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**Civilian  
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**Title II-Leave**

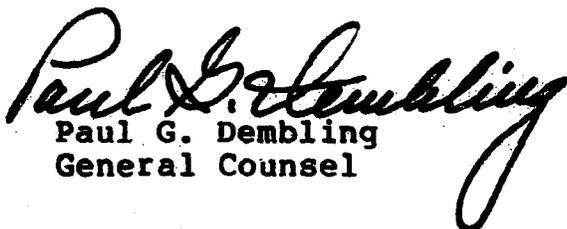
OFFICE OF GENERAL COUNSEL  
U.S. GENERAL ACCOUNTING OFFICE

## FOREWORD

In the May 1977 Foreword accompanying Title I, Compensation, of the Civilian Personnel Law Manual, it was stated that Title II, Leave, would soon be distributed. We are pleased to announce the distribution of Title II at this time.

Title II is a comprehensive outline of decisions of this Office dealing with legal issues involving the various types of leave which pertain to Federal employees. Note that the material contained in Title II reflects the decisions of this Office issued through September 30, 1976.

As with Title I, we welcome any comments regarding any aspect of this Title.

  
Paul G. Dembling  
General Counsel

December 1977

## **TABLE OF CONTENTS**

**Chapter 1--GENERAL PROVISIONS**

**Chapter 2--ANNUAL LEAVE**

**Chapter 3--LUMP-SUM LEAVE PAYMENTS**

**Chapter 4--SICK LEAVE**

**Chapter 5--OTHER LEAVE PROVISIONS**

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# INDEX

Page

## CHAPTER 1--GENERAL PROVISIONS

A. Coverage.....	1- 1
B. Employees Covered.....	1- 1
Agricultural marketing agents.....	1- 1
Employees of cooperating agency.....	1- 1
Public Health Service commissioned personnel....	1- 1
Law clerks to Federal judges.....	1- 2
Temporary employees.....	1- 2
Intermittent employees.....	1- 2
WAE employees.....	1- 2
Maritime employees.....	1- 2
Park Police--status during administrative sick leave.....	1- 3
Governor of Farm Credit Administration.....	1- 3
C. Employees Excluded.....	1- 3
Contract employees.....	1- 3
Contractors.....	1- 3
Experts and consultants.....	1- 3
Federal Reserve Bank employees.....	1- 3
Fee compensated persons.....	1- 4
Governors, commissioners, and appointees.....	1- 4
Joint U.S.-foreign Government employees.....	1- 4
Maritime Service enrollees on active administrative duty.....	1- 4
Nonappropriated fund employees.....	1- 4
"Officers".....	1- 4
United States Attorneys.....	1- 5
Court reporters.....	1- 5
Intermittent employees.....	1- 5
Temporary employees.....	1- 6
De facto employees.....	1- 6

## CHAPTER 2--ANNUAL LEAVE

A. Generally.....	2- 1
Laws and regulations.....	2- 1
Definitions.....	2- 1
Accrued leave.....	2- 1
Accumulated leave.....	2- 1
Leave year.....	2- 1
Days of leave.....	2- 1
Full biweekly pay period.....	2- 1
Rate of compensation.....	2- 1
B. Accrual.....	2- 2
Rate of accrual.....	2- 2

Full-time employees.....	2- 2
Part-time employees.....	2- 2
Minimum service requirement.....	2- 3
Pay period requirement.....	2- 3
Biweekly pay period.....	2- 3
Pay period other than biweekly.....	2- 3
Nonpay status during pay period.....	2- 3
Effective date of change in accrual rate.....	2- 3
During suspension or separation.....	2- 4
Reduction in force.....	2- 4
Suspension for security reasons.....	2- 4
Veterans reemployment right.....	2- 4
Unjustified or unwarranted personnel action..	2- 4
While receiving disability compensation.....	2- 4
Park Police during injury related absence....	2- 4
Maximum accumulation.....	2- 5
Generally.....	2- 5
Employees stationed outside of the United States.....	2- 5
Employed and hired locally.....	2- 5
Significance of employee's permanent residence.....	2- 5
Personal ceiling.....	2- 6
Part-time employees.....	2- 6
C. Creditable Service.....	2- 6
Generally.....	2- 6
Potentially creditable service.....	2- 6
Noncreditable service.....	2- 6
Generally.....	2- 6
ASCS employees.....	2- 7
Service governed by other than 5 U.S.C. § 8332.....	2- 7
D. Transfers and Reemployment.....	2- 7
Transfers.....	2- 7
Between positions under 5 U.S.C. §§ 6301 et seq.....	2- 7
Generally.....	2- 7
Between permanent and temporary positions.	2- 7
Reemployed annuitant.....	2- 8
Between different leave systems.....	2- 8
ASCS employee.....	2- 8
National Guard technicians.....	2- 8
Reemployment.....	2- 8
Generally.....	2- 8
After military service.....	2- 8
E. Administration of Annual Leave.....	2- 9
Generally.....	2- 9
Charges to annual leave.....	2- 9
Minimum charge.....	2- 9
Charges to current, not subsequent, years....	2- 9
Military duty.....	2-10

Holidays and standby duty.....	2-10
Agency-required physical exam.....	2-10
Advance leave.....	2-10
Generally.....	2-10
Return to duty requirement.....	2-10
Refund for unearned leave.....	2-11
Substitution of annual leave.....	2-11
For sick leave.....	2-11
Generally.....	2-11
Hospitalization during period of removal..	2-11
To avoid forfeiture of annual leave....	2-11
Retroactive substitution.....	2-12
Administrative error.....	2-12
For leave without pay.....	2-12
Mistake of law or fact.....	2-12
Administrative discretion.....	2-13
Disability compensation.....	2-13
To avoid break in service.....	2-13
Terminal leave.....	2-13
Administrative discretion.....	2-13
No limitation on lump-sum leave.....	2-14
Traveltime.....	2-14
To and from overseas posts.....	2-14
Generally.....	2-14
Place of actual residence.....	2-14
Travel from Alaska or Hawaii.....	2-14
Employee hired overseas.....	2-15
Other traveltime.....	2-15
Administrative discretion.....	2-15
Limitations on discretion.....	2-15
Involuntary leave.....	2-16
F. Restoration of Leave.....	2-16
Under Public Law 93-181.....	2-16
Generally.....	2-16
Forfeiture under other provisions.....	2-16
Forfeiture because of additional holidays.	2-17
Leave scheduled in advance.....	2-17
Administrative error.....	2-17
Generally.....	2-17
What constitutes an administrative error..	2-17
Exigencies of public business.....	2-18
Generally.....	2-18
Leave scheduled in advance.....	2-18
Sickness.....	2-18
Generally.....	2-18
Leave scheduled in advance.....	2-18
Employee on extended illness.....	2-18
Employee election to use annual leave..	2-19
Under Back Pay Act of 1966.....	2-19

CHAPTER 3--LUMP-SUM LEAVE PAYMENTS

A. Generally.....	3- 1
B. Entitlement.....	3- 1
Payable upon separation.....	3- 1
Payable upon transfer or change of positions....	3- 1
Transfer to position not under leave system..	3- 1
Change to intermittent employment with no regular tour of duty.....	3- 2
Transfers to other positions.....	3- 2
Payment optional.....	3- 2
Duty in armed forces.....	3- 2
Position in public international organization.....	3- 3
Lump-sum payment not payable.....	3- 3
Transfer to position where annual leave is transferable.....	3- 3
Generally.....	3- 3
Personal ceiling limitation.....	3- 3
Student trainee employed intermittently between full-time tours of duty.....	3- 3
Exempted officers.....	3- 4
Transfer from temporary position.....	3- 4
C. Rate Payable.....	3- 4
Generally.....	3- 4
Statutory pay increases.....	3- 5
General Schedule.....	3- 5
Wage board employees.....	3- 5
Step increases.....	3- 5
Generally.....	3- 5
Eligibility completed while on leave without pay.....	3- 5
Eligibility completed while on military furlough.....	3- 6
Saved pay.....	3- 6
Premium pay.....	3- 6
Cost-of-living allowances and foreign differentials.....	3- 6
Separated at post of duty.....	3- 6
Separated away from post of duty.....	3- 6
Separated while on temporary duty.....	3- 6
Reemployed annuitants.....	3- 7
Nonworkdays and holidays.....	3- 7
Generally.....	3- 7
Inauguration Day.....	3- 7
Executive order holidays.....	3- 7
Holidays and employees overseas.....	3- 8
American citizens.....	3- 8
Local employees.....	3- 8
Holiday outside of lump-sum period.....	3- 8
Rotating workweeks.....	3- 8

D. Reemployment and Recredit.....	3- 8
Generally.....	3- 8
Refund.....	3- 9
Refund required.....	3- 9
Temporary position.....	3- 9
After erroneous separation.....	3- 9
Reemployment under different leave system.....	3- 9
Refund not required.....	3- 9
Reemployed under "no leave" system.....	3- 9
Maximum limitation on leave accumulation.....	3- 9
Reemployed under different leave system...	3- 9
Personal leave ceiling.....	3- 9
Inclusion of cost-of-living allowance.....	3-10
Recredit.....	3-10
Reemployment prior to payment.....	3-10

#### CHAPTER 4--SICK LEAVE

A. Accrual.....	4- 1
Rate.....	4- 1
Full-time employee.....	4- 1
Part-time employee.....	4- 1
District of Columbia firefighters.....	4- 1
Entitlement.....	4- 1
B. Transfers and Reemployment.....	4- 1
Transfers.....	4- 1
Between positions under 5 U.S.C. §§ 6301	
et seq.....	4- 1
Between different leave systems.....	4- 2
ASCS employees.....	4- 2
Commissioned officers of Public Health	
Service.....	4- 2
District of Columbia teachers.....	4- 2
Reemployment after break in service.....	4- 2
Generally.....	4- 2
Appointment after 3 years.....	4- 3
What constitutes "break in service".....	4- 3
Effect of temporary appointment.....	4- 3
Peace Corps Volunteer service.....	4- 3
Transfer or detail to international	
organization.....	4- 3
Service as substitute teacher in District	
of Columbia.....	4- 4
Evidence to support claim.....	4- 4
Sworn statements.....	4- 4
Officially approved leave requests.....	4- 5
Merger of leave systems.....	4- 5
Generally.....	4- 5
Postal Service.....	4- 5
C. Administration of Sick Leave.....	4- 5

Generally.....	4- 5
Minimum charge.....	4- 6
Granting.....	4- 6
Agency discretion.....	4- 6
First 40-hour employees.....	4- 7
Contagious disease.....	4- 7
During erroneous separation.....	4- 7
Criminal confinement.....	4- 8
Supporting evidence.....	4- 8
Personal certification.....	4- 8
Advance leave.....	4- 8
Administrative determination.....	4- 9
Liquidation of advance leave.....	4- 9
Change of separation date for purpose of granting sick leave.....	4- 9
Generally.....	4- 9
Administrative error.....	4-10
Generally.....	4-10
Violation of agency policy.....	4-10
Intent of parties.....	4-11
Sick leave used in computation of annuity....	4-12
Substitution of sick leave.....	4-12
For annual leave.....	4-12
Administrative error.....	4-13
For leave without pay.....	4-13
Generally.....	4-13
Administrative error.....	4-13
While in nonpay status.....	4-14
Sick leave used in computation of annuity.	4-14
Involuntary sick leave.....	4-14
Employee ready, willing, and able to perform.	4-14
Contagious disease.....	4-15
Agency filed application for disability retirement.....	4-15

**CHAPTER 5--OTHER LEAVE PROVISIONS**

A. Administrative leave.....	5- 1
Generally.....	5- 1
Administrative discretion.....	5- 1
Fire fighting.....	5- 1
Emergency situation.....	5- 1
Rest period after travel.....	5- 2
Amount of leave to be granted.....	5- 2
Brief periods.....	5- 2
Long periods.....	5- 2
Professional examination.....	5- 2
Voluntary humanitarian service.....	5- 3
International athletic competition.....	5- 3
Medical purposes.....	5- 3

Medical examinations.....	5- 3
Non-work related injury.....	5- 3
Other specific situations.....	5- 4
Incident to relocation.....	5- 4
Counsel appointed for indigents.....	5- 4
Absentee ballot voting.....	5- 4
Employee under investigation.....	5- 4
Professional examination.....	5- 5
B. Holidays.....	5- 5
Generally.....	5- 5
Inclusion of holiday in regular workweek.....	5- 5
Local and foreign holidays.....	5- 5
Irregular unscheduled holiday work.....	5- 6
Employee refuses to work holiday.....	5- 6
C. Court Leave.....	5- 6
Generally.....	5- 6
Service as a juror.....	5- 7
Eligibility.....	5- 7
Part-time employee.....	5- 7
Temporary employee.....	5- 7
When-actually-employed employee.....	5- 7
Administration.....	5- 7
Duration of jury service.....	5- 7
Employee excused or discharged by court...	5- 8
Return to duty when excused by court.....	5- 8
Night jury service.....	5- 8
Weekend duty.....	5- 8
Relation to other types of leave.....	5- 9
Annual leave.....	5- 9
Employee on annual leave.....	5- 9
May not be substituted for court leave.	5- 9
Leave without pay.....	5- 9
Service as a witness.....	5- 9
Generally.....	5- 9
Testimony in official capacity.....	5-10
Former employee.....	5-10
Private litigation.....	5-10
D. Military Leave.....	5-10
Generally.....	5-10
Entitlement.....	5-11
Temporary employees.....	5-11
Temporary indefinite employees.....	5-11
Law clerk-trainee.....	5-12
Term appointments.....	5-12
Part-time employees.....	5-12
Granting.....	5-12
Additional days.....	5-12
Uncommon tour of duty.....	5-13
Status prior to military duty.....	5-13
Leave without pay.....	5-13
After erroneous separation.....	5-14

Administration of military leave.....	5-14
Under section 6323(a).....	5-14
Nonwork days.....	5-14
Part day.....	5-14
Full day.....	5-15
Minimum charge.....	5-16
Single period of training restriction.....	5-16
Under section 6323(c).....	5-16
Standby time.....	5-16
Uncommon tour of duty.....	5-16
Use of annual leave.....	5-16
E. Home Leave.....	5-17
Generally.....	5-17
Entitlement.....	5-17
Minimum service requirement.....	5-17
After erroneous separation.....	5-17
Temporary duty in the United States.....	5-18
Effect of break in service.....	5-18
Employees having 45-day annual leave ceiling.	5-18
Employed and hired locally.....	5-18
Administrative discretion.....	5-19
Return to overseas post requirement.....	5-19
Agency determination.....	5-19
Agency intent.....	5-20
F. Leave Without Pay.....	5-20
Generally.....	5-20
Administrative discretion.....	5-20
Involuntary charge.....	5-21
Employee refuses to report for duty.....	5-21
Employee incapacitated for duty.....	5-21
Disability retirement.....	5-21
Federal employee's compensation.....	5-21

CHAPTER 1

GENERAL PROVISIONS

A. COVERAGE

The Annual and Sick Leave Act of 1951, as amended, 5 U.S.C. §§ 6301, et seq., applies to the following individuals:

- (1) an employee of the Federal Government as defined by 5 U.S.C. § 2105, and;
- (2) an individual employed by the Government of the District of Columbia.

However, there are certain employees excluded from coverage by 5 U.S.C. § 6301(2). A list of the employees excluded from the act also may be found in FPM Supp. 990-2, subchapter S2-1.

B. EMPLOYEES COVERED

Agricultural marketing agents

Employees of the Department of Agriculture at various milk markets, whose salaries are paid from funds established by assessments upon milk handlers, are entitled to accrual of leave. B-109025, June 23, 1952.

Employees of cooperating agency

Personnel employed and paid pursuant to cooperative agreements between the United States and a cooperating agency, such as a state or other political subdivision, are employees of the United States and are subject to Federal laws controlling the rights and benefits of Federal personnel including leave entitlement so long as their duties and time of work are supervised and controlled by Federal officers. B-139050, June 2, 1959.

Public Health Service commissioned personnel

Commissioned personnel of the Public Health Service are considered civilian officers and employees under 5 U.S.C. § 6308 so that members transferring between the Commissioned Corps and other civilian positions are not entitled to lump-sum leave payment but may have annual and sick leave transferred on adjusted basis. 34 Comp. Gen. 287 (1954).

Law clerks to Federal judges

Claims for payment for annual leave from law clerk secretaries may be paid if a certificate is furnished from the judge showing that a regular tour of duty was worked weekly by the employees, that all absences were charged to leave, and the amount of leave on the date of separation. Similar criteria should be used to determine whether employees could be granted leave where no separation is involved. B-86699, June 14, 1949 and B-86699, July 20, 1949.

Temporary employees

Service of temporary and indefinite employees of the Federal Deposit Insurance Corporation is considered comparable to service creditable under 5 U.S.C. § 8332 and may be credited for annual leave purposes. 35 Comp. Gen. 1 (1955).

Intermittent employees

When a regular tour of duty is established for intermittent employees by preparation of a monthly work schedule 3 weeks in advance, such employees are covered by 5 U.S.C. §§ 6301 et seq. However, the regular tour of duty requirement is not met when employees are not scheduled to perform duties during each week of a pay period and the benefits of the leave act are not available to such employees. 32 Comp. Gen 206 (1952).

WAE employees

Employees, appointed on a when-actually-employed basis, worked regularly scheduled tours of duty of 80 hours each pay period during their period of employment. Therefore, they are entitled to annual and sick leave accrual and pay for holidays that occurred during their tours of duty. B-183813, June 20, 1975.

Maritime employees

Although civilian personnel serving on ships of the MSTs have their wages fixed in accordance with prevailing rates and practices of the maritime industry, such employees are not exempted from the provisions of 5 U.S.C. §§ 6301 et seq. 43 Comp. Gen. 661 (1964).

## LEAVE

### Park Police--status during administrative sick leave

United States Park Police are subject to 5 U.S.C. §§ 6301 et seq., and accrue annual and sick leave while in a pay status. When a Park Police officer is absent from duty due to injury or illness resulting from the performance of duty and is not charged for that absence pursuant to 5 U.S.C. § 6324 he remains in a pay status during such absence and continues to accrue annual and sick leave. B-182608, February 19, 1976.

### Governor of Farm Credit Administration

Although his appointment is subject to the approval of the President, the Governor of Farm Credit Administration is appointed by the 12 members of the Board. Thus, he is subject to 5 U.S.C. §§ 6301 et seq., because he is not expressly excluded by the provisions of 5 U.S.C. 6301(2). There is no authority to exempt his office from coverage since the Governor is not appointed by the President. B-123698, December 9, 1964.

## C. EMPLOYEES EXCLUDED

### Contract employees

Leave is governed by statute and not by the terms of a contract. B-61290, November 15, 1946.

### Contractors

Contractors are not regarded as employees of the United States if engaged on other than a personal service basis and are, thus, excluded from leave laws. 23 Comp. Gen. 425 (1943).

### Experts and consultants

Experts and consultants without a regular tour of duty are excluded from leave benefits under 5 U.S.C. §§ 6301 et seq. 35 Comp. Gen. 638 (1956).

### Federal Reserve Bank employees

Employees of Federal Reserve Bank are not employees of the United States and are not entitled to benefits under 5 U.S.C. §§ 6301 et seq. B-53989, December 10, 1945.

## LEAVE

### Fee compensated persons

Persons compensated on a fee basis are not to be considered officers and employees of the United States and, therefore, are not covered by 5 U.S.C. §§ 6301 et seq. 30 Comp. Gen. 406 (1951).

### Governors, commissioners, and appointees

Governors and high commissioners of United States Territories are exempted from leave benefits of 5 U.S.C. §§ 6301 et seq. B-127205, May 9, 1956.

### Joint U.S.-foreign Government employees

Joint United States-foreign Government employees, who devote no particular period of their employment to the work of either Government, are not officers and employees of the United States so as to be entitled to leave benefits under 5 U.S.C. §§ 6301 et seq. 24 Comp. Gen. 384 (1944).

### Maritime Service enrollees on active administrative duty

Although enrollees (administrative) of U.S. Maritime Service are not expressly exempted from 5 U.S.C. §§ 6301 et seq., they are not subject to its provisions, and a leave system may be properly established by regulations prescribed by the Administrator of the Maritime Administration. B-117518, November 20, 1953.

### Nonappropriated fund employees

Nonappropriated fund employees of the Army and Air Force Motion Picture Service are not covered by 5 U.S.C. §§ 6301 et seq., and, thus, they are not entitled to service credit for annual leave accrual on subsequent employment in a department or agency of the Executive branch. 37 Comp. Gen. 671 (1958).

### "Officers"

The term "officers" as used in 5 U.S.C. § 6301(2)(xi) applies only to persons who are required to be appointed by the President with or without confirmation by the Senate, and, therefore, CSC, acting under delegation of the President's authority, contained in Executive Order No. 10540, June 29,

## LEAVE

1954, may designate for exemption from the leave act only those persons who are presidential appointees. B-123698, June 22, 1955.

### United States Attorneys

United States Attorneys who are compensated at Executive Schedule rates are excluded from coverage of 5 U.S.C. § 6301(2)(x), which exempts from coverage all officers appointed by the President whose basic rates of pay exceed the highest General Schedule level. Although 5 U.S.C. § 6301(2)(x) refers to an individual whose rate of pay "exceeds" the highest General Schedule level, the intent of section 6301(2)(x) can be effected only if those whose positions are in the Executive Schedule are exempted, even though GS-18 and Executive Level V officials may at times receive equal pay. Furthermore, while 5 U.S.C.

§ 6301(2)(xi) prohibits the President from excluding any United States Attorney from coverage, the clause does not operate to nullify the statutory exclusion required by 5 U.S.C. § 6301(2)(x). 53 Comp. Gen. 577 (1974).

### Court reporters

Court reporters paid an annual salary to be on call as needed by the court, but who are otherwise free to augment income with earnings from transcript fees do not have regular tours of duty consisting of a definite time, day, and/or hour which they are required to work during the workweek. Thus, they are part-time employees excluded from annual leave entitlement by 5 U.S.C. § 6301(2)(ii). While a court reporter-secretary may be entitled to annual leave for the secretarial portion of duties performed during a regular tour of duty, the record contains no certification of leave earnings and use upon which to base a lump-sum leave payment. 54 Comp. Gen. 251 (1974).

### Intermittent employees

The National Gallery of Art employed four nurses who worked every third weekend, and an occasional day each administrative workweek. One nurse also worked as relief nurse and another worked part-time summer evenings. Since they had no regularly scheduled tour of duty in each administrative workweek they were not entitled to accrue annual and sick leave by virtue of 5 U.S.C. § 6301(2)(ii), which excludes part-time employees who do not have regularly scheduled tours of duty. B-111206, November 24, 1971.

## LEAVE

### Temporary employees

Construction tradesmen, recruited from a local work force under temporary appointments at hourly rates to perform alterations at the Grand Coulee Power Plant, worked side by side with regular maintenance employees, and the total crew performed a mixture of construction and maintenance work. The regular workers received maintenance wages and the temporary construction workers received construction wages. However, the construction workers are not entitled to leave benefits under 5 U.S.C. §§ 6301 et seq., since they are specifically excepted from coverage as "temporary employees engaged on construction work at hourly rates" by 5 U.S.C. § 6301(2)(iii). B-160391, December 21, 1966.

### De facto employees

Although a person who is continued on the rolls of an agency without Presidential extension after reaching compulsory retirement age occupies the status of a de facto employee and may retain compensation actually paid, such person does not accrue annual leave during the de facto period so as to be entitled to a lump-sum payment. 31 Comp. Gen. 262 (1952).

CHAPTER 2

ANNUAL LEAVE

A. GENERALLY

Laws and regulations

The laws and regulations governing annual leave are contained in 5 U.S.C. §§ 6301 et seq., 5 C.F.R. Part 630, FPM chapter 630, and FPM Supp. 990-2, Book 630.

Definitions

Accrued leave

--The leave earned by an employee during the current leave year that is unused at any given time in that year. 5 C.F.R. § 630.201(b)(1). See also 27 Comp. Gen. 373 (1948).

Accumulated leave

--The unused leave remaining to the credit of an employee at the beginning of a leave year. 5 C.F.R. § 630.201(b)(2).

Leave year

--The period beginning with the first day of the first complete pay period in a calendar year and ending with the day immediately before the first day of the first complete pay period in the following calendar year. 5 C.F.R. § 630.201(b)(5).

Days of leave

--The days on which the employee would otherwise work and receive pay and do not include holidays and nonworkdays established by Federal statute, Executive order, or administrative order. 5 U.S.C. § 6302(a).

Full biweekly pay period

--For the purposes of the statutes governing leave, an employee is deemed employed for a full biweekly pay period if he is employed during the days within that

## LEAVE

period, exclusive of holidays and nonworkdays established by Federal statute, Executive order, or administrative order, which fall within his basic administrative workweek. 5 U.S.C. § 6302(b).

### Rate of compensation

There is no authority to fix a rate of compensation during annual leave differing from the rate regularly fixed for active service during a regular tour in the position. 27 Comp. Gen. 92 (1947).

## B. ACCRUAL

### Rate of accrual

#### Full-time employees

Under 5 U.S.C. § 6303(a) annual leave accrues at the following rates:

--employees with less than 3 years of service - 1/2 day (4 hours) for each full biweekly pay period, or 13 days per year;

--employees with between 3 and 15 years of service - 3/4 day (6 hours) for each full biweekly pay period, except for the last full biweekly pay period which shall be 1-1/4 days (10 hours), or a total of 20 days per year;

--employees with 15 or more years of service - 1 day (8 hours) for each full biweekly pay period, or 26 days per year.

#### Part-time employees

Under 5 C.F.R. § 630.303 a part-time employee for whom there has been established in advance a regular tour of duty on 1 or more days during each administrative workweek accrues annual leave at the following rates:

--employees with less than 3 years of service - 1 hour for each 20 hours in a pay status;

--employees with between 3 and 15 years of service - 1 hour for each 13 hours in a pay status;

## LEAVE

--employees with 15 or more years of service - 1 hour for each 10 hours in a pay status.

### Minimum service requirement

Prior to the enactment of Public Law 93-181, December 14, 1973, 87 Stat. 705, employees entitled to annual leave were required to be continuously employed for 90 days before annual leave accruing to them would be creditable and available for use. With the enactment of Public Law 93-181, 5 U.S.C. § 6303(b) was amended removing the restriction on the use of annual leave during the first 90 days of employment unless the appointment is for less than 90 days in which case the employee must be employed for a continuous period of 90 days under successive appointments before he is entitled to annual leave. See FPM Letter 630-22, January 11, 1974.

### Pay period requirement

Biweekly pay period--To earn leave, an employee must be employed during a full biweekly pay period and, if he enters on duty in the middle of the pay period, he is not entitled to any credit for annual leave for that pay period. 31 Comp. Gen. 581 (1952) and B-112731, December 4, 1952. See also FPM Supp. 990-2, Book 630, S2-3(a)(2)(b).

Pay period other than biweekly--An employee paid on other than a biweekly pay period basis earns leave on a pro rata basis for a full pay period. 5 C.F.R. § 630.203.

Nonpay status during pay period--When an employee's service is interrupted by a non-leave-earning period (nonpay status), he earns leave on a pro rata basis for that portion of the pay period in which he was in a paid status. 5 C.F.R. § 630.204. See also 32 Comp. Gen. 310 (1953) and FPM Supp. 990-2, Book 630, S2-3(d).

### Effective date of change in accrual rate

Any change in the rate of accrual shall take effect at the beginning of the next pay period (or corresponding period for employees not paid on a biweekly basis) after the pay period in which the employee completed the prescribed period of service. 5 U.S.C. § 6303(c).

## LEAVE

### During suspension or separation

#### Reduction in force

An employee suspended or removed by a reduction in force does not accrue leave during such period. 32 Comp. Gen. 449 (1953).

#### Suspension for security reasons

An employee who is suspended for security reasons under 5 U.S.C. § 7532, but who is later reinstated, is entitled to accrue annual leave for the period of suspension, subject to the maximum accrual limitation. 39 Comp. Gen. 52 (1959) and 35 id. 121 (1955).

#### Veterans reemployment right

A veteran who is erroneously prevented from restoration to his civilian job is entitled to accrual of leave for the intervening period. B-127901, August 1, 1956.

#### Unjustified or unwarranted personnel action

Employees who have suffered an unjustified or unwarranted personnel action under the Back Pay Act of 1966, 5 U.S.C. § 5596, are entitled to be credited with all leave which accrued during the period of separation or suspension. Further there is no limitation on the amount of annual leave which may be restored, and any amount in excess of the maximum allowable shall be credited to a separate leave account. See 5 U.S.C. § 5596(b)(2).

#### While receiving disability compensation

An employee who is receiving disability compensation for a work-related illness or injury does not accrue annual leave for the period covered by such compensation. 29 Comp. Gen. 73 (1949) and B-164617, April 13, 1972.

#### Park Police during injury related absence

When a Park Police officer is absent from duty due to injury or illness resulting from the performance of

## LEAVE

duty and he is not charged leave pursuant to 5 U.S.C. § 6324, he remains in a pay status during such absence, and continues to accrue sick and annual leave. B-182608, February 19, 1976.

### Maximum accumulation

#### Generally

Under 5 U.S.C. § 6304(a), an employee is limited to a maximum accumulation of 30 days, or 240 hours. The limitation is imposed at the beginning of the first full biweekly pay period (or corresponding period for an employee not paid biweekly) occurring in a year. Any excess accrued annual leave will be forfeited at that time. See 32 Comp. Gen. 111 (1952) and 31 *id.* 581 (1952. See also this Chapter, "Restoration of Leave."

#### Employees stationed outside of the United States

Employees stationed outside of the United States who meet the conditions for eligibility established by 5 U.S.C. § 6304(b) and 5 C.F.R. § 630.302 may accumulate 45 days (360 hours) of annual leave.

Employed and hired locally--An employee, who entered service in the Canal Zone and was given a transportation agreement on the basis of his travel to the Zone as a dependent of an employee with a transportation agreement, is not entitled to accumulate 45 days annual leave and home leave since he did not meet the requirement of 5 U.S.C. § 6304(b) that he be recruited from the United States or a territory or possession of the United States outside the Zone. However, he is entitled to such benefits upon transfer to Mexico since the Zone is considered within the phrase "territories and possessions" of the United States as used in 5 U.S.C. § 6304(b)(1). 53 Comp. Gen. 966 (1974).

Significance of employee's permanent residence--A postal inspector recruited in Puerto Rico and trained and employed in the United States for 2 years, and then transferred to Puerto Rico, was not under the 45-day ceiling since there was no indication that he changed his permanent residence to the United States where he would be expected to take his home leave. 48 Comp. Gen. 437 (1968).

## LEAVE

### Personal ceiling

5 U.S.C. § 6304(c) provides that an employee who had accumulated more than 30 days of annual leave at the end of the 1952 leave year or who had accumulated between 31 and 45 days of leave while under a 45-day ceiling and then moved to a position with a 30-day ceiling retains a personal or individual ceiling which is reduced if he uses more annual leave in a leave year than he earns. See FPM chapter 630, S3-5(d).

### Part-time employees

Part-time employees operate under the same 30-day or 45-day ceilings as apply to full-time employees. 5 C.F.R. § 630.304.

## C. CREDITABLE SERVICE

### Generally

In determining years of service, any service which may be used in computing an annuity under 5 U.S.C. § 8332, is creditable for setting leave earning rates. An employee who is a retired member of a uniformed service is entitled to credit for the active military service only under certain conditions. 5 U.S.C § 6303(a).

### Potentially creditable service

Service which is potentially creditable such as (1) service for which retirement deductions were withdrawn and not repaid, (2) service not under the retirement act, (3) service where the employee is receiving an annuity under another retirement system, (4) military service on the basis of which an employee is receiving retired pay, and (5) military service which was not an interruption of civilian service and where the employee does not have 5 years of civilian service, is creditable for setting leave earning rates. 31 Comp. Gen. 215 (1951).

### Noncreditable service

#### Generally

See the list provided in FPM chapter 630, S3-2(d) and FPM Supp. 296-31, appendix B.

ASCS employees

Agricultural Stabilization and Conservation Service County Committee employees were held not to be entitled to use service as such employees in determining creditable service for leave accrual purposes. 40 Comp. Gen. 412 (1961). However, 5 U.S.C. § 6312 created an exception to that rule for those ASCS employees who move to positions with the Department of Agriculture. See also FPM Supp. 990-2, Book 630, S3-2(c)(2).

Service governed by other than 5 U.S.C. § 8332

All service creditable under 5 U.S.C. § 8332 for annuity purposes under the act even though not regarded as military or Government service may be used in determining years of service for leave accrual purposes unless excluded under other provisions of law. Therefore, the service specified in 5 U.S.C. § 8332(b)(1) through (8) is creditable, but employment not otherwise creditable for leave accrual purposes is not creditable solely because it may by specific provision--other than 5 U.S.C. § 8332--be creditable for retirement purposes. 51 Comp. Gen. 301 (1971). In the same manner, service with Howard University, which is not creditable service under 5 U.S.C. § 8332, is not Federal civilian service for leave accrual purposes. 50 Comp. Gen. 820 (1971).

D. TRANSFERS AND REEMPLOYMENT

Transfers

Between positions under 5 U.S.C. §§ 6301 et seq.

Generally--An employee who transfers between positions covered by 5 U.S.C. §§ 6301 et seq., without a break in service, shall have his leave certified to the employing agency for credit or charge. 5 C.F.R. § 630.501(a); FPM chapter 630, S5-1(a)(1); and FPM Supp. 990-2, Book 630, S5-1(a)(1).

Between permanent and temporary positions--An employee who was voluntarily furloughed from a permanent position so as to accept a temporary appointment and who resumed duties in the permanent position without a break in service, may have the annual leave he accrued in the temporary position transferred to his credit in the permanent position. 33 Comp. Gen. 528 (1954).

## LEAVE

Reemployed annuitant--An employee retired on December 31 and accepted a temporary appointment beginning January 1, of the following year. His accumulated and accrued leave should be transferred to his new position. 55 Comp. Gen. 784 (1976) and B-106065, October 24, 1951.

### Between different leave systems

Under 5 U.S.C. § 6308 an employee who transfers between positions under different leave systems without a break in service shall have his leave credited to his new position on an adjusted basis as set forth under CSC regulations. See 5 C.F.R. § 630.501(b); FPM chapter 630, S5-1(a)(2); and FPM Supp. 990-2, Book 630, S5-1(a)(2). An employee may transfer all the accumulated and currently accrued annual leave not in excess of the maximum allowable under his former leave system to his new position, and such leave shall constitute his leave ceiling until reduced under 5 U.S.C. § 6304(c). 48 Comp. Gen. 212 (1968). See also 49 Comp. Gen. 189 (1969).

ASCS employee--Agricultural Stabilization and Conservation County Committee Service employees shall transfer accrued and accumulated leave to their positions with the Department of Agriculture. 5 U.S.C. § 6312 and 48 Comp. Gen. 486 (1969).

National Guard technicians--A National Guard technician who under Public Law 90-486, August 13, 1968, 82 Stat. 755, became a Federal employee as of January 1, 1969, shall have leave to his credit prior to the conversion transferred to his position as a National Guard technician. 49 Comp. Gen. 383 (1969).

## Reemployment

### Generally

For employees who have received a lump-sum payment upon separation and are reemployed before the end of the period covered by the lump-sum payment in the Federal service, see 5 U.S.C. § 6306. See also, Chapter 3, "Lump-Sum Leave Payments."

### After military service

An employee who leaves his civilian position to enter the military service (and elects under 5 U.S.C. § 5552

## LEAVE

to have his leave remain to his credit) shall have his leave restored in accordance with his right of restoration to his civilian position or upon reemployment in a position covered under 5 U.S.C. § 6301 et seq., not more than 3 years after separation from active military duty. 5 C.F.R. § 630.504.

### E. ADMINISTRATION OF ANNUAL LEAVE

#### Generally

As stated in the FPM, annual leave is provided and used for two general purposes: (1) to allow every employee an annual vacation period of extended leave for rest and recreation, and (2) to provide periods of time off for personal and emergency purposes such as a death in the family, religious observances, attending to personal business, etc. FPM chapter 630, S3-4a. As provided in 5 U.S.C. § 6302(d) annual leave may be granted at any time during the year as the head of the agency concerned may prescribe. Thus, while the taking of annual leave is an absolute right of the employee, it is subject to the right of the head of the agency concerned to fix the time at which leave may be taken. 39 Comp. Gen. 611 (1960) and 16 id. 481 (1936). See also FPM chapter 630, S3-4 and FPM Supp. 990-2, Book 630, S3-4.

#### Charges to annual leave

##### Minimum charge

The minimum charge for leave is 1 hour, and additional charges are in multiples thereof, unless an agency establishes or negotiates a different minimum. However, if an employee is unavoidably or necessarily absent or tardy for less than 1 hour the agency, for adequate reason, may excuse him without charge to leave. An employee who is charged for leave for an unauthorized absence or tardiness may not be required to perform work for any part of the leave period charged. 5 C.F.R. § 630.206.

##### Charges to current, not subsequent, years

Annual leave taken during a calendar year must be charged to leave which accrues during that year, or to prior accumulations. 31 Comp. Gen. 581 (1952) and 27 id. 336 (1947). See also this Chapter, "Advance Leave."

### Military duty

Where employees performed military service for 5-day periods and not on weekends, they need not be charged military leave or annual leave for the weekend periods. B-171947, September 7, 1972 and B-149951, November 23, 1962.

### Holidays and standby duty

Where X-ray technicians employed by a VA hospital received premium pay for standby duty and where they were not scheduled for standby duty on days which were holidays (Washington's Birthday, Memorial Day), they need not work those days or be charged annual leave instead. 54 Comp. Gen. 662 (1975).

### Agency-required physical exam

Where it is an agency policy to grant compensatory time to employees who are required to take a physical examination on a nonworkday, the agency may not otherwise charge the employee annual leave when they report for such an examination. B-159420, July 19, 1966.

## Advance leave

### Generally

Under 5 U.S.C. § 6302(d) annual leave, including that which will accrue to an employee during the year, may be granted at any time during the year within the discretion of the head of the agency concerned. See also FPM chapter 630, S3-4(c) and FPM Supp. 990-2, Book 630, S3-4(b)(4). An employee may be credited at the beginning of the first pay period in a calendar year with such annual leave as will accrue in 26 pay periods (a leave year). 31 Comp. Gen. 215, 224 (1951).

### Return to duty requirement

Where it is known at the time advance leave is requested that the employee will not be returning to duty, advance annual leave or sick leave may not be granted. 25 Comp. Gen. 874 (1946) and 23 id. 837 (1944). Where an employee was reported lost at sea and there was only a remote possibility that he would return to duty, advance annual

## LEAVE

leave may not be granted. 48 Comp. Gen. 676 (1969).

Where an agency has a policy not to grant leave until it is earned, an employee on leave need not return for 1 workday prior to retirement in order to use annual leave. The agency may advance him the 8 hours of leave. B-120074, November 29, 1966.

### Refund for unearned leave

An employee who is indebted for unearned leave must, upon separation, either refund the amount paid him representing the amount of indebtedness or have deducted that amount from any pay due him. An employee who enters active military service with a right of restoration is deemed not separated for the purposes of this provision. Refund is not required when an employee dies, retires for disability, or resigns or is separated because of disability under specified conditions. 5 C.F.R. § 630.209. See also 33 Comp. Gen. 145 (1953); 29 *id.* 234 (1949) and B-131792, June 14, 1957. The leave "forgiven" by this provision is not chargeable against subsequently earned leave if the employee is later reemployed. FPM Supp. 990-2, Book 630, S2-5(b) and 29 Comp. Gen. 234, supra.

### Substitution of annual leave

#### For sick leave

Generally--An absence which is otherwise chargeable to sick leave may be charged to annual leave if the employee so requests and the agency agrees. 37 Comp. Gen. 439 (1957) and B-142571, April 20, 1960.

Hospitalization during period of removal--Where an employee was reinstated into Federal service after an improper removal, the period the employee was in the hospital during his separation may be charged to annual leave at the discretion of the agency. B-183566, April 16, 1976.

#### To avoid forfeiture of annual leave

Generally, a substitution of annual leave for sick leave may not be made retroactively solely for

the purpose of avoiding a forfeiture of annual leave at the end of the leave year. 38 Comp. Gen. 354 (1958); 31 id. 524 (1952); and B-183566, April 16, 1976.

An employee who was on sick leave from September 1971 until March 1972 requested for the substitution of 18 hours of annual leave forfeited at the end of the 1971 leave year for an equal amount of sick leave. The retroactive substitution of annual for sick leave was permitted since the employee, through no fault of his own, was unaware of his leave balance, and had he been informed and able to, he would have chosen to apply the forfeited annual leave to a period of the illness in a timely manner. Also, the length of the illness foreclosed any possibility of using annual leave for vacations, etc. B-176093, July 10, 1972. See also B-178583, June 14, 1973. See also this Chapter, "Restoration of Leave."

Retroactive substitution--The retroactive substitution of annual leave for sick leave is not authorized absent a law or regulation permitting a change in a statutory right once it has been vested. 38 Comp. Gen. 354 (1958). An exception to this policy exists for the liquidation of advance sick leave. See 37 Comp. Gen. 439 (1957) and FPM Supp. 990-2, Book 630, S2-5(b).

Administrative error--An employee who utilized advance sick leave while filing for a disability retirement and who later substituted annual leave for the advance sick leave may have the charge to annual leave recredited since she was erroneously advised that she would have to repay her advance sick leave. There is no requirement to repay such leave if a disability retirement is granted. B-175144, March 16, 1972.

For leave without pay

Mistake of law or fact--Where an employee was separated due to a reduction in force on August 31 and the employee's eligibility for a within-grade increase had been delayed until September 2 due to excess use of leave without pay, the employee may not substitute annual leave for leave without pay. Generally, annual

## LEAVE

leave may be substituted for leave without pay only when there is a mistake of law or fact. B-180870, August 27, 1974.

Administrative discretion--It is within the limits of proper administrative discretion to change the status of an employee from leave without pay to annual leave for the purpose of placing the employee in pay status 1 day prior to entry on military training duty. 37 Comp. Gen. 608 (1958).

Disability compensation--An employee was injured on the job and subsequently received disability compensation. He may not substitute accrued leave for LWOP unless he refunds that portion of his disability compensation payments covered by that leave. B-117594, January 15, 1954.

### To avoid break in service

An employee who resigned one position to accept a position with another agency may be charged annual leave or leave without pay to avoid a break in service which was not intended by the parties involved and which resulted from a delay in receipt of the letter of appointment by the second agency. B-112802, February 2, 1953.

## Terminal leave

### Administrative discretion

The administrative authority to grant terminal, annual or vacation leave immediately prior to separation from Federal service, when the separation is known in advance, is limited to cases where the exigencies of the service require such action since the agency's discretion is not unlimited. 34 Comp. Gen. 61 (1954). Furthermore, the failure of an agency to grant leave under such circumstances is not construed as administrative error under 5 U.S.C. § 6304(d)(1). B-182608, February 27, 1975. However, if the employee's separation was not in conformance with established agency policy or regulations or with the intent of the parties especially regarding counseling of the employee and permitting the use of leave, the employee may be restored to the rolls for the purpose of using the unpaid leave. B-182608, supra; B-182027, December 23, 1974; and

## LEAVE

B-174975, March 31, 1972. See also B-121712, October 28, 1954 and B-124148, June 9, 1955.

### No limitation on lump-sum leave

Prior to the 1973 amendment, employees upon separation were entitled to payment for all accumulated and accrued annual leave up to a limitation of 30 days of leave. However, section 1 of Public Law 93-181, December 14, 1973, 87 Stat. 705, amended 5 U.S.C. § 5551(a) so as to remove any limitation on the amount of accumulated annual leave to be included in the lump-sum payment. It would appear that this amendment would obviate the need for consideration of terminal leave which is granted so as to use annual leave prior to separation which would otherwise be subject to forfeiture. See also Chapter 3, "LUMP-SUM LEAVE PAYMENTS."

### Traveltime

#### To and from overseas posts

Generally--Under 5 U.S.C. § 6303(d) an employee, (1) who is authorized to accumulate up to 45 days of annual leave (see 5 U.S.C. § 6304(b)), (2) whose post of duty is outside the United States, and (3) who is returning on leave to the United States or to his place of residence, outside the area of employment, in the Commonwealth of Puerto Rico or the territories or possessions of the United States, may be granted leave-free traveltime for all time actually and necessarily occupied in going to or from a post of duty and time necessarily occupied awaiting transportation, limited to one period of leave during a prescribed tour of duty. See also 5 C.F.R. § 630.207 which requires employees to designate their place of residence in their request for home leave.

Place of actual residence--An employee who is eligible for leave under 5 U.S.C. § 6303(d) may take leave at a place other than his actual residence if within the same country, territory, or possession. 38 Comp. Gen. 631 (1959).

Travel from Alaska or Hawaii--Leave-free traveltime under 5 U.S.C. § 6303(d) is not available for travel between Hawaii or Alaska and the continental United States since they are not outside the "United States"

## LEAVE

as defined by 5 U.S.C. § 6301(1). B-171947.62, November 27, 1974 and 55 Comp. Gen. 1035 (1976).

Employee hired overseas--Overseas employees recruited locally while temporarily outside the United States may be eligible for leave-free traveltime if it is determined that their stay abroad was not of such duration or under such circumstances as to constitute a residence abroad rather than in the United States. 35 Comp. Gen. 244 (1955).

### Other traveltime

Administrative discretion--It is a matter of administrative discretion whether to charge an employee annual leave for traveltime involving personal convenience travel in excess of that required for official travel alone. Thus, where an employee returning from temporary duty interrupts his trips for personal reasons over a weekend, it is within the discretion of the agency to charge the employee annual leave for the completion of his return travel on Monday. 46 Comp. Gen. 425 (1966). See also 40 Comp. Gen. 53 (1960); B-175627, July 5, 1972; B-163654, June 22, 1971; and B-171420, March 3, 1971.

Limitations on discretion--Although matters of charging leave to an employee for traveltime are primarily matters for the administrative office, our Office will in an appropriate situation disapprove the granting of excess time off without a charge to leave, as well as an unwarranted charge. Thus, an employee who was authorized travel by privately owned vehicle but whose leave was determined on the basis of travel by commercial carrier was erroneously charged annual leave. 39 Comp. Gen. 250 (1959).

An employee left the West Coast by plane at 7:30 p.m. on Thursday and arrived at his home on the East Coast at 11:45 a.m. the following day. It was not proper for the agency to charge him 4 hours annual leave for not reporting to the office that afternoon since, being entitled to a normal period of rest, he could have remained overnight in California and returned to his official duty station during normal working hours on Friday. B-181363, August 23, 1974.

## LEAVE

GAO did not object to an agency's action in excusing an employee without charge to leave for excess travel-time caused by an airline strike. B-160278, December 23, 1966.

### Involuntary leave

Where an employee is voluntarily absent from his official duty station, it is proper for the agency to charge him annual leave. B-166469, September 25, 1969. An agency that bused employees during normal working hours to its new offices prior to relocation may charge an employee annual leave where she refused to be bused and, thus, refused to report for duty. B-186095, April 26, 1976. See also, "Leave Without Pay," Chapter 5.

### F. RESTORATION OF LEAVE

#### Under Public Law 93-181

##### Generally

Prior to 1973, leave which was forfeited by operation of 5 U.S.C. § 6304(a) or (b) (30-day or 45-day or personal ceiling limitation on accumulated leave) could not be restored to the employee even if such forfeiture was the result of administrative error or actions beyond the employee's control. However, with the enactment of Public Law 93-181, December 14, 1973, 87 Stat. 705, 5 U.S.C. § 6304(d), such forfeited leave may be restored to the employee if the forfeited leave resulted from (1) an administrative error, (2) the exigencies of public business when the annual leave was scheduled in advance, or (3) sickness of the employee when the annual leave was scheduled in advance. For leave year 1973 an interim policy was approved by CSC as outlined in FPM Letter 630-22, January 22, 1974.

Forfeiture under other provisions--An employee who resigned August 13, 1973, and forfeited 93 hours which could not be liquidated by lump-sum payment may not have such leave restored under 5 U.S.C. § 6304 as leave lost by administrative error since restoration applies only to leave forfeited by operation of 5 U.S.C. § 6304, and no other provision. B-182608, February 27, 1975.

Forfeiture because of additional holidays--Where an employee takes annual leave for the remainder of the leave year (13 days) but is charged for only 11 days because two additional holidays were declared by Executive order during that period, there is no authority under 5 U.S.C. § 6304 to restore the 6 hours of forfeited annual leave in excess of the statutory limit of 240 hours for carry over into the next leave year. In addition, there is no authority to authorize holiday pay for two additional holidays since the employee did not perform work on those days. B-182549, August 22, 1975.

Leave scheduled in advance

In accordance with 5 C.F.R. § 630.308 before annual leave forfeited under 5 U.S.C. § 6304 may be considered for restoration, the use of such annual leave must have been scheduled in writing before the start of the third biweekly pay period prior to the end of the leave year.

Administrative error

Generally--Under 5 U.S.C. § 6304(d)(1)(A), annual leave lost through forfeiture under section 6304 shall be restored to the employee if lost because of "administrative error when the error causes a loss of annual leave otherwise accruable after June 30, 1960." If the employee is separated before the error is discovered, the restored leave is subject to credit and liquidation by lump-sum payment if a claim is filed within 3 years immediately following the date of discovery of the error. 5 U.S.C. § 6304(e).

What constitutes an administrative error--An employee who retired on December 31, 1974, with 560 hours of annual leave (and a personal ceiling of 480 hours) and then accepted a temporary appointment effective January 1, 1975, does not receive a lump-sum payment for his accrued and accumulated leave but rather has his leave transferred to his new position resulting in a forfeiture of 80 hours. The determination as to what constitutes administrative error is primarily for the employing agency, and GAO has no authority to make an independent determination. Therefore,

if the agency concerned determines that it violated a policy or regulation regarding counseling employees to avoid forfeiture, then the leave may be restored under 5 U.S.C. § 6304(d)(1)(A). 55 Comp. Gen. 784 (1976).

#### Exigencies of public business

Generally--Under 5 U.S.C. § 6304(d)(1)(B) annual leave lost through forfeiture under section 6304 shall be restored to the employee if lost because of "exigencies of the public business when the annual leave was scheduled in advance." The determination that the exigency is of such importance as to preclude the use of scheduled annual leave is to be made by an agency official as described in 5 C.F.R. § 630.305. For further guidance see FPM Letter 630-22, January 22, 1974.

Leave scheduled in advance--A second requirement for restoration under this condition is that the annual leave was scheduled in advance in writing prior to the third biweekly pay period prior to the end of the leave year. See 5 C.F.R. § 630.308 and FPM Letter 630-22, January 22, 1974.

#### Sickness

Generally--Under 5 U.S.C. § 6304(d)(1)(C) annual leave lost through forfeiture under section 6304 shall be restored to the employee if lost because of "sickness of the employee when the annual leave was scheduled in advance." Considerations regarding a finding that a period of sickness interfered with the usage of scheduled annual leave are discussed in FPM Letter 630-22, January 22, 1974.

Leave scheduled in advance--Under 5 C.F.R. § 630.308 the annual leave must have been scheduled in writing before the start of the third biweekly pay period prior to the end of the leave year.

#### Employee on extended illness

A Park Police officer who was injured in the performance of duty and was thereafter absent from duty for nearly 1 year without charge to leave pursuant to 5 U.S.C. § 6324, forfeited 204 hours

## LEAVE

of annual leave. The forfeited leave may be restored to his account under 5 U.S.C. § 6304 (d)(1)(C) since in cases of prolonged illness preceding the end of a leave year the employee may be presumed to have requested proper scheduling of annual leave otherwise subject to forfeiture. B-182608, February 19, 1976.

### Employee election to use annual leave

Where an employee chose to use annual leave in lieu of sick leave there was no forfeiture of annual leave. Since there was no forfeiture there is no leave to be restored under 5 U.S.C. § 6304(d)(1). 54 Comp. Gen. 1086 (1975).

### Under Back Pay Act of 1966

An employee who suffers an unwarranted or unjustified personnel action under the Back Pay Act of 1966, 5 U.S.C. § 5596, shall be recredited with all annual or sick leave which was used or which accrued during the period. Further, through the enactment of Public Law 94-172, December 23, 1975, 89 Stat. 1025, there is no limitation on the amount of annual leave which may be restored, and any leave in excess of the maximum allowable shall be credited to a separate leave account. 5 U.S.C. § 5596(b)(2) and 5 C.F.R. § 630.505.

CHAPTER 3

LUMP-SUM LEAVE PAYMENTS

A. GENERALLY

An employee (as defined by 5 U.S.C. § 2105) or an individual employed by the District of Columbia who is separated from the service is entitled to receive a lump-sum payment for accumulated and current accrued annual leave to which he is entitled by statute. The payment shall equal the pay the employee would have received had he remained in the service until the end of the period of annual leave, and the payment is considered pay for taxation purposes only. 5 U.S.C. § 5551(a). Section 1 of Public Law 93-181, approved December 14, 1973, 87 Stat. 705, removed the limitation that lump-sum payments could not exceed leave in excess of 30 days or the employee's own leave ceiling. See 53 Comp. Gen. 820 (1974). However, an employee who enters active duty in the armed forces may elect to have his leave remain to his credit until his return from active duty. 5 U.S.C. § 5552.

Governing CSC regulations on lump-sum leave payments are contained in FPM chapter 550, subchapter 2 and FPM Supp. 990-2. Book 550, subchapter 2.

B. ENTITLEMENT

Payable upon separation

Employees who are separated from the service are entitled to a lump-sum payment for all unused annual leave through the last full pay period before separation. The right to a lump-sum payment vests on the date of separation. 33 Comp. Gen. 85 (1953).

Payable upon transfer or change of positions

Transfer to position not under leave system

Where an employee transfers to a position not covered by 5 U.S.C. §§ 6301 et seq., and his accumulated leave cannot be transferred, such transfer may be regarded as a separation for the purposes of a lump-sum leave payment. 49 Comp. Gen. 189 (1969); 33 id. 622 (1954); and 33 id. 85, 88 (1953).

### Change to intermittent employment with no regular tour of duty

Where an employee converts to a position as an intermittent employee with no regular tour of duty during an administrative workweek and where he will earn no leave and cannot transfer his leave, he shall receive a lump-sum payment for all annual leave accumulated under his prior position. 47 Comp. Gen. 706 (1968) and 33 id. 85, 88 (1953).

### Transfers to other positions

Judges and court employees--Where an employee of the Department of Justice takes a position with a Federal judge or with the U.S. Courts which is not covered by 5 U.S.C. §§ 6301 et seq., and to which his accumulated leave is not transferrable, the employee shall receive a lump-sum leave payment to avoid forfeiture of the leave. 33 Comp. Gen. 622 (1954) and B-166640, May 21, 1969. See also B-128026, July 20, 1956. However, the judges of the Tax Court, which was removed from executive branch and established as a constitutional court, were not regarded as thereby "separated from the service" as contemplated by 5 U.S.C. § 5551. Instead their entitlement to payments for annual leave remained undisturbed and their accumulated leave would be paid upon separation or recredited upon return to a position covered by 5 U.S.C. §§ 6301 et seq. 49 Comp. Gen. 545 (1970).

### Payment optional

#### Duty in armed forces

An employee who entered active duty in the armed forces requested that his leave remain to his credit until his return, but never returned to Federal service. The action should be recorded as a separation and the individual is entitled to receive a lump-sum payment. B-162148, October 5, 1967.

An employee who enters on active duty with the armed forces and elects to receive a lump-sum payment under 5 U.S.C. § 5552 relinquishes any right to a recredit of the leave upon return to Federal service. B-180926, March 28, 1975.

A retired Regular officer serving in a civilian position who reports for 2 weeks active duty is entitled to receive a lump-sum payment or to have his leave remain to his credit until his return from active duty. 49 Comp. Gen. 444 (1970).

Position in public international organization

Under 5 U.S.C. § 3582(a)(4) an employee who transfers to an international organization (as defined in 5 U.S.C. § 3581) is entitled to elect to retain his annual leave to his credit or to receive a lump-sum payment. If he elects the lump-sum payment but is reemployed within 6 months after transfer, he must refund the lump-sum payment to the agency. See also FPM Supp. 990-2, Book 550, S2-2a(2) regarding leave restored by operation of 5 U.S.C. § 6304(d)(1).

Lump-sum payment not payable

Transfer to position where annual leave is transferable

Generally--A lump-sum payment may not be made to an employee upon transfer to a position to which his annual leave is transferable, but instead his leave is transferred to his new position. 5 U.S.C. § 6308.

Personal ceiling limitation--An employee may transfer all accumulated and currently accrued annual leave to his credit as of the date of transfer not in excess of the maximum limitation allowable under the leave system from which transferred, and that amount shall constitute the employee's annual leave ceiling until reduced under 5 U.S.C. § 6304(c). 48 Comp. Gen. 212 (1968).

Student trainee employed intermittently between full-time tours of duty

Normally, an employee who moves to a position as an intermittent employee with no regular tour of duty is entitled to a lump-sum payment for accrued annual leave. However, if the employee is a student trainee, the period of intermittent employment between full-time tours of duty shall not be regarded as a transfer or separation for purposes of lump-sum leave payment, and any leave earned under regular employment shall remain to his credit. 37 Comp. Gen. 523 (1958).

Exempted officers

When an employee subject to the annual and sick leave provisions of 5 U.S.C. § 6301 accepts a presidential appointment, which is exempted from those provisions, he may not receive a lump-sum payment for annual leave. 40 Comp. Gen. 164 (1960); 38 id. 386 (1958); 33 id. 177 (1953); and B-165516, November 22, 1968. The accumulated and accrued annual leave is to be credited for payment upon separation or death under 5 U.S.C. § 5551 or for recredit upon reemployment without a break in service in a position subject to the leave provisions. See 49 Comp. Gen. 545 (1970) and B-116694, January 28, 1976. If a lump-sum payment is made, the rate shall be the salary received prior to presidential appointment but the time period shall be projected from the date of retirement. 40 Comp. Gen. 579 (1961). If the employee has any leave in a separate account restored under 5 U.S.C. § 6304(d)(1) it shall be liquidated by lump-sum payment immediately upon transfer to the excepted position. FPM Supp. 990-2, Book 550, S2-2b(2).

Transfer from temporary position

An employee was voluntarily furloughed from a permanent position in order to accept a temporary position for 2 months, and then returned without a break in service to the permanent position. The annual leave which accrued in the temporary position shall be transferred and not paid in a lump-sum. 33 Comp. Gen. 528 (1954).

C. RATE PAYABLE

Generally

Under 5 U.S.C. § 5551(a), the lump-sum payment covers the period over which the employee's annual leave would have carried him if he had actually used it. 40 Comp. Gen. 579 (1961) and 38 id. 161, 163 (1958). See also FPM chapter 550, S2-3 and FPM Supp. 990-2, Book 550, S2-3.

Statutory pay increases

General Schedule

If the employee is separated prior to a statutory pay increase but the period of projected leave extends beyond the effective date of the increase, the lump-sum payment shall be adjusted to reflect the increased rate for any leave from the effective date of the pay increase. 47 Comp. Gen. 773 (1968) and B-165201, October 2, 1968.

Wage board employees

For prevailing rate or wage board employees who retire or separate prior to the date a wage increase under 5 U.S.C. §§ 5341 et seq., is effective, and who receive a lump-sum payment for leave, there may be no adjustment to the lump-sum payment even if the leave would have extended beyond the effective date of the new wage rate. However, if the employee is on "terminal leave" up to or beyond the date the new wage rate is ordered into effect, his pay may be adjusted to reflect the new wage rates. 54 Comp. Gen. 655 (1975).

Step increases

Generally

Where prior to date of separation, an employee has completed the requisite period of actual service, and has met all other conditions, for a within-grade advancement under 5 U.S.C. § 5335 the fact that, because such advancements are not effective until the beginning of the next pay period following completion of the required period of service, the advancement was not actually received prior to separation would not preclude including it in the computation of the lump-sum payment under 5 U.S.C. § 5551 for leave extending beyond the beginning of the next pay period. 26 Comp. Gen. 102 (1946).

Eligibility completed while on leave without pay

Where the employee completed the requisite service for a step increase while on leave without pay in connection with a reduction in force, the step increase would be included in his lump-sum payment even though the employee did not return to a pay status. 27 Comp. Gen. 330 (1947).

## LEAVE

### Eligibility completed while on military furlough

An employee was credited with step increases while on military furlough and resigned without returning to his civilian position. Such step increases should be included in the computation of his lump-sum payment. B-115871, August 24, 1953.

### Saved pay

An employee whose retained pay under 5 U.S.C. § 5337 is scheduled to expire during the period covered by his lump-sum leave payment shall have his payment adjusted to reflect the reduced rate for the applicable period. B-151640, June 4, 1963.

### Premium pay

An employee's lump-sum payment shall include the premium percentage pay for irregular or unscheduled overtime to which he would have been entitled had he remained in the service for the period covered by his leave. 36 Comp. Gen. 18 (1956) and 38 id. 161 (1958).

### Cost-of-living allowances and foreign differentials

#### Separated at post of duty

If an employee is receiving a cost-of-living allowance or post differential and he is separated at his post of duty, such differential or allowance shall be included in the computation of his lump-sum payment. 52 Comp. Gen. 993 (1973); 32 id. 323 (1953); 29 id. 10 (1949); and 28 id. 465 (1949).

#### Separated away from post of duty

An employee who was separated after leaving his overseas post may not have the post differential or cost-of-living allowance he was receiving included in his lump-sum leave payment since he was not receiving the differential or allowance at the time of separation. 38 Comp. Gen. 594 (1959); 33 id. 287 (1954); and 28 id. 465 (1949).

#### Separated while on temporary duty

An employee returned to the United States for temporary duty (and was receiving a cost-of-living allowance while on

## LEAVE

temporary duty and was then separated from Federal service following a few days of leave. His lump-sum payment should include the cost-of-living allowance even though he was separated away from his overseas post if it was in the public interest not to return him to his overseas post for separation B-155356, November 20, 1964.

### Reemployed annuitants

While a reemployed annuitant's pay will be reduced by the amount of his annuity, his lump-sum payment upon separation shall be based upon his full pay rate without reduction by the amount of his annuity. 5 U.S.C. § 8344(a). 36 Comp. Gen. 340 (1956) and id. 209.

### Nonworkdays and holidays

#### Generally

Holidays (if the employee would have been entitled to have been paid for the holiday without charge against his leave) and nonworkdays are not counted against the projected annual leave during a computation of a lump-sum payment. 38 Comp. Gen. 869 (1959).

#### Inauguration Day

Inauguration Day, or the following Monday when the day falls on Sunday, is a holiday for Federal employees in the District of Columbia pursuant to 5 U.S.C. § 6301(c) so that a former Federal employee who was employed in the District of Columbia and who retired with sufficient annual leave to extend through the holiday may have it included in the lump-sum leave payment. 36 Comp. Gen. 478 (1956).

#### Executive order holidays

Where a holiday is established by Executive order, employees who are separated after the date the order was signed are entitled to payment for the holiday which falls within the period covered by their lump-sum payment. Since an Executive order is effective when signed unless otherwise provided, an employee who is separated on the day the order is signed, is entitled

## LEAVE

to the holiday in the computation on the lump-sum payment. 34 Comp. Gen. 254 (1954).

### Holidays and employees overseas

American citizens--Foreign holidays should not be included in computing lump-sum payments for American employees since there is no authority to close offices or declare such holidays to be nonworkdays for American citizens. B-130233, February 25, 1957.

Local employees--Where it is discretionary rather than mandatory to excuse local employees of the Foreign Service on United States national holidays and local holidays, such holidays may not be included in lump-sum payments due local employees on separation from service. 36 Comp. Gen. 447 (1956).

### Holiday outside of lump-sum period

An employee is not entitled to pay for a holiday which immediately follows the last day represented by his lump-sum leave payment. 47 Comp. Gen. 147 (1967).

### Rotating workweeks

An employee who works a regular rotation schedule should have his lump-sum payment computed on the basis of the workdays, holidays, etc., occurring within the rotative workweek he would have worked had he remained in Federal service. 30 Comp. Gen. 508 (1951).

## D. REEMPLOYMENT AND RECREDIT

### Generally

5 U.S.C. § 6306 provides that when an employee has received a lump-sum payment under 5 U.S.C. § 5551 and he reenters the Federal service (except for certain positions before the end of the period covered by the lump-sum payment, he shall refund an amount corresponding to the unexpired portion of the period covered by the lump-sum payment. See also 5 C.F.R. Part 630, Subpart E; FPM chapters 550 and 630; and FPM Supp. 990-2, Book 550, S2-4.

Refund

Refund required

Temporary position--A refund is required even if the employee is reemployed in a temporary position for less than 90 days. 32 Comp. Gen. 387 (1953).

After erroneous separation--An employee who is restored to duty retroactively after an erroneous separation is required to refund the entire lump-sum payment he received. 55 Comp. Gen. 48 (1975); 48 id. 572 (1969); 32 id. 162 (1952); id. 22; B-167395, August 6, 1969; and B-103238, July 2, 1951.

Reemployment under different leave system--Where a Public Health Service officer received a lump-sum payment upon separation and is reemployed in the civil service before expiration of the period of leave, he shall refund the unexpired portion of the lump-sum payment even though different leave systems are involved. See B-119016, July 20, 1956.

Refund not required

Reemployed under "no leave" system--An employee reemployed in a position which has no annual leave system to which leave can be recredited need not refund any of his unexpired lump-sum leave payment. 33 Comp. Gen. 209, 213 (1953).

Maximum limitation on leave accumulation

Reemployed under different leave system--An employee who is separated from Federal service and reemployed in a position under a different leave system prior to the expiration of the lump-sum leave payment period need only refund an amount representing that amount of leave which can be transferred to the new leave system. 33 Comp. Gen. 209, 213 (1953).

Personal leave ceiling--An employee with a "saved" leave ceiling (see 5 U.S.C. § 6304(c)) who resigns in 1 leave year and is reemployed in the next leave year prior to the expiration of the lump-sum leave payment period shall have his ceiling constructively reestablished by deducting from the previous ceiling the excess over current accrual,

## LEAVE

if any, of the expired portion of leave covered by the lump-sum payment added to leave actually used during the year. 38 Comp. Gen. 91 (1958).

### Inclusion of cost-of-living allowance

An employee who is required to refund part of a lump-sum payment shall include any differential or cost-of-living allowance included in the lump-sum payment. B-137579, November 20, 1958.

### Recredit

The leave of an employee is to be reconstructed as of the date of reemployment even though the employee chooses to refund the payment in installments, and it is within the discretion of the agency to refuse to grant leave represented by the refund until the refund has been made in full. 38 Comp. Gen. 91 (1958).

### Reemployment prior to payment

Employees who are separated and then reemployed by another agency prior to the processing of the lump-sum leave payment may be paid for that portion of leave which expired during the interval between employments (less taxes), and have the remaining leave transferred without tax deductions to the new agency. 34 Comp. Gen. 290 (1954) and B-121724, April 20, 1971. See also 49 Comp. Gen. 444 (1970).

CHAPTER 4

SICK LEAVE

A. ACCRUAL

Rate

Full-time employee

A full-time employee earns sick leave with pay at the rate of one-half day or 4 hours for each full bi-weekly pay period. 5 U.S.C. § 6307(a).

Part-time employee

A part-time employee earns 1 hour of sick leave with pay for each 20 hours in a pay status. 5 C.F.R. § 630.406. If a part-time employee's hours in a pay status exceed an agency's basic working hours in a pay period, the excess hours are disregarded in computing leave earnings. 5 C.F.R. 630.202(b).

District of Columbia firefighters

Members of the Firefighting Division of the Fire Department of the District of Columbia accrue sick leave at the rate of two-fifths of a day for each full bi-weekly pay period and may be advanced a maximum of 24 days of sick leave with pay in cases of serious illness or disability. 5 U.S.C. § 6307.

Entitlement

As a general matter, an employee who accrues annual leave under 5 U.S.C. §§ 6301 et seq., also accrues sick leave. See the cases set forth in Chapter 2, "ANNUAL LEAVE," "Accrual."

B. TRANSFERS AND REEMPLOYMENT

Transfers

Between positions under 5 U.S.C. §§ 6301 et seq.

When an employee transfers between positions under 5 U.S.C. §§ 6301 et seq., the agency from which he transfers shall certify his sick leave

## LEAVE

account to the employing agency for credit or charge. 5 C.F.R. § 630.502(a).

### Between different leave systems

Sick leave to the credit of an employee who transfers between positions under different leave systems without a break in service shall be transferred to his new employing agency on an adjusted basis under regulations prescribed by CSC. 5 U.S.C. § 6308. See also 5 C.F.R. § 630.502.

ASCS employees--Under 5 U.S.C. § 6312, an employee who transfers without a break in service from the Department of Agriculture to an Agricultural Stabilization and Conservation Service County Committee may transfer his annual and sick leave balances to his new position. Furthermore, the leave balances transferred from county committee service to the Department of Agriculture may be treated as earned in Federal employment for transfer under 5 U.S.C. §§ 6301 et seq. 48 Comp. Gen. 486 (1969).

Commissioned officers of Public Health Service--Commissioned personnel of the Public Health Service are considered civilian officers and employees under 5 U.S.C. §§ 6301 et seq. Thus, members transferring to and from the Commissioned Corps to other civilian positions are not entitled to a lump-sum payment but may have their annual and sick leave transferred on an adjusted basis. 34 Comp. Gen. 287 (1954).

District of Columbia teachers--District of Columbia Teachers' Leave Act of 1949 is essentially a sick leave act. Therefore, under 5 U.S.C. § 6308, a Federal employee, who, without a break in service, transfers to a position under the District of Columbia Teachers' Leave Act, may transfer sick leave upon an adjusted basis in accordance with regulations prescribed by CSC. However, no annual leave may be transferred. 33 Comp. Gen. 209 (1953).

### Reemployment after break in service

#### Generally

An employee who is separated from the Federal Government or the government of the District of Columbia is entitled

to a recredit of his sick leave if he is reemployed in the Federal Government or the government of the District of Columbia, without a break in service of more than 3 years. 5 C.F.R. 630.502(b)(1).

Appointment after 3 years--A Federal employee, who was separated from Federal service on January 23, 1970, was offered reemployment within 3 years. However, because of a hiring freeze he was not appointed until after 3 years from his separation date. He may not be recredited with sick leave earned during prior service. CSC regulations, contained in 5 C.F.R. § 630.502(b)(1), provide that a separated employee may be recredited with sick leave only if the break in service is 3 years or less. B-180604, April 9, 1974.

What constitutes "break in service"

Effect of temporary appointment--An employee served under several temporary appointments on a when-actually-employed basis between his voluntary separation in 1953 and his reemployment in 1956. Although he does not accrue leave during a when-actually-employed appointment, he is entitled to recredit of sick leave accumulated prior to his separation in 1953 upon his reemployment in 1956. The term "break in service" in 5 C.F.R. § 630.502(b)(1) refers to actual separation from the Federal service. 47 Comp. Gen. 308 (1967).

Peace Corps Volunteer service--An employee with 568 hours of sick leave resigned December 3, 1965, to train and serve as a Peace Corps Volunteer. The employee who was reemployed July 6, 1970, contends that volunteer service should be considered Federal service for the purpose of extending the 3-year limit within which sick leave may be recredited after a break in service. However, 22 U.S.C. § 2504(f) may not be considered as authorizing the counting of volunteer service to suspend the 3-year break-in-service rule. B-175209, August 14, 1972.

Transfer or detail to international organization--An employee who resigned to work for an international organization requested restoration of sick leave upon his subsequent reemployment. Under 5 U.S.C. § 3582, an agency is required to restore the sick leave of an employee who was transferred or detailed to an international organization. The sick leave may not be restored

## LEAVE

under section 3582 since the employee was not transferred or detailed to the international organization but rather resigned to accept that position. Neither may the leave be restored under 5 C.F.R. § 630.502(b)(2) since service with an international organization does not constitute Federal service for the purpose of 5 U.S.C. §§ 6301 et seq., and the employee's break in service exceeded 3 years. B-180857, August 27, 1974.

Service as substitute teacher in District of Columbia--  
Substitute teachers employed by the District of Columbia government do not earn sick leave under the District of Columbia Teachers' Leave Act of 1949, 31 D.C. Code § 691, nor under 5 U.S.C. §§ 6301 et seq. However, service as a substitute teacher in the District of Columbia is service for the purpose of recrediting sick leave under 5 C.F.R. § 630.502(b)(2) after a separation from Federal service. Accordingly, a former substitute teacher reemployed by HEW within the applicable time limit, is entitled to recredit of sick leave earned as a Federal employee prior to her substitute teaching. 54 Comp. Gen. 669 (1975).

### Evidence to support claim

Certifications of leave credits based upon other than official records are not to be sanctioned. However, in lieu of a certification, where no official records are available, there should be furnished statements to requesting agencies of any other evidence which may be available in respect of employees' leave credits, including an estimate of his leave credit, if possible. Any such statements should clearly reflect the factors forming the basis of the estimate. The agency where the employee currently is employed may then determine whether upon the basis of such showing a credit of leave may be made. 32 Comp. Gen. 310 (1953).

### Sworn statements

Unused sick leave of an employee who was inducted into the Army may be recredited upon his reemployment after retirement from the military service. The statement of the Letterkenny Army Depot and the statement of the National Personnel Records Center that they have no record of the employee's sick leave balance at the time he entered the military would not preclude the acceptance of secondary evidence to support his claim for recredit.

Accordingly, statements furnished by officers and employees who have knowledge of facts and circumstances existing at the time of his induction may be used. B-164220, September 5, 1968.

### Officially approved leave requests

Where an employee's leave records have been destroyed an agency may accept as evidence of leave usage the officially approved leave requests and the employee's affidavit attesting that such leave requests represent the only sick leave that was used for the period involved. B-175742, June 20, 1972.

### Merger of leave systems

#### Generally

An employee who earned leave under the leave acts of 1936 or any other leave system merged under 5 U.S.C. §§ 6301 et seq., is entitled to a recredit of that leave under those sections if he would have been entitled to recredit for it on reentering the leave system under which it was earned. However, this section does not revive leave already forfeited. 5 C.F.R. § 630.503.

Postal Service--An employee under the leave act of 1936 resigned from the Federal Works Agency in 1943 before the enactment of legislation permitting transfer of leave between different leave systems. He accepted a position subject to the postal leave system. In 1961 he transferred to the General Services Administration without any break in service. The employee is entitled to retroactive adjustment of annual and sick leave effective January 6, 1952, subject to the limitation on annual leave. CSC regulations provide that leave earned under different leave systems merged under 5 U.S.C. §§ 6301 et seq., and leave to which employee would have been otherwise entitled shall be credited if it has not already been forfeited. B-152694, December 19, 1963.

### C. ADMINISTRATION OF SICK LEAVE

#### Generally

The granting of sick leave in accordance with the controlling regulations is an administrative responsibility. The nature

## LEAVE

The nature of the evidence required to determine whether an employee was incapacitated must of necessity be left to administrative determination, bearing in mind the possibility of abuse. FPM Supp. 990-2, Book 630, S4-2.b(1).

An agency shall grant sick leave to an employee when the employee:

- Receives medical, dental, or optical examination or treatment;
- Is incapacitated for the performance of duties by sickness, injury, or pregnancy and confinement;
- Is required to give care and attendance to a member of his immediate family who is afflicted with a contagious disease; or
- Would jeopardize the health of others by his presence at his post of duty because of exposure to a contagious disease. 5 C.F.R. § 630.401.

### Minimum charge

Unless an agency establishes a minimum charge of less than 1 hour or establishes a different minimum through negotiations, the minimum charge for sick leave is 1 hour. 5 C.F.R. § 630.206(a).

### Granting

#### Agency discretion

During a period when 3,000 air traffic controllers reported themselves disabled for duty, an air traffic controller who was absent for 2 weeks alleged that his absence was due to the effects of drugs prescribed by a physician designated by the Federal Aviation Administration. Claimant states that pursuant to regulations, prescribed drugs were incapacitating for traffic control duty and, therefore, he should have been carried on sick leave rather than an absent without leave status. Absent a showing of arbitrary or capricious action, GAO is generally without authority to overturn administrative action by which sick leave is

## LEAVE

refused or employee is placed in an absent without leave status. B-170730, August 16, 1971.

First 40-hour employees--National Aeronautics and Space Administration employees assigned to a first 40-hour workweek under 5 C.F.R. § 610.111 contend that local regulations governing their use of sick leave, which permit their supervisor to retroactively determine that a day on which they were sick may be accounted for as a nonworkday, are contrary to law and CSC regulations. Inasmuch as the local regulations could be applied to deprive employees of the use of sick leave, the local regulations are inconsistent with CSC regulations and, therefore, must be amended. B-171947.78, July 9, 1976.

### Contagious disease

An employee may be granted sick leave to care for a member of his immediate family who is ill at home with a disease requiring isolation, quarantine, or restriction of movement for the period required by local health regulations or, in absence thereof, in accordance with a period specified in a physician's certificate. 36 Comp. Gen. 183 (1956).

An arbitrator granted sick leave to an employee who attended a sick member of his family not afflicted with a contagious disease. The award may not be implemented by the agency since there is no legal authority to grant sick leave under these circumstances. 55 Comp. Gen. 183 (1975).

### During erroneous separation

An employee was restored to duty and awarded backpay for the period of her erroneous separation, including a period during which she was incapacitated by illness.

Backpay may not be awarded for a period of incapacity when an employee is not ready, willing, and able to perform the duties of the former position. However, where the employee has accumulated sick leave, the period of incapacity may be charged to sick leave upon restoration to duty. 46 Comp. Gen. 139 (1966).

## LEAVE

### Criminal confinement

While the incapacity of an employee to perform his duties because of confinement to a mental hospital for treatment or diagnosis would appear to be a case in which sick leave could properly be granted, since the employee was unavailable for performance of duties because he was confined as a result of a criminal conviction, the employee was not incapacitated for any of the reasons set forth in the regulations. Therefore, the agency's determination not to grant sick leave was correct and there is no basis for his retroactive reinstatement to the rolls for the purpose of granting 264 hours of sick leave. B-176645, November 1, 1972.

### Supporting evidence

An agency may grant sick leave only when supported by administratively acceptable evidence. Regardless of the duration of the absence, an agency may accept an employee's certification as to the reason for his absence. However, for an absence in excess of 3 work-days, or for a lesser period when determined necessary by an agency, the agency may also require a medical certificate, or other administratively acceptable evidence as to the reason for the absence. 5 C.F.R. § 630.403.

Personal certification--Where, due to a scarcity of physicians or other practitioners in a particular locality, an employee is unable to procure a physician's certificate to support his application for sick leave for a period of more than 3 days' duration, as required by of the regulations, it is within the agency's discretion to grant the employee sick leave on the basis of his personal certification. 23 Comp. Gen. 186 (1943).

### Advance leave

In cases of serious disability or illness, a maximum of 30 days sick leave with pay may be advanced to the employee. 5 U.S.C. § 6307(c). An employee serving under a limited appointment or one which will be terminated on a specific date, may be advanced sick leave only up to the total amount

he would otherwise earn during the term of his appointment.  
5 C.F.R. § 630.404.

#### Administrative determination

An agency's decision not to grant an employee advance sick leave and to place on leave without pay for absences from work after he applied for disability retirement is sustained. The authority to grant or refuse a request for advance sick leave is exclusively within the jurisdiction of the agency. B-182085, December 24, 1974.

#### Liquidation of advance leave

An employee injured on the job in 1964, elected to receive employee's compensation until he resigned. Since it was not clear at that time that the resignation was based on medical factors, annual leave of 75 hours was used to offset an equal number of hours of advanced sick leave. The voucher for 75 hours of annual leave may be paid, since under 5 C.F.R. § 630.209(b), an employee is not required to refund an amount equal to any unliquidated advanced sick leave if he resigns or retires because of disability. B-174466, December 27, 1971.

#### Change of separation date for purpose of granting sick leave

##### Generally

5 U.S.C. § 6307 provides for the granting of sick leave to employees on the rolls and not to former employees separated by retirement, resignation, or otherwise. Separated employees may not be restored to rolls for the purpose of taking sick leave unless there was a bona fide administrative error in fixing the employee's separation date. B-180436, February 13, 1975.

A claim by a civilian employee with Department of the Navy for payment of sick leave accumulated at the date of his separation, based on an apparently bona fide medical determination by a Navy medical authority that the claimant was capable of performing the duties of his position subject to certain limitations, is disallowed. There is no statutory authority

for reimbursing an employee for sick leave not used prior to his separation. An employee cannot be restored to his former position solely to be granted unused sick leave, unless there was a bona fide administrative error in effecting separation. Further, disability retirement approved retroactively does not invalidate an otherwise proper action taken by the Navy Department. B-162628, December 27, 1967.

### Administrative error

Generally--An employee, who was carried on sick leave from February 20, 1968, until January 4, 1969, may have annual leave substituted for 136 hours of sick leave. The employee had requested annual leave for the period December 22, 1968, through January 4, 1969, which was granted but through administrative error was charged on leave records as sick leave. Since additional sick leave would have been granted prior to his retirement for disability, the employee should be restored to the rolls and the separation date extended for that purpose. B-170896, October 22, 1970.

An employee resigned from the Department of the Army with 222 hours sick leave to her credit and was re-employed by the National Labor Relations Board 2 years later. Through an administrative error she was not credited sick leave until after her separation due to confinement for pregnancy which required the use of annual leave and leave without pay. She may have sick leave substituted for the period during which annual leave and leave without pay was used. CSC regulations provide that a person restored to Federal employment within 3 years after separation is entitled to recredit of sick leave, and the record shows that the absence would have been charged to sick leave had information been furnished, the non-availability of which was due to administrative error. B-159606, July 26, 1966.

Violation of agency policy--An employee, involuntarily removed from service on July 23, 1965, for absence without leave, was notified by CSC in 1966 that his application of February 1, 1965, for disability retirement had been approved. The employee should be given an opportunity to use his forfeited sick leave

by restoration to the rolls with proper adjustments for that purpose, since the FPM provides that a definite duty rests with an agency not to separate an ill employee, if he has the necessary service to qualify for disability retirement. If he is unable to work, the agency should carry him in a leave status (with or without pay) until notified by the CSC's action on his application. 39 Comp. Gen. 89 (1959) and B-162875, December 19, 1967.

A claim for payment for the sick and annual leave accrued as of an employee's retirement date on the basis that the subsequent approval of his disability retirement proves that the physician's pronouncement of his fitness for duty was erroneous, and that he could have been granted all of his leave prior to separation had the agency allowed his disability retirement is disallowed. The employee may not be reimbursed for sick leave not granted prior to his separation or be restored to the agency rolls for the purpose of granting such leave absent an error or violation of a regulation in effecting the separation. The employee was not refused leave prior to his optional retirement; rather he elected to be separated effective April 30, 1968, to be eligible for a 3.9 percent cost-of-living allowance. B-167973, October 13, 1969.

Intent of parties--A chest X-ray incident to an employee's separation indicated no abnormality nor a need for additional X-rays. However, an X-ray taken incident to a reemployment examination 4 days after his retirement revealed carcinoma of the lung requiring surgery. The agency does not deny the likelihood of error which would taint the otherwise valid processing of the retirement and render the separation ineffective as being contrary to the intent of both parties. Accordingly, the employee should be restored to the rolls for the purpose of allowing him to exhaust his accrued sick leave. B-175201, July 2, 1972.

An employee, who was separated from the service because of pregnancy prior to the termination of her accumulated sick leave which had been administratively approved on the basis of a timely application supported by a doctor's certificate, is entitled to

## LEAVE

corrective action to show her separation at the termination of sick leave since that was originally intended by both parties. B-116468, October 5, 1953.

### Sick leave used in computation of annuity

An employee who alleges that she was advised by her agency to apply for involuntary retirement to facilitate the processing of the application and to apply for disability retirement after her involuntary retirement was approved was, thus, unable to use 273 hours of sick leave. She requests that her separation date be changed so that she may be restored to the rolls for the purpose of exhausting her sick leave. However, the 273 hours of sick leave were used in the computation of her annuity. Thus, 5 C.F.R. § 630.407 prohibits the recredit of sick leave to her account for use even if her separation date were changed. B-183551, November 28, 1975.

### Substitution of sick leave

#### For annual leave

An employee who was entitled to use sick leave specifically requested that such time be charged to annual leave. After annual leave is granted, an employee may not thereafter have such leave charged to sick leave and be recredited with the amount of annual leave previously charged for the purpose of a lump-sum payment upon separation for retirement. 54 Comp. Gen. 1086 (1975) and B-182804, March 29, 1976.

A Navy employee requested and was granted annual leave in connection with his hospitalization and recuperation in October and November 1973. However, after enactment of Public Law 93-181, December 14, 1973, 87 Stat. 705, by which the limit on a lump-sum leave payment for annual leave was removed, and apparently after his decision to retire in December 1973, he requested that sick leave be substituted for the annual leave so taken. The request may not be granted, since such substitution involves a change in a vested statutory right and such changes are not authorized absent a provision in a statute or regulation providing therefor. B-181087, January 21, 1974.

## LEAVE

Administrative error--An administrative error in charging part of a period of sick leave prior to an employee's death as annual leave is substantiated by documents which establish that sick leave applications were properly certified and presented and that no application for annual leave was submitted. Therefore, the voucher covering payment for the annual leave recredited to the account of the deceased employee may be certified. B-123655, December 6, 1955. Upon review of an employee's accumulated annual leave pending his retirement on February 28, 1969, it was administratively decided, without consulting the employee, to show him in an annual leave status from December 12, 1968, through January 20, 1969, which resulted in the employee using 24 hours of annual leave in excess of his current accrual. Because the employee was unable to work during this period and had unused sick leave to his credit, his request that 24 hours of annual leave charged for January 16, 17, and 20 be changed to sick leave is approved. Since the timing of the charge to annual leave was not his, but was an administrative decision, the payment for 24 hours of annual leave charged him in error is authorized. B-166841, July 16, 1969 and 31 Comp. Gen. 524 (1952).

### For leave without pay

Generally--5 U.S.C. § 6307 provides for the granting of sick leave only to employees on the rolls and not to former employees who have been separated by retirement, resignation, or other means. Separated employees may not be restored to the rolls for the purpose of substituting sick leave for leave without pay unless there was an administrative error in fixing their separation date. B-180436, February 13, 1975.

Administrative error--The estate of an employee, who died while on leave without pay in which he was placed while too ill to report for duty following a furlough, despite sick leave to his credit, may be compensated for such sick leave. Since the agency reports that the employee would have been placed on sick leave at time of his recall to duty except for an administrative error. B-130418, February 28, 1957.

While in nonpay status--An employee, who was in a non-pay status at the time he became ill and continued in such status throughout the period of his illness, may not be granted sick leave. Absence with pay is synonymous with an active duty status. If there are no duties for the employee to perform and he is in a nonpay status it would be improper to terminate the nonpay status primarily for the purpose of placing the employee in a sick leave status. B-122201, January 7, 1955.

Sick leave used in computation of annuity--An agency placed an employee in an absent-without-leave status when she refused reassignment and took leave, claiming sickness. Request for recredit of sick leave is denied, since pursuant to 5 C.F.R. § 630.407, sick leave used in the computation of an annuity may not be substituted for leave without pay. B-181500, April 2, 1975.

### Involuntary sick leave

#### Employee ready, willing, and able to perform

An employee was placed on sick leave without his consent while an agency action for his involuntary disability retirement was being processed. The retirement was later rejected by CSC for failure to establish at any time that the employee was not physically and mentally capable of performing his duties. Subsequently the employee was placed on sick leave while the agency was processing a disability separation action under 5 U.S.C. § 7701. It too was rejected on the basis that the medical evidence did not support the separation. The placing of an employee, who was willing and able to perform his duties, on involuntary sick leave is an unjustified and unwarranted personnel action, and, upon restoration to duty, the employee is entitled to have both periods of sick leave regarded as erroneous suspensions, and the salary received during the sick leave period regarded as backpay allowable under 5 U.S.C. § 7701. Therefore, recredit of the sick leave is proper. 39 Comp. Gen. 154 (1959).

Contagious disease

An employee suspected of having a contagious disease, who is placed on involuntary sick and annual leave pursuant to medical advice is not entitled to restoration of the leave, as the administrative action was a reasonable precaution to protect public health. 42 Comp. Gen. 438 (1963).

Agency filed application for disability retirement

An employee is not entitled to restoration of leave when placed on involuntary leave pending resolution of an agency-filed application for disability retirement. 41 Comp. Gen. 774 (1962); B-184522, March 16, 1976; and B-184706, January 12, 1976. However, if the application is denied by CSC and the agency files an appeal, the employee must be either restored to duty or separated pending the agency appeal. B-184522, March 16, 1976.

# LEAVE

## CHAPTER 5

### OTHER LEAVE PROVISIONS

#### A. ADMINISTRATIVE LEAVE

##### Generally

The term "administrative leave," while not officially recognized in legislation or executive regulation, is used to refer to an authorized absence from duty with pay and without charge to leave. Since there are no general CSC regulations covering administrative leave, each agency or department has the authority for determining the situations in which excusing employees from work without charge to leave is appropriate. However, for some of the more common situations in which agencies generally grant administrative leave see FPM Supp. 990-2, Book 630, subchapter S11 and 53 Comp. Gen. 582 (1974). For information regarding the granting of administrative leave to daily, hourly, and piecework employees, see 5 C.F.R. §§ 610.301 et seq.

##### Administrative discretion

###### Fire fighting

The denial of administrative leave to an employee for time spent as a member of a volunteer fire department in fighting a local fire outside his Government installation was a proper exercise of administrative discretion. CSC has not issued general regulations covering the granting of administrative leave. Therefore, each agency has the responsibility for determining situations in which excusing employees from work without a charge to leave is appropriate. 54 Comp. Gen. 706 (1975).

###### Emergency situation

A retroactive grant of 8 hours of administrative leave to an employee by the local Commander of an Air Force Base for time he spent in cleaning and arranging for repair of damages to his home that resulted from an ammunition train explosion, was a proper exercise of administrative discretion. CSC has not issued general regulations covering the granting of administrative leave. Therefore, each

agency, under the general guidance of decisions of the Comptroller General and FPM Supplement 990-2, Book 630, subchapter S11, has responsibility for determining situations in which excusing employees from work without charge to leave is appropriate. 53 Comp. Gen. 582 (1974).

Rest period after travel

The granting of administrative leave to an employee for an acclimatization rest after he completed a full day of duty and traveled over 7 hours by air on his return from Guam is a proper exercise of administrative discretion. CSC has not issued general regulations covering the granting of administrative leave. Therefore, each agency, under the general guidance of decisions of the Comptroller General and FPM Supplement 990-2, Book 630, subchapter S11, has responsibility for determining situations in which excusing employees from work without charge to leave is appropriate. 55 Comp. Gen. 510 (1975).

Amount of leave to be granted

Brief periods

An employee, who had been granted 1 week's administrative leave in connection with a change of station, did not complete the transfer because it was canceled. No objection will be made to the granting of such leave, if the agency determines it was granted for the purpose of complying with a transfer order before its cancellation. An agency may excuse an employee for brief periods of time without charge to leave or loss of pay. B-180693, May 23, 1974 and 44 Comp. Gen. 333 (1964).

Long periods

Professional examination--Excused absences of 14, 28, and 31 days, without charges to leave, granted to employees for bar examination preparation are not authorized by statute and are not appropriate under FPM guidelines, pertaining to excusing employees for periods of brief duration. B-156287, February 5, 1975.

Voluntary humanitarian service--An employee performed services for Africare, a private nonprofit organization assisting in the Sahelian Drought Relief Program. The services rendered were similar to those performed in her Government position. However, she may not be granted administrative leave, since no authority exists for granting such leave to an employee of the executive branch for the purpose of engaging in voluntary, humanitarian work for a private, nonprofit organization for a period of 6 weeks. B-156287, June 26, 1974 and 44 Comp. Gen. 643 (1965).

International athletic competition--An employee of the Nuclear Regulatory Commission may not be granted 3 weeks' administrative leave to participate in the Pan American Games as a member of the United States Field Hockey Team. B-185128, December 3, 1975.

## Medical purposes

### Medical examinations

An agency head may excuse employees' absences to take administratively required physical examinations. Such absences without charge to leave or loss of pay by an employee should not be granted for extended periods of time. Nor should they be granted for any period the employee may subsequently be hospitalized to take more extensive tests and examinations based upon conditions discovered or medical suspicions resulting from the initial examination. 44 Comp. Gen. 333 (1964).

### Non-work related injury

An employee, who was injured and unable to perform his regular duties but who could perform other limited duties, submitted a grievance alleging that his agency did not comply with a labor-management agreement in that it did not "make every effort" to find a limited duty position for him. The recommendation of an arbitrator that the employee be granted 30 days of administrative leave may not be implemented by the agency. There is no legal authority to grant administrative leave under these circumstances. 53 Comp. Gen. 1054 (1974).

Other specific situations

Incident to relocation

A transferred employee seeks restoration of 8 hours annual leave charged to his leave account while he was awaiting the arrival of movers on a scheduled day of travel. If his agency determines that he delayed travel while reasonably and necessarily awaiting movers, GAO would interpose no objection if he was administratively excused for such time. 55 Comp. Gen. 779 (1976).

Counsel appointed for indigents

Federal attorneys who serve as counsel to indigent defendants in state and Federal court cases may not be excused from their Federal employment without a loss of pay or a charge to annual leave. 44 Comp. Gen. 643 (1965).

Absentee ballot voting

Directive in FPM, authorizing agencies to permit employees who desire to vote in states where they maintain voting residences to be excused for that purpose without charge to annual leave, except where voting by absentee ballot is permitted, may not be extended by administrative regulation so as to authorize the excusing of an employee, without charge to annual leave, who absents himself from work for 1 day in order to vote in a state where voting by absentee ballot is permitted. 32 Comp. Gen. 361 (1953).

Employee under investigation

During an investigation of an employee for wrongdoing, when it is in the interest of the Government to have the employee off the job, it is not proper to place the employee in an enforced leave status. Instead the employee may be relieved from duty and continued in a pay status without charge to leave for such time as is necessary to process his suspension. 38 Comp. Gen. 203 (1958).

## LEAVE

### Professional examination

Excused absences of 14, 28, and 31 days, without charges to leave, granted to employees for bar examination preparation are not authorized by statute and are not appropriate under FPM guidelines pertaining to excusing employees for periods of brief duration. B-156287, February 5, 1975.

## B. HOLIDAYS

### Generally

5 U.S.C. § 6103(a) designates certain days as legal public holidays. Subsection (b) establishes the rules to be applied to Federal employees when a holiday designated by law or Executive order falls on a Saturday or Sunday. Subsection (c) designates January 20 of each fourth year after 1965, Inauguration Day, a holiday for Federal employees who work in the metropolitan Washington area. 5 U.S.C. § 6104 extends similar benefits to employees paid on a daily, hourly, and piece-work basis. See also Executive Order No. 11582, February 11, 1971 and 5 C.F.R. §§ 610.201 and 610.202.

### Inclusion of holiday in regular workweek

In the absence of specific legislation to the contrary, an administrative office may, within its discretion, include a holiday within the official hours of duty or regular workweek of employees and require them to work on that day. 22 Comp. Gen. 762 (1942) and 27 id. 191 (1947).

### Local and foreign holidays

It is within the administrative discretion of agencies to close field offices in the United States, its possessions, or foreign countries on local holidays where Federal work may not be properly performed. When the office is thus closed, such days are not chargeable to annual leave, and employees paid on an annual or monthly basis are entitled to compensation for such days. 17 Comp. Gen. 298 (1937).

## LEAVE

### Irregular unscheduled holiday work

Employees who receive premium compensation because their duty necessitates holiday work are to be charged leave for holidays on which no work is performed and which fall within the employees' regularly scheduled tour of duty. However, for employee's whose premium pay for standby duty is not based on holiday pay, there should be no charge to annual leave for absence on holidays. In addition, employees who receive premium compensation for irregular, unscheduled holiday work may be absent from duty on holidays without charges to leave. 54 Comp. Gen. 662 (1975).

### Employee refuses to work holiday

When, regardless of the need for his services, an employee unjustifiably absents himself or refuses to work on a holiday contrary to a proper administrative order, there is no requirement that such absence must be excused or that the employee be paid his regular compensation for that day. The agency is not required to charge such absence to annual leave. However, while an administrative deduction of pay, because of such refusal to work that day, is not an adverse action, any suspension or other disciplinary action affecting the employee's pay for any other day would be subject to the laws, regulations, and procedures applicable to such disciplinary actions. 44 Comp. Gen. 274 (1964).

## C. COURT LEAVE

### Generally

An employee of the United States or of the government of the District of Columbia is entitled to leave, without loss of or reduction in pay or leave to which the employee is otherwise entitled, for a period of absence during which the employee is summoned in connection with a judicial proceeding to serve as a juror or as a witness on behalf of a state or local government. 5 U.S.C. § 6322(a), as amended by Public Law 94-310, June 15, 1976, 90 stat. 687.

For materials relating to the disposition of juror and witness fees and expense payments made to Federal employees, see Title I, COMPENSATION, Chapter 9.

## LEAVE

### Service as a juror

#### Eligibility

Part-time employee--A part-time Federal employee with a regular tour of duty who is called for jury service in a United States court is entitled to court leave under 5 U.S.C. § 6322 for those periods of jury service that coincide with his regularly scheduled tour of duty. 36 Comp. Gen. 378 (1956).

Temporary employee--An employee serving under a temporary appointment is eligible for court leave under 5 U.S.C. § 6322. 48 Comp. Gen. 630 (1969).

When-actually-employed employee--Employees working on an intermittent or when-actually-employed basis without a regular tour of duty are not eligible for court leave under 5 U.S.C. § 6322. 49 Comp. Gen. 287 (1969).

A career-conditional employee on a when-actually-employed basis who has a regularly scheduled tour of duty, may be granted court leave for jury duty performed on scheduled workdays, since her employment covered a protracted period under a continuing established work schedule. Although, technically, the conditions of her employment call for a when-actually-employed designation, they may be viewed as tantamount for court leave purposes, to those of temporary employees, whose entitlement to such leave was upheld in 48 Comp. Gen. 630 (1969). B-166056, August 12, 1970.

#### Administration

Duration of jury service--A Federal employee under a proper summons from a state or Federal court to serve on a jury may be granted court or jury leave for the entire period from the date on which he is required to report to court, to the time he is discharged by the court, regardless of the number of hours per day or the days per week he actually served on a jury during the period. 20 Comp. Gen. 131 (1940) and id. 181.

Employee excused or discharged by court--Jury service for which a Government employee is entitled to court leave does not include periods when the employee is excused or discharged by the court, either for an indefinite period subject to call by the court or for a definite period in excess of 1 day. 20 Comp. Gen. 181 (1940) and 26 id. 413 (1946).

Return to duty when excused by court--Employees, who otherwise are entitled on account of jury service to court leave of absence with pay and who are excused by the court for periods of 1 day during the term of service, may not be granted court leave for any day within such period. Also, if the return of a juror to duty would not involve hardship - such as depriving an employee on night duty of his sleep or where the place of duty is far removed from the court - an agency could inform the prospective juror that if excused from jury duty for 1 day or less, he should return to his regular duty or suffer a charge against annual leave. 26 Comp. Gen. 413 (1946).

Night jury service--An employee, who performs duty for a full workday and then sits on a grand jury in the evening, may be granted court leave for the day following such duty to the extent necessary to alleviate hardship. The employee is entitled to retention of a pro rata portion of his grand jury fee to the extent that the hours actually served exceed hours of court leave granted. B-70371, August 5, 1975.

Weekend duty--It would be a hardship on Federal Aviation Administration employees who are called for weekday jury duty and whose tours of duty include work on Saturdays or Sundays, or both, to require them to work their regularly scheduled weekend days in addition to serving on juries on 5 weekdays. Therefore, the Federal Aviation Administration may establish a policy to permit those employees to be absent on weekends without charge to annual leave and with payment of premium pay normally received by them for work on Saturdays and Sundays. 54 Comp. Gen. 147 (1974).

## LEAVE

### Relation to other types of leave

#### Annual leave

##### Employee on annual leave

If an employee is on annual leave when called for jury service, court leave should be substituted. 27 Comp. Gen. 83 (1947).

An employee on annual leave under an advance notice of separation from the Federal civilian service due to a reduction in force was summoned as a juror. He is entitled to have otherwise proper court leave substituted for annual leave, not to extend beyond the date administratively fixed for his separation. 27 Comp. Gen. 414 (1948).

##### May not be substituted for court leave

The requirement that a period of absence for jury service be without a deduction from other types of leave of absence is mandatory. The effect of the law is not to deny the employee the use of annual leave. Its intent is to preserve other leave rights without diminution resulting from jury service. Thus, regardless of whether an employee may desire to use annual leave when serving on a jury, if it is used, the fact remains that it is being diminished, which is prohibited by statute. B-119969, March 11, 1969.

Leave without pay--An employee on leave without pay, although otherwise eligible, may not be granted court leave when called to jury duty. Court leave is available only to an employee who, except for jury duty, would be on duty or on leave with pay. 27 Comp. Gen. 83 (1947).

#### Service as a witness

##### Generally

An employee who is summoned or assigned by his agency to (1) testify or produce records on behalf of the

## LEAVE

United States or the District of Columbia, or (2) testify in his official capacity or produce official records on behalf of a party other than the United States or the District of Columbia, is performing official duty for the period of such service. 5 U.S.C. § 6322(b).

### Testimony in official capacity

When an employee is summoned or assigned by his agency to testify in his official capacity or to produce official records, he is in an official duty status and entitled to his regular compensation without regard to any entitlement to court leave. 38 Comp. Gen. 142 (1958).

Former employee--An employee is considered to be a witness in his official capacity when he is called as a witness in the official capacity of a former position he held in the Federal service, as well as when called as a witness in the official capacity of the position in which he is currently serving. B-160343, November 22, 1966.

### Private litigation

Employees who were summoned to appear as individuals and not in their official capacities in a suit in the Court of Claims by fellow employees for overtime compensation are not entitled to court leave authorized by 5 U.S.C. § 6322, for the period of absence in which they appeared as witnesses on behalf of a private party and without official assignment. 52 Comp. Gen. 10 (1972). But see Public Law 94-310, June 15, 1976, 90 Stat. 687 amending 5 U.S.C. § 6322 to permit payment under such circumstances.

## D. MILITARY LEAVE

### Generally

Military leave for civilian employees of the District of Columbia and Federal employees, as defined by 5 U.S.C. § 2105, is authorized by 5 U.S.C. § 6323. Military leave is available to all permanent or temporary indefinite Federal and District employees who are members of a reserve component of the armed forces or the National Guard.

## LEAVE

Under 5 U.S.C. § 6323 employees are allowed military leave as follows:

--Reserve members of the armed forces or members of the National Guard are entitled to up to 15 days of military leave during each calendar year while performing active duty for training;

--Reserve members of the armed forces or National Guard are entitled to 22 days of military leave when performing Federal service or full-time military service with the National Guard for the purpose of providing military aid to enforce the law; or

--Members of the National Guard of the District of Columbia are entitled to military leave for each day of a parade or encampment ordered pursuant to title 39 of the District of Columbia Code.

Note the provisions of 5 U.S.C. § 5519, which may require the crediting of military pay against civilian compensation where military leave has been granted.

### Entitlement

#### Temporary employees

Part-time, intermittent, and temporary employees of the Federal Government, appointed for less than 1 year, are not eligible for military leave under 5 U.S.C. § 6323. 54 Comp. Gen. 999 (1975).

#### Temporary indefinite employees

Employees assigned to an executive agency under the Intergovernmental Personnel Act, 5 U.S.C. § 3374, are eligible for military leave with pay under 5 U.S.C. § 6323, provided their appointments are for a period in excess of 1 year. The Comptroller General has held that Congress intended to exclude from eligibility for military leave only employees having part-time, intermittent, and temporary appointments for less than 1 year. B-173997, June 19, 1972.

Law clerk-trainee

Since the extension of appointments to 14 months of law clerks serving under 5 C.F.R. § 213.3102(e) does not change the nature of those appointments to permanent or temporary indefinite, there is no basis for granting military leave with pay under 5 U.S.C. § 6323 to law clerk-trainees prior to the conversion of their appointments to permanent appointments. B-173997, October 27, 1971; B-154080, July 16, 1964; and B-159563, March 17, 1973.

Term appointments

Employees under term appointments for periods of more than 1 year but not to exceed 4 years (unlike temporary employees appointed for less than 1 year) are eligible for military leave under 5 U.S.C. § 6323. 46 Comp. Gen. 72 (1966).

Part-time employees

A provision to establish military leave eligibility for part-time employees with regularly scheduled tours of duty was considered and rejected by Congress. However, in light of the broad authority in 38 U.S.C. § 4108, and absent any legislative limitation with respect to absences for military service, GAO concludes there is no objection to providing military leave for part-time physicians, dentists, and nurses, not to exceed the benefits generally afforded full-time personnel under applicable statutes. B-123384, September 10, 1970.

Granting

Additional days

When a Federal employee, who as member of a reserve component of the armed forces or the National Guard performs law enforcement services for a state or the District of Columbia, exhausts the 22 days of additional leave provided under 5 U.S.C. § 6323(c), he may not be granted administrative leave. The discretionary authority of agency heads to excuse employees when absent without charge to leave may not be used to increase the number of days an employee is excused to participate in reserve and National Guard duty. Therefore, an employee who has

## LEAVE

exhausted his section 6323(c) military leave may not be further excused from duty without loss of pay or a charge to leave for performing military duty. 49 Comp. Gen. 233 (1969).

### Uncommon tour of duty

To avoid a disparity in the benefits between employees who work five 8-hour tours of duty and those who work uncommon tours of duty, the leave benefits provided in 5 U.S.C. § 6323(c), prescribing 22 additional days of military leave for civilian employees who as members of a reserve component of the armed forces or the National Guard perform law enforcement services, should be converted into hours and charged in units of hours on the same basis as annual and sick leave is charged under 5 U.S.C. §§ 6301 et seq. 49 Comp. Gen. 233 (1969).

### Status prior to military duty

#### Leave without pay

An employee of the Interstate Commerce Commission, was placed on leave without pay incident to his hospitalization. Subsequently, during convalescence he received orders to active military duty as a Reserve officer in the Army Judge Advocate General's Corps. He may properly be paid for 15 days of military leave only if it may be determined that he would have been in a civilian pay status during the first 15 days of his military service but for the requirement that he perform such military service. B-166993, June 18, 1969 and 37 Comp. Gen. 608 (1958).

A civilian employee on leave without pay due to insufficient annual leave immediately prior to military leave and in a non-pay status for part of the next working day after his return from 17 days of military duty may receive payment for 15 days of military leave pursuant to 5 U.S.C. § 6323. But for the requirement to perform military duty he would have been in a civilian pay status during the first 15 days of his military duty period, and upon return he could be considered in a civilian pay status, having performed official duties in his regular civilian position for a portion of the day. B-179444, September 27, 1973.

After erroneous separation

An employee was reemployed under a temporary appointment in the same position from which he was separated by a reduction in force. He was then ordered to be restored to his former position, retroactive to the date of separation, pursuant to a CSC decision which regarded the employee as retaining the same status as when he was improperly removed. He may have military leave which was denied because of the temporary appointment substituted for annual leave and leave without pay. 34 Comp. Gen. 442 (1955).

Administration of military leave

Under section 6323(a)

Nonwork days--Air Force employees, who were ordered to military duty for three separate 5-day periods, covering Monday through Friday, with a return to civilian status on weekends, are not chargeable with military leave for the intervening weekends, even though they occurred between periods of military duty. Military leave under 5 U.S.C. § 6323(a) is chargeable only for such days as an employee is in a military duty status. Therefore, any annual leave charged for such weekends should be restored, if not in excess of the maximum accumulation permitted by law, and any leave without pay should now be paid. B-149951, November 23, 1962 and B-171947.27, September 7, 1972.

Naval reservists, whose 15-day military leave authorized by 5 U.S.C. § 6323(a) includes nonworkdays and incorporates Saturday and Sunday at the start and end of leave, may not contend that the phrase "from his duties" as used in the military leave acts excludes nonworkdays. The general rule is well established that intervening Sundays and holidays are included and, since 5 U.S.C. § 6323(a) neither expressly nor implicitly permits the exclusion of nonworkdays, military leave is required to be charged for intervening nonworkdays. However, nonworkdays occurring at the start and close of military leave are not included in the period of military leave. B-133674, December 30, 1957.

Part day--A National Guard technician who for a period of 5 days performs 4 hours of civilian duty each day followed by active military duty as part of year around training authorized under 32 U.S.C. § 503, is entitled

## LEAVE

to civilian pay without charge to leave for the 4 hours worked in a civilian capacity on the day he reported for military duty, with a charge of 4 hours annual leave or a full day of military leave under 5 U.S.C. § 6323(a) for the 4 remaining hours of the civilian duty day. In order for the technician to receive compensation from both civilian and military sources, 8 hours of annual leave or a full day of military leave is chargeable for the balance of the 5-day period, since no additional pay would result for the part-time performance of his civilian duties without a charge to leave. 52 Comp. Gen. 471 (1973).

A National Guard technician, who became subject to military control upon reporting for full-time training duty after completion of his civilian workday, is entitled under the principle stated in 49 Comp. Gen. 233 (1969) to his civilian pay without charge to leave for the day of reporting, even though he may be entitled to military pay for that day. However, since full-time training duty constitutes active duty under 37 U.S.C. 204(d), which is incompatible with civilian service, there is no entitlement under the rule in 37 Comp. Gen. 255 (1957) to civilian pay without charge to appropriate leave--military (under 5 U.S.C. § 6323(a)), annual, or leave without pay--for the days subsequent to his coming under military control, even though the duties of his military assignment were such that he was able to perform his civilian duty on those days. 52 Comp. Gen. 471 (1973).

Full day--A National Guard technician upon completion of his civilian workday departed for 2 weeks' full-time training duty. He returned home afterwards in a military travel status shortly after midnight and reported to his civilian position the same day. He is entitled to civilian pay without charge to military or civilian leave for the day of departure, since his civilian duties were performed before he became subject to military control. He is entitled to civilian compensation for the day he reported back to his civilian position, as he no longer was subject to military control. In addition, he is entitled to military pay incident to his return travel from training as it is not incompatible with the performance of his civilian duties or the payment therefor after the termination of active military training duty. 52 Comp. Gen. 471 (1973).

LEAVE

Minimum charge--There is no provision for charging military leave under 5 U.S.C. § 6323(a) in increments of less than 1 day. 52 Comp. Gen 471 (1973).

Single period of training restriction--A civilian employee who as an Army reservist, was ordered to active duty for training for a 47-week period extending into 2 calendar years and was granted 15 days' military leave in each of the calendar years. The employee was entitled only to 15 days military leave under 5 U.S.C. § 6323 for a single period of training, even though the training extended from 1 calendar year into the next.

Under section 6323(c)

Standby time--The term "full-time military service for his State" contained in 5 U.S.C. § 6323(c) for Federal employees performing active service in the aid of law enforcement as members of a reserve component of the armed forces or the National Guard, includes the time from reporting when so ordered by competent authority to serve in the active military service of the state until relieved by proper orders. It also includes any standby time necessitated by the need for the employee to take over or perform when his active service or skill is needed, as well as actual engagement in law enforcement duties. 49 Comp. Gen. 233 (1969).

Uncommon tour of duty--To avoid disparity in the benefits between employees who work five 8-hour tours of duty and those who work uncommon tours of duty, the leave benefits provided in 5 U.S.C. § 6323(c), prescribing 22 additional days of military leave for civilian employees who as members of a reserve component of the armed forces or the National Guard perform law enforcement services, should be converted into hours and charged in units of hours on the same basis as annual and sick leave is charged under 5 U.S.C. §§ 6301 et seq. 49 Comp. Gen. 233 (1969).

Use of annual leave--A Federal employee who as a member of a reserve component of the armed forces or National Guard is entitled to 22 workdays of leave in a calendar

## LEAVE

year pursuant to 5 U.S.C. § 6323(c) for periods of active duty in aid of law enforcement may be granted annual leave or unused military leave under 5 U.S.C. § 6323(a) only if section 6323(c) leave is exhausted. Under section 6323(c), an employee entitled "to leave without loss of or reduction in \* \* \*leave" may not elect to use, nor may he voluntarily be charged annual leave, or any other type of leave for periods of service in the aid of law enforcement if he has section 6323(c) leave available for use, even to avoid a forfeiture of leave. 49 Comp. Gen. 233 (1969).

### E. HOME LEAVE

#### Generally

Home leave for Federal employees stationed outside the United States is authorized by 5 U.S.C. § 6305(a), with implementing regulations found at 5 C.F.R. §§ 630.601 et seq. Only those employees who qualify for the maximum annual leave accumulation of 45 days under the provisions of 5 U.S.C. § 6304(b) are eligible for home leave. Home leave may be used only in the United States, the Commonwealth of Puerto Rico, or the territories and possessions of the United States. An employee is eligible for home leave entitlements only when he has completed 24 months of continuous service abroad.

#### Entitlement

##### Minimum service requirement

After erroneous separation--An employee was separated in a reduction-in-force action from a position with the Trust Territories of the Pacific Islands prior to the completion of 2 years' service at that post. The separation was found to be invalid, and he was ordered reinstated to his prior position or an equivalent position. He accepted a position with the Bureau of Reclamation in Denver. He is entitled, under 5 U.S.C. § 5596, to count the time he did not spend at his foreign post due to his erroneous separation for the purpose of fulfilling the 24 months' overseas service requirement. However, the limitations imposed on granting home leave by 5 C.F.R. § 630.606(c) disqualified the employee from using his home leave until he has served another qualifying period overseas. 52 Comp. Gen. 860 (1973).

## LEAVE

Temporary duty in the United States--To be eligible for the home leave travel allowances prescribed for an employee who satisfactorily completes an agreed upon period of service the employee must have completed a minimum of 12 months of service following the date on which he arrives at or returns to his overseas post of duty. Therefore, an agency may not regard an agreed upon period of overseas service as commencing on the date the employee is assigned to training or temporary duty in the United States following completion of home leave and credit the employee with the time spent in training toward the fulfillment of the agreed upon period of service. 49 Comp. Gen. 425 (1970).

Effect of break in service--A school teacher after serving for 1 year in the Pacific Islands resigned and departed for the continental United States. She must complete a new period of 24 months' continuous service overseas before being eligible for a grant of home leave. 5 U.S.C. § 6305(a) and 5 C.F.R. § 630.606(a) provide that a basic service period of 24 months of continuous service abroad is required for home leave, and a continuous period is terminated by a break in service. B-159334, July 29, 1966.

### Employees having 45-day annual leave ceiling

Employed and hired locally--An employee, who entered service in the Canal Zone and was given a transportation agreement on the basis of his travel to the Zone as a dependent of an employee with a transportation agreement, is not entitled to accumulate 45 days annual leave and home leave since he did not meet the requirement of 5 U.S.C. § 6304(b) that he be recruited from the United States or a territory or possession of the United States outside the Zone. However, he is entitled to such benefits upon transfer to Mexico since the Zone is considered within the phrase "territories and possessions" of the United States as used in 5 U.S.C. § 6304(b)(1). 53 Comp. Gen. 966 (1974).

## LEAVE

### Administrative discretion

The disallowance of a claim for reimbursement for accrued home leave or the credit of such leave to the employee's annual leave account is affirmed, since the legal authority for home leave provides only for its use as such at the discretion of an agency. Moreover, the provisions of 5 U.S.C. § 6304(d)(1)(A) regarding the restoration of forfeited annual leave are not applicable, since no forfeiture is established on the record. 54 Comp. Gen. 349 (1974).

Although the granting of home leave is basically for each agency's determination, the Army's refusal to grant it to an employee who had completed his basic service period required for home leave entitlement under 5 U.S.C. § 6305, solely on the grounds that the employee had refused to sign a transportation agreement, appears fundamentally discriminatory. The right to return travel had already been earned and home leave itself is never forfeited where the refund of transportation expenses and the loss of return rights are effected under a transportation agreement. Accordingly, the substitution of home leave for annual leave is appropriate. B-170250, October 23, 1970.

An overseas employee, after serving in Bangkok, was appointed to a position in St. Croix, Virgin Islands, but was not authorized home leave. While 5 U.S.C. § 6305 provides that employees may be granted home leave after 24 months' continuous service outside the United States, regulations provide that the granting of home leave is an administrative matter within discretion of an agency. The regulations also provide that home leave will be granted only when it is planned that the employee will complete another tour of duty abroad. It was administratively determined that the employee would not complete another tour abroad. B-163364, April 6, 1971.

### Return to overseas post requirement

#### Agency determination

An overseas employee serving in Bangkok was transferred to St. Croix, Virgin Islands, but was not authorized home leave. While 5 U.S.C. § 6305(a) and the implementing regulations provide that an employee may be granted home leave after 24 months' continuous service outside of the United States,

## LEAVE

they also provide that home leave will be granted only when it is planned that the employee will complete another tour of duty abroad. Here it was administratively determined that the employee would not complete another tour abroad. B-163364 April 6, 1971.

### Agency intent

An employee's separation in a reduction-in-force action from a position with the Trust Territories of the Pacific Islands prior to completion of 2 years' service was found to be invalid. He was ordered reinstated to the same position or an equivalent position, and accepted a position with the Bureau of Reclamation in Denver. He is entitled pursuant to 5 U.S.C. § 5596 to home leave credit authorized under 5 U.S.C. § 6305(a), and may count the time he did not spend at his foreign post due to his erroneous separation for purposes of fulfilling the 24 months' overseas service requirement. However, limitations imposed on the granting of home leave disqualified the employee for home leave at the time he accepted the Denver position, since there was no intent to return him overseas. 52 Comp. Gen. 860 (1973).

## F. LEAVE WITHOUT PAY

### Generally

Leave without pay is a temporary nonpay status and absence from duty which, in most cases, is granted at the employee's request. It does not include nonpay status on days for which the employee would be paid on an overtime basis and does not include days on which the employee is not scheduled to work. FPM chapter 630, subchapter 12 and FPM Supp. 990-2, Book 630, subchapter 12.

### Administrative discretion

The authorization of leave without pay is solely a matter of administrative discretion, and employees cannot demand it as a matter of right, except in cases of (1) disabled veterans in need of medical treatment, and (2) reservists and National Guardsmen performing military training duties. See FPM chapter 630, S12-2 and FPM Supp. 990-2, Book 630, S12-1. See also 54 Comp. Gen. 154 (1974).

## LEAVE

### Involuntary charge

#### Employee refuses to report for duty

Where an agency relocated its offices and during the transition bused employees to the new offices within normal working hours, the agency may place an employee on leave without pay where the employee refused to be bused to the new offices and, thus, was considered to be unjustifiably refusing to report for duty as assigned. B-186095, April 26, 1976 and B-159542, July 21, 1966.

#### Employee incapacitated for duty

When an employee is determined to be incapacitated for the performance of assigned duties, he may be involuntarily placed on leave or leave without pay. B-186197, July 28, 1976 and B-181313, February 7, 1975.

#### Disability retirement

CSC's recommendations on granting leave without pay pending settlement of an employee's claim for disability retirement are contained in FPM Supp. 831-1. An agency may, under conditions set forth in 5 C.F.R. § 831.1206, place an employee on leave with or without his consent when the agency has filed an application for disability retirement. Such action does not constitute an unjustified or unwarranted personnel action under 5 U.S.C. § 5596, even though CSC disapproves the application. 41 Comp. Gen. 774 (1962); B-184522, March 16, 1976; and B-184706, January 12, 1976.

#### Federal employee's compensation

Leave without pay may be granted to an employee pending action on a claim for disability compensation under the Federal Employees' Compensation Act, 5 U.S.C §§ 8101 et seq., and may be substituted for annual and/or sick leave previously charged when disability compensation is granted for a work-related illness or injury. 32 Comp. Gen. 310 (1953); B-166538, April 28, 1969; and B-112786, January 26, 1953. See also FPM chapter 630, S12-1(b)(4)(d) and FPM Supp. 990-2, Book 630, S12-2(b)(5)(e).