding Time

Eduardo is in a senior-leader position at his agency and has a 720-hour annual leave carryover ceiling. He and his wife are having a baby boy. He would like time off to care for his wife during her recovery from childbirth and to care for his baby on an intermittent basis during the first year. He has been a Federal employee for seven years and so qualifies for FMLA. Eduardo has 700 hours of sick leave and 520 hours of annual leave.

On March 23, Eduardo's wife gives birth. Eduardo takes sick leave from March 23 through May 15 to care for his wife, whose healthcare provider has certified that she will need 8 weeks to recover from her cesarean section.

Eduardo returns to work on May 18. On May 19, he invokes his FMLA entitlement to bond with his baby and takes FMLA intermittently two days a week, on Tuesdays and Thursdays, through his 12-week FMLA entitlement, which ends on December 15. Eduardo works on Mondays, Wednesdays, and Fridays. Beginning on May 19 through December 15, Eduardo substitutes his annual leave for unpaid intermittent FMLA leave.

Tip: Eduardo has exhausted his FMLA entitlement but, if approved, can take off more time from work by requesting LWOP outside of FMLA or annual leave.

Between December 17 through March 23 of the next year, Eduardo requests and is approved to take annual leave every Tuesday and Thursday to bond with his son.

Eduardo would be eligible for all holidays as he is in a pay status either before or after each holiday.

In summary:

- March 23: BABY BORN
- March 23 – May 15: SICK LEAVE for recovery from childbirth (8 weeks)
- May 19 – December 15: Intermittent FMLA w/substitution of ANNUAL LEAVE on Tuesdays and Thursdays to bond with baby. Employee would work on Mondays, Wednesdays and Fridays.
- December 17 – December 31: ANNUAL LEAVE on Tuesdays and Thursdays
- January 5 – March 18: ADVANCED ANNUAL LEAVE on Tuesdays and Thursdays

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Sick Leave
Intermittent FMLA – Substitution of Annual Leave
Annual Leave
Advanced Annual Leave
Holiday

Scenario 6

Childbirth - Family Member, Limited Leave

Karina is a Federal employee whose same-sex spouse is having a baby. Karina would like to take time off to care both for her wife and her baby on an intermittent basis after the baby is born. She has been a Federal employee for more than one year and qualifies for FMLA. She has 128 hours of sick leave and 24 hours of annual leave.

Note: In accordance with an [OPM Memorandum](#) dated October 21, 2013, Federal employees are entitled to use FMLA leave to care for a same-sex spouse with a serious health condition, including care for a same-sex spouse who gives birth to a child. This stems from the June 26, 2013, Supreme Court decision that Section 3 of the Defense of Marriage Act is unconstitutional. As a result of the decision, OPM is now able to extend certain benefits to Federal employees and annuitants who have legally married a spouse of the same sex, regardless of the employee's or annuitant's State of residency.

Karina's wife is put on medically prescribed bed rest for two weeks prior to the birth of her child. Karina uses 80 hours of sick leave to care for her wife during her period of medically prescribed bed rest and prenatal appointments from March 9 through March 20.

On March 23, Karina's wife gives birth to their baby girl. Following the birth of her daughter, Karina remains on sick leave from March 23 through March 31 to care for her wife who is recovering from childbirth. Thereafter, Karina no longer has an entitlement to time off because she does not have any more sick leave available, so Karina invokes her FMLA entitlement to care for her spouse during recovery from childbirth on April 1. From April 1 through April 3, she substitutes annual leave for unpaid FMLA leave.

Next, Karina is granted 160 hours of advanced sick leave to cover her wife's full period of recovery from childbirth (6 weeks). Karina substitutes the advanced sick leave for unpaid FMLA leave to care for her wife during recovery from childbirth from April 6 through May 1.

Tip: Since Karina has used up all her available paid leave (sick and annual leave), she may apply to receive donated annual leave under the VLTP/VLBP for the period of her wife's recovery from childbirth (6 weeks). She can use the donated annual leave to repay advanced sick leave taken to care for her wife during recovery from childbirth.

Karina returns to work on a reduced schedule the week of May 4. She requests and is approved for 88 hours (the amount of annual leave she would accrue through the remainder of the leave year) of advanced annual leave for bonding with her baby. Karina takes FMLA intermittently

three days a week, on Mondays, Wednesdays, and Fridays. She works on Tuesdays and Thursdays. Karina substitutes the advanced annual leave for unpaid intermittent FMLA leave from May 4 through May 29.

Beginning June 1, Karina remains on her intermittent FMLA schedule but no longer substitutes paid leave for unpaid leave. She is on intermittent FMLA leave without pay (LWOP) for the period of June 1 through the expiration of her 12-week FMLA entitlement, July 31.

Karina receives pay for the Memorial Day and Independence Day holidays as she is in a pay status either before or after the holidays.

In Summary:

- March 9 – March 20: SICK LEAVE to care for a spouse who is on bed rest/pre-natal appointments (10 days)
- March 23: BABY BORN
- March 23 – March 31: SICK LEAVE to care for a spouse who is recovering from childbirth (8 days)
- April 1 – April 3: FMLA w/ substitution of ANNUAL LEAVE to care for a spouse who is recovering from childbirth (3 days)
- April 6 – May 1: FMLA w/ substitution of ADVANCED SICK LEAVE or DONATED LEAVE to care for a spouse who is recovering from childbirth (20 days)
- May 4 – May 29: Intermittent FMLA w/ substitution of ADVANCED ANNUAL LEAVE on Mondays, Wednesdays and Fridays (11 days) for bonding with baby. Employee would work on Tuesdays and Thursdays. Employee would be in a pay status on the day after the Memorial Day holiday so will be paid for the holiday.
- June 1 – July 31: Intermittent FMLA LWOP on Mondays, Wednesdays and Fridays (26 days) for bonding with baby. Employee would work on Tuesdays and Thursdays. Employee would be working and in a pay status on the day prior to the Independence Day holiday so will be paid for the holiday.

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- Sick Leave**
- FMLA – Substitution of Annual Leave**
- FMLA – Substitution of Advanced Sick Leave and/or Donated Leave**
- Intermittent FMLA – Substitution of Advanced Annual Leave**
- Intermittent FMLA – LWOP**
- Holiday**

Scenario 7

Childbirth - Family Member, Using Intermittent FMLA, Telework, and AWS

Tom is in a scientific position at NASA and has a 720-hour annual leave carryover ceiling. He and his wife are expecting a baby. He would like time off to care for wife during her recovery from childbirth and to care for his baby on an intermittent basis for the first year after the baby's birth. He has been a Federal employee for ten years and so qualifies for FMLA. Tom has 800 hours of sick leave and 720 hours of annual leave.

Tom takes sick leave on March 9 and 16 to take his wife to prenatal appointments. On March 23, Tom's wife Sarah gives birth to their baby boy. Following the birth of his son, Tom remains on sick leave from March 23 through April 17 to care for his wife who is recovering from childbirth.

Between April 20 through May 1, Tom uses sick leave only on Mondays and Fridays to continue caring for his wife who is recovering from childbirth. During this time, he returns to work on a reduced schedule to complete a project he has been working on and has approval to telework every Wednesday on a permanent basis.

Tom is entitled to use sick leave only through his wife's period of recovery from childbirth (6 weeks), which ends on May 1. Thereafter, he invokes his FMLA entitlement on May 4 to bond with his baby. Between May 4 through July 31, Tom takes FMLA intermittently two days a week, on Mondays and Fridays. When Monday or Friday is a holiday, Tom takes his FMLA day off on the day before or after the holiday. He substitutes his annual leave for unpaid FMLA leave. He continues to telework every Wednesday.

Tip: Employees must be in a pay status or a paid time off status on their scheduled workday either before or after a holiday in order to be paid for the holiday. Since Tom is in a pay status before and after the Memorial Day (May 25) and Independence Day (July 3) holidays, he will be paid for the holidays.

Beginning on August 3 through March 22 of the next year, Tom continues to work a reduced schedule, continues to telework, and has been approved to work an alternative work schedule on a permanent basis, specifically a fixed 5-4/9 schedule. During this period, Tom uses FMLA intermittently on Mondays to bond with his son through the expiration of his 12-month FMLA period, which expires on March 22 of the next year. Tom substitutes his annual leave for unpaid FMLA leave during this time. He continues to telework every Wednesday and now works a fixed 5-4/9 work schedule that permits him a fixed AWS Day Off on the second Friday of each pay period.

Tip: Employees, including those on flexible or compressed work schedules, are entitled to an "in lieu of" holiday when a holiday falls on a nonworkday. In such cases, the employee's holiday is the basic workday immediately preceding the nonworkday. Therefore, in Tom's case, when the December 25 holiday falls on a Friday, Tom's nonworkday, his "in lieu of" holiday is December 24.

In summary:

- March 9 and March 16: SICK LEAVE to care for spouse during prenatal appointments (2 days)
- March 23: BABY BORN
- March 23 – April 17: SICK LEAVE to care for a spouse who is recovering from childbirth (20 days)
- April 20 – May 1: SICK LEAVE on Mondays and Fridays to care for a spouse who is recovering from childbirth (4 days). Returns to work on April 21 and works on Tuesdays, Wednesdays, and Thursdays. Employee is approved to Telework on Wednesdays on a permanent basis.
- May 4 – July 31: Intermittent FMLA w/ substitution of ANNUAL LEAVE on Mondays and Fridays (if those days fall on a holiday, employee can take off the day before or after) (26 days) for bonding with baby. Employee would be in a pay status on the day prior to the May 25 and July 3 holidays so will be paid for the holidays.
- August 3 – March 22: Intermittent FMLA w/ substitution of ANNUAL LEAVE on Mondays (Tuesdays if Monday is a Holiday) (34 days) for bonding with baby. Employee would work the rest of the week. Employee would be able to have Mondays off through the expiration of the FMLA 12-month bonding period, which expires on March 22, one year after the birth of his baby. Fixed AWS Day Off on the second Friday of each pay period. Employee remains in a pay status prior to and after all holidays, so will be paid for the holidays.

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Sick Leave
Intermittent FMLA – Substitution of Annual Leave
Holiday
Telework Day
AWS Day Off

D. Summary of Leave Programs Available for Adoption or Foster Care

The following provides a quick summary of the various leave programs available for adoption and foster care purposes, broken out by programs used specifically prior to the placement of the child for adoption or foster care, and those to bond with the child post-placement. Leave programs to care for the health needs of the child and other workplace flexibilities are not shown here, but are discussed throughout the handbook text. An employee may be able to use some or all of these leave programs, depending on his or her leave balances, interests, and needs.

FMLA leave is in addition to other paid time off available to an employee. For adoption purposes, this means that an employee can invoke his or her sick leave entitlement first. Then, after all activities necessary for the adoption to proceed are completed, he or she can invoke his or her FMLA entitlement to bond with the adopted child.

An Employee Adopting a Child May:

Planning for adoption of child. For adoption-related purposes such as appointments with adoption agencies, social workers, and attorneys; court proceedings; required travel; and any other activities necessary for the adoption to proceed:

- Use **sick leave** entitlement
- Request **advanced sick leave**
- Request **annual leave**
- Request **advanced annual leave**
- Invoke **FMLA** entitlement for up to 12 weeks if employee is FMLA eligible—unpaid leave
 - May substitute sick leave for unpaid FMLA leave
 - May substitute advanced sick leave for unpaid FMLA leave
 - May substitute annual leave for unpaid FMLA leave
 - May substitute advanced annual leave for unpaid FMLA leave
 - May take on an intermittent basis, if approved
- Request **leave without pay** outside of FMLA

To bond with child after child is adopted:

- Use **sick leave** entitlement only if bonding period is ordered by a court or adoption agency
- Request **advanced sick leave** only if bonding period is ordered by a court or adoption agency
- Request **annual leave**
- Request **advanced annual leave** (agency may require invocation of FMLA if employee is FMLA eligible)
- Invoke **FMLA** entitlement for any remainder of the 12-week period to bond with child—unpaid leave
 - May substitute sick leave for unpaid FMLA leave only if a bonding period is

<p>ordered by a court or adoption agency</p> <ul style="list-style-type: none"> ○ May substitute advanced sick leave for unpaid FMLA leave only if a bonding period is ordered by a court or adoption agency ○ May substitute annual leave for unpaid FMLA leave ○ May substitute advanced annual leave for unpaid FMLA leave ○ May take on an intermittent basis, if approved <ul style="list-style-type: none"> ● Request leave without pay outside of FMLA
<p>An Employee Fostering a Child May:</p>
<p>Planning for the placement of a foster child or after child is placed for foster care:</p> <ul style="list-style-type: none"> ● Request annual leave ● Request advanced annual leave ● Invoke 12-week FMLA entitlement for up to 12 weeks (if eligible for FMLA)—unpaid leave <ul style="list-style-type: none"> ○ May substitute annual leave for unpaid FMLA leave ○ May substitute advanced annual leave for unpaid FMLA leave ○ May take on an intermittent basis, if approved ● Request leave without pay outside of FMLA

E. Sample Leave Calendars for Adoption and Foster Care

An employee planning to be absent from the workplace for adoption or foster care purposes may find it helpful to prepare a calendar indicating the amount of time he or she wishes to be absent from the workplace. The calendar should reflect the type of leave and work scheduling flexibilities the employee wishes to use each day. Having a well-thought-out calendar will facilitate a meaningful discussion with the employee’s manager. We encourage employees to review all of the following calendars, which provide various examples of how leave and workplace flexibilities may be used in combination to meet employees’ specific needs.

Scenario 1

Adoption- Limited Leave

Tammy is a Federal employee who plans to adopt a one-year old girl from China. She has been a Federal employee for more than one year and qualifies for FMLA. She has 80 hours of sick leave and 48 hours of annual leave.

Tammy uses 8 hours of sick leave on March 9 to meet with an attorney for adoption-related purposes. Tammy uses 24 hours of sick leave from March 17 through March 19 to travel to China and meet with the adoption agency. Tammy requests and is approved to use 8 hours of annual leave for personal time in China on March 20.

Tip: Employees are entitled to use sick leave for adoption-related purposes which may include but are not limited to:

- Appointments with adoption agencies, social workers, and attorneys;
- Court proceedings;
- Required travel;
- Any periods of time the employee is *ordered* or *required* by the adoption agency or by the court to take time off from work to care for the adopted child; and
- Any other activities *necessary to allow the adoption to proceed*.

On March 23, Tammy officially adopts her daughter. Tammy uses sick leave from March 23 through March 30 for adoption-related purposes to travel from China and to care for her daughter. Because the adoption agency is concerned about attachment disorder, they are requiring that Tammy have a 30-day bonding period before returning to work. The 30-day period required by the adoption agency runs through April 21. On March 31, because she no longer has any more sick leave, Tammy invokes her FMLA entitlement to continue to bond with her daughter. She requests and is granted 128 hours of advanced sick leave to cover the remainder of the required 30-day bonding period. Tammy substitutes advanced sick leave for unpaid FMLA leave from March 31 through April 21.

Note: Tammy cannot receive donated annual leave under the VLTP/VLBP because adoption-related purposes do not involve a medical emergency.

Next, Tammy remains on FMLA and substitutes her annual leave for unpaid FMLA leave for the period of April 22 through April 28. She then requests and is granted 64 hours (the amount of annual leave she would accrue through the remainder of the leave year) of advanced annual leave to bond with her daughter. She substitutes the 64 hours of advanced annual leave for unpaid FMLA leave for the time period of April 29 through May 8. Beginning on May 11, Tammy

remains on FMLA in an LWOP status through the remainder of her 12-week FMLA entitlement, which expires on June 23.

Tip: Employees must be in a pay status or a paid time off status on their scheduled workday either before or after a holiday in order to be paid for the holiday, so Tammy can choose to use paid leave on May 22 or May 26 in order to be paid for the Memorial Day holiday. (She chooses May 22.)

In Summary:

- March 9: SICK LEAVE for adoption-related purposes to meet with attorney (1 day)
- March 17 – 19: SICK LEAVE to travel to China for adoption of child and to meet with adoption agency (3 days)
- March 20: ANNUAL LEAVE for personal time in China (1 day)
- March 23: ADOPTION OF CHILD
- March 23 – March 30: SICK LEAVE for adoption-related purposes to travel from China and required 30-day bonding (6 days)
- March 31 – April 21: FMLA w/substitution of ADVANCED SICK LEAVE for required 30-day bonding (16 days)
- April 22 – April 28: FMLA w/substitution of ANNUAL LEAVE for bonding with child (5 days)
- April 29 – May 8: FMLA w/substitution of ADVANCED ANNUAL LEAVE for bonding with child (8 days)
- May 11 – June 23: FMLA LWOP for bonding with child (60 days). FMLA is extended by 1 day because Federal holidays do not count towards the 12 weeks of FMLA leave
- May 22: FMLA w/ substitution of ANNUAL LEAVE for bonding with baby (1 day). Uses annual leave accrued while on paid leave to be in a pay status on the day prior to the Memorial Day holiday, so will be paid for the holiday.

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Sick Leave
Annual Leave
FMLA – Substitution of Advanced Sick Leave
FMLA – Substitution of Annual Leave
FMLA – Substitution of Advanced Annual Leave
FMLA - LWOP
Holiday

Scenario 2

Foster Care—Limited Leave Balances

Jane is a Federal employee who plans to become the foster parent of a young boy and would like to take as much time off from work as she can to bond with her foster son. She has been a Federal employee for three years and qualifies for FMLA. She has 80 hours of sick leave and 24 hours of annual leave.

Jane requests and is approved to use 8 hours of annual leave on March 2, 11, and 20 for foster care meetings and home visits.

On March 23, the young boy is placed into foster care with Jane. Since she no longer has any annual leave, Jane invokes her FMLA entitlement for bonding with her foster son on March 23. She requests and is granted 80 hours of advanced annual leave to substitute for unpaid FMLA leave from March 23 through April 3.

Note: While employees are entitled to sick leave for adoption-related purposes, an employee cannot use sick leave for purposes related to foster care.

Beginning on April 6, Jane remains on FMLA in an LWOP status throughout the remainder of her 12-week FMLA entitlement, which expires on June 15. She does not receive pay for the Memorial Day holiday (May 25) because she is not in a pay status on the workday before or after the holiday. Jane returns to work on June 16.

In Summary:

- March 2, March 11, March 20: ANNUAL LEAVE for foster care meetings and home visits
- March 23: PLACEMENT OF FOSTER CHILD
- March 23 – April 3: FMLA w/ substitution of ADVANCED ANNUAL LEAVE for bonding with child (10 days)
- April 6 – June 15: FMLA LWOP for bonding with child. FMLA is extended by 1 day because Federal holidays do not count towards the 12 weeks of FMLA leave.
- May 25: HOLIDAY – MEMORIAL DAY. Employee would not be in a pay status on the workday before or after the Memorial Day holiday so will not be paid for the holiday.

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Annual Leave
FMLA – Substitution of Advanced Annual Leave
FMLA – LWOP
Holiday