# HOURS OF DUTY AND LEAVE

1. **REASON FOR ISSUE:** To revise Department of Veterans Affairs (VA) policy regarding hours of duty and leave.

2. **SUMMARY OF CONTENTS/MAJOR CHANGES:** This policy change provides modifications to incorporate the Administrative Leave Act regulations and to incorporate the requirements of 38 U.S.C. 717. The pages in this handbook replace the corresponding page numbers in VA Handbook 5011. Revised text is contained in [brackets]. These changes will be incorporated into the electronic version of VA Handbook 5011 that is maintained on the Office of the Chief Human Capital Officer website and the VA Publications website. Significant changes include:

   a. Revises part III, chapter 2, paragraph 12, and part III, chapter 3, paragraph 9 to incorporate Administrative Leave Act regulations. Authorized absence is also redefined as Administrative Leave.

   b. Adds Appendices I and J, Administrative Leave relevant to 5 C.F.R. 630, Subpart N, and Administrative leave by law, regulation, or Presidential Directive, to part III. The content is not new except where indicated. Content is moved from part III, chapter 2, paragraph 12.

   c. Adds Appendix K, Investigative Leave and Notice Leave, to Part III.

   d. Adds 38 U.S.C. 717, limitation on administrative leave, previously contained in Human Resources Management Letter 05-17-13, to Part III.

3. **RESPONSIBLE OFFICE:** Human Resources and Administration/ Operations, Security, and Preparedness (HRA/OSP) (006), Office of the Chief Human Capital Officer (OCHCO) (05), Worklife and Benefits Service (058).

4. **RELATED DIRECTIVE:** VA Directive 5011, “Hours of Duty and Leave.”

5. **RESCISSIONS:** Not applicable.

**Department of Veterans Affairs**
**Washington, DC 20420**

**VA HANDBOOK 5011/38**
**Transmittal Sheet**
**September 10, 2025**

**CERTIFIED BY:**

/s/
Nathan T. Sanfilippo
Acting Assistant Secretary for
Enterprise Integration

**BY DIRECTION OF THE SECRETARY OF VETERANS AFFAIRS:**

/s/
Mark R. Engelbaum
Assistant Secretary for
Human Resources and Administration/
Operations, Security, and Preparedness

**DISTRIBUTION:** Electronic Only

# HOURS OF DUTY AND LEAVE
## CONTENTS

**PART I. GENERAL PROVISIONS**

**PART II. HOURS OF DUTY**

**PART III. LEAVE**

# HOURS OF DUTY AND LEAVE

## PART I. GENERAL PROVISIONS

## CONTENTS

**PARAGRAPH** **PAGE**

1. PURPOSE ..... I-1
2. REFERENCES ..... I-1
3. DEFINITIONS ..... I-2

# HOURS OF DUTY AND LEAVE

## PART I. GENERAL PROVISIONS

**1. PURPOSE.** This handbook contains instructions and mandatory procedures for Department of Veterans Affairs (VA) policy on the establishment of duty schedules and the administration of leave systems within VA. It is applicable to most VA employees, except for the following:

a. Purchase and hire employees; however, they are subject to the provisions of 5 U.S.C. 5544(a), relating to overtime.

b. Veterans Canteen Service employees appointed under authority of 38 U.S.C. ch. 77; they are subject to leave provisions of 5 U.S.C. ch. 63, but their leave policies are published in VCS-1, "Veterans Canteen Service Operating Procedures."

c. Hospital administration residents are excluded by the provisions of 5 U.S.C. 6101(a)(1) and 5541(2)(v).

d. Employees for whom no regular tour of duty has been established for each administrative workweek are not covered by any leave system.

e. Persons employed on an intermittent basis, per annum fee basis, or lump-sum fee basis, under authority of 38 U.S.C. 7405 are paid for actual service rendered and therefore their duty schedules shall be determined by procedural requirements issued by the Under Secretary for Health. Such employees are not entitled to leave benefits.

**2. REFERENCES**

a. 5 U.S.C. chs. 51, 55, 61, and 63.

b. 38 U.S.C. chs. 73 and 74.

c. 38 U.S.C. [501(a), 512(a), and] 7421.

d. Executive Order 10358, as amended.

e. 5 CFR parts 61 and 63.

f. VA Handbook[s 5005 and] 5007.

g. MP-4, part II and VHA Supplement, MP-4, part II.

h. VA Manual M-8, Parts II, III and IV.

## 3. DEFINITIONS

a. **Accrued Leave.** The leave earned by an employee during the current leave year that is unused at any given time in that leave year.

b. **Accumulated Leave.** The unused leave remaining to the credit of an employee at the beginning of a leave year.

c. **Administrative Workweek.** The calendar week, Sunday through Saturday.

d. **Alternate Work Schedules for Registered Nurses.**

(1) **72/80 Work Schedule.** Six regularly scheduled 12-hour tours of duty [ ] within a pay period that is considered for all purposes to be a full 80 hour pay period.

(2) **9-Month Work Schedule.** Nine months part-time with three months off duty within a fiscal year, paid at 75 percent of the full-time rate for such nurse's grade and step each bi-weekly pay period of the fiscal year.

(3) **Baylor Plan.** Two regularly scheduled 12-hour tours of duty contained entirely within the first and last day of the administrative workweek (Sunday and Saturday).

e. **Basic Workweek**

(1) For full-time employees (other than physicians, dentists, podiatrists, chiropractors, optometrists, nurses, nurse anesthetists, physician assistants (PAs) and expanded-function dental auxiliaries (EFDAs) appointed under 38 U.S.C. chapters 73 or 74), a basic workweek consists of a 40-hour workweek established in accordance with 5 CFR 610.111 and part II, chapter 2 of this handbook.

(2) For full-time physicians and dentists appointed under 38 U.S.C. chapters 73 or 74, the basic workweek consists of a 40-hour tour of duty during the administrative work week (i.e., Sunday through Saturday). The workday shall not be less than 2 hours and may not exceed 12 hours. The 40-hour tour of duty may vary each administrative workweek but must be determined prior to the beginning of the workweek. The basic workweek shall be completed within the 7-day period from Sunday to Saturday and must not cross over into the following administrative workweek of the 80-hour bi-weekly pay period.

(3) Full-time physicians, dentists, podiatrists, chiropractors, and optometrists to whom the provisions of part II, chapter 3 of this handbook apply shall be continuously subject to call unless officially excused by proper authority. This requirement as to availability exists 24 hours per day, 7 days per week.

(4) For full-time nurses, nurse anesthetists, PAs and EFDAs, a basic workweek consists of a 40-hour workweek established in accordance with the provisions of part II, chapter 3 of this handbook. A 72/80 Work Schedule and the Baylor Plan (24-hour) basic workweek established in accordance with the provisions of part II, chapter 3 of this handbook is applicable only to full-time nurses and nurse anesthetists. Employees under the 9-Month Work Schedule are considered part-time employees, except for purposes of health insurance per 38 U.S.C. 7456A(d)(4).

f. **General Leave Terms.** In administrating 5 U.S.C. ch. 63, VA will observe the definitions in 5 CFR 630.201.

g. **Intermittent Employment.** This term refers to the employment of an individual under the provisions of 38 U.S.C. 7405 (a)(1)(A) on an intermittent basis.

h. **Irregular or Occasional Overtime Work.** Overtime work that is not regularly scheduled.

i. **Leave Year.** A leave year begins on the first day of the first full biweekly pay period in a calendar year and ends the day before the first full biweekly pay period in the following calendar year.

j. **Overtime Work and Overtime.** Definitions are the same as the definitions in 5 CFR 550.103(i) and 550.111 for General Schedule (GS) employees and non-U.S. citizen employees overseas. Overtime for title 38 employees is discussed in VA Handbook 5007, part V, chapter 2.

k. **Part-Time Employee.** An employee who performs a regular [ly scheduled] tour of duty on lessthan a full-time basis. Such an employee may be required to perform duty on an unscheduled basis inaddition to the regularly scheduled tour of duty. Part-time physicians appointed under 38 U.S.C. 7405(a)(1)(A) may also be placed on Adjustable Work Hours (see Part II, Appendix I).

l. **Regular Overtime Work.** Any work qualifying as overtime work that is regularly scheduled in advance of the administrative workweek in which it occurs.

m. **Regularly Scheduled Administrative Workweek.** For full-time employees (other than physicians, dentists, podiatrists, chiropractors, optometrists, nurses, nurse anesthetists, PAs and EFDAs appointed under 38 U.S.C. chs. 73 or 74), means the period within an administrative workweek, established in accordance with 5 CFR 610.111 and part II, chapter 3 of this handbook, within which these employees are required to be on duty regularly. For part-time employees (other than those appointed under 38 U.S.C. chs. 73 or 74), it means the officially prescribed days and hours within an administrative workweek during which these employees are required to be on duty regularly.

**NOTE:** [*Hours of work officially ordered or approved that are performed in excess of 8 hours per day, or 40 hours in an administrative workweek, constitutes overtime work for General Schedule and wage grade employees (5 U.S.C. 5542 and 5543).*]

n. **VA Work.** For guidance on determining whether the activities of VHA health care professionals constitute VA work, see chapter 3, paragraph 2g, of this part.

# HOURS OF DUTY AND LEAVE

## PART II. HOURS OF DUTY

## CONTENTS

**PARAGRAPH** **PAGE**

**CHAPTER 1. GENERAL**

1. PURPOSE ..... I-1
2. WORK SCHEDULES ..... II-1

**CHAPTER 2. ESTABLISHMENT OF WORKWEEKS, TOURS OF DUTY, AND WORK SCHEDULES FOR EMPLOYEES IN TITLE 5 POSITIONS (APPOINTED UNDER 5 U.S.C., CHAPTER 51)**

1. BASIC WORKWEEK AND WORK SCHEDULES ..... I-3
2. WORK SCHEDULE INFORMATION ..... II-5
3. OVERTIME ..... II-5
4. LUNCH PERIOD ..... II-7
5. HOLIDAYS ..... II-8
6. TEMPORARY CLOSING OF OFFICES ..... II-10
7. DAYLIGHT-SAVINGS TIME ..... II-10
8. LIMITATION ON TOURS FOR MINORS ..... II-10
9. EMPLOYEES PARTICIPATING IN DISASTER AND CIVIL DEFENSE PROGRAMS ..... II-10
10. DRESS-UP TIME/WEARING OF UNIFORMS ..... II-10
11. WORKPLACE ACCOMMODATIONS FOR NURSING MOTHERS ..... II-11
12. ALTERNATIVE WORK SCHEDULES (FLEXIBLE AND COMPRESSED WORK SCHEDULES) ..... II-11

**CHAPTER 3. ESTABLISHMENT OF WORKWEEKS, TOURS OF DUTY, AND WORK SCHEDULES FOR EMPLOYEES APPOINTED TO TITLE 38 POSITIONS**

1. SCOPE ..... I-25
2. BASIC WORKWEEK AND OFFICIAL DUTY ..... II-25
3. HOLIDAYS ..... II-30
4. WORKPLACE ACCOMMODATIONS FOR NURSING MOTHERS ..... II-31
5. ADJUSTABLE WORK HOURS FOR PART-TIME PHYSICIANS ..... II-31
6. FLEXIBLE AND COMPRESSED WORK SCHEDULE FOR EMPLOYEES IN TITLE 38 POSITIONS ..... II-31a
7. ALTERNATE WORK SCHEDULES FOR REGISTERED NURSES ..... II-39

[8. OVERTIME DUTY FOR NURSING STAFF ..... II-40f]

**PARAGRAPH** **PAGE**

**CHAPTER 4. ALTERNATIVE WORKPLACE ARRANGEMENTS [(TELEWORK AND REMOTE WORK)]**

1. PURPOSE ..... II-41
2. COVERAGE ..... II-41
3. EXCLUSIONS ..... II-41
4. RESPONSIBILITIES ..... II-41
5. DEFINITIONS ..... II-43
6. POLICIES AND PROCEDURES FOR TELEWORK ..... II-45
7. TELEWORK CRITERIA ..... II-48
8. PROCESS FOR ESTABLISHING A TELEWORK AGREEMENT ..... II-50
9. PROCEDURES TO REQUEST A TELEWORK AGREEMENT ..... II-50
10. POLICIES AND PROCEDURES FOR REMOTE WORK ..... II-51
11. REMOTE WORK CRITERIA ..... II-53
12. PROCESS FOR ESTABLISHING A REMOTE WORK AGREEMENT ..... II-54
13. PROCEDURES TO REQUEST OR MODIFY A REMOTE WORK AGREEMENT ..... II-55
14. OTHER CONSIDERATIONS FOR TELEWORK AND REMOTE WORK ..... II-58
15. PAY, HOLIDAYS, TRAVEL, AND TIME AND ATTENDANCE ..... II-62
16. DOMESTIC EMPLOYEES TELEWORKING OVERSEAS (DETO) ..... II-62
17. REFERENCES ..... II-63

**APPENDICES**

II-A. SAMPLE LETTER - ELIGIBLE TO TELEWORK ..... II-A-1
II-B. SAMPLE LETTER - NOT ELIGIBLE TO TELEWORK ..... II-B-1
II-C. VARIABLE WORK SCHEDULE AGREEMENT ..... II-C-1
II-D. SAMPLE REQUEST FORM FOR ALTERNATE SCHEDULES – VA FORM 0870a ..... II-D-1
II-E. SAMPLE NOTICE ON THE 9-MONTH WORK SCHEDULE REGARDING THE IMPACT ON BENEFITS AND OTHER CONDITIONS OF EMPLOYMENT (NEW EMPLOYEE) ..... II-E-1
II-F. SAMPLE NOTICE ON 9-MONTH WORK SCHEDULE REGARDING THE IMPACT ON BENEFITS, PROBATIONARY STATUS AND OTHER CONDITIONS OF EMPLOYMENT – CONVERSION FROM FULL-TIME TO PART-TIME/CURRENT PART-TIME TO 9-MONTH WORK SCHEDULE ..... II-F-1
II-G. SAMPLE CONSENT FORM FOR APPOINTMENT TO A 9-MONTH/3-MONTH OFF ALTERNATE WORK SCHEDULE AGREEMENT – VA FORM 0870b ..... II-G-1
II-I. PRESCHEDULED PART-TIME TOURS AND THE UTILIZATION OF ADJUSTABLE WORK HOURS (TITLE 38) ..... II-I-1
II-J. MEMORANDUM OF SERVICE LEVEL EXPECTATIONS FOR PART-TIME PHYSICIANS ON ADJUSTABLE WORK HOURS ..... II-J-1
II-K. WORKSHEET FOR DETERMINING PERCENTAGES ON MEMORANDUM OF SERVICE LEVEL ..... II-K-1

# PART II. HOURS OF DUTY

## CHAPTER 1. GENERAL

**1. PURPOSE.** This part contains Department of Veterans Affairs (VA) mandatory procedures on the establishment of duty schedules for employees in title 5 and title 38 positions.

**2. WORK SCHEDULES**

a. In scheduling hours and tours of duty for VA employees, primary consideration will be given to efficiency in management and conduct of agency functions, and equitable treatment of individual employees. Work schedules will be established in a manner that realistically reflects the actual work requirement.

b. In Veterans Health Administration (VHA), the proper care and treatment of patients shall be the primary consideration in scheduling tours of duty under these instructions. Duty schedules shall be established as appropriate and necessary for performance of services in the care and treatment of patients and other essential activities within the administrative discretion of the Under Secretary for Health or designated officials. This includes authorizing flexible and compressed work schedules for title 38 health care employees outside VA Central Office (VACO).

c. Overtime for nurses, nurse anesthetists, PAs and EFDAs shall be used only under conditions wherein necessary functions cannot be performed through planned coverage during their regular basic workweek. Supervisory personnel must obtain proper authorization for overtime before permitting or requiring the performance of overtime service by an employee. See VA Directive 4100 concerning the procedures for the use of the Enhanced Time and Attendance System (ETA) for the authorization of overtime. Administration heads, or their designees, are authorized to order and approve overtime for employees under their jurisdiction.

d. The occurrence of holidays shall not affect the designation of the basic workweek.

# CHAPTER 2. ESTABLISHMENT OF WORKWEEKS, TOURS OF DUTY, AND WORK SCHEDULES FOR EMPLOYEES IN TITLE 5 POSITIONS (APPOINTED UNDER 5 U.S.C., CHAPTER 51)

## 1. BASIC WORKWEEK AND WORK SCHEDULES

### a. Basic Workweek

(1) Within each administrative workweek, the "basic workweek" for full-time employees shall be 40 hours in length. The normal tour of duty within the 40-hour basic workweek shall consist of five 8-hour days, exclusive of the luncheon period, Monday through Friday. Except for unusual circumstances, as provided below, the working hours in each day in the basic workweek shall be the same. Directors of field facilities are authorized to fix the hours of duty constituting the normal tours of duty within the 40-hour basic workweek. Employees will have their assignments scheduled in advance over periods of not less than one administrative workweek.

(2) Other tours of duty constituting the 40-hour basic workweek may be established when adherence to the normal tour is administratively impracticable, will handicap operations, or result in substantially increased costs. Under such conditions, directors of field facilities may schedule the 40-hour basic workweek to include Saturday and Sunday. However, the basic workweek may not extend over more than 6 days in the administrative workweek. Deviations from the normal tour of duty within a facility will be kept to a minimum and generally will be authorized only for certain groups of employees in those cases where the service is required on a continuing, around-the-clock basis, or must be performed outside the normal tour of duty of the facility. Where facilities and equipment are to be utilized during more than an 8-hour day for maximum efficiency, employees shall be assigned on a shift basis, when appropriate. The head of each VACO office or field facility may (within his or her responsible area) prescribe further restrictions or conditions appropriate to scheduling of such tours of duty for specific categories of employees. Administration Heads and top staff officials are authorized to approve tours of duty which are other than the normal for Central Office personnel under their jurisdiction, with the concurrence of the Deputy Assistant Secretary for Human Resources Management [and Labor Relations].

(3) When tours of duty must necessarily vary from the normal tour, employees will be given the opportunity of discussing their assignment and of having their views or personal problems arising in connection with such assignment considered. Tours of duty will not be changed arbitrarily, and insofar as possible, employees will be given notice of any change in their work schedule at least one administrative workweek in advance. Sympathetic consideration will be extended to employees who have religious scruples against working on their Sabbath. If practicable, mutually satisfactory exchange of duty assignments may be worked out for such employees, or substitute work time may be provided to offset the time required for religious observance. Insofar as possible, work schedules should be arranged to permit employees' observance of their Sabbath on whatever day it occurs.

(4) Notwithstanding other provisions of this chapter, special tours of duty (of not less than 40 hours) may be established for General Schedule employees to take courses in nearby educational institutions as outlined in 5 CFR 610.122. Approving officials for these special tours of duty will be the same as indicated in paragraph 1a(2), above. An employee may not receive premium pay solely because the special tour of

duty causes the employee to work on a day or at a time of day for which premium pay would otherwise be payable. Accordingly, the approving official or designee will make a determination of entitlement or non-entitlement to premium pay. The payroll office and unit timekeeper will be informed of this determination. Payroll offices should maintain appropriate records to assure accurate data for any required reports.

(5) Notwithstanding other provisions of this chapter, deviations from the normal tour of duty may be established when strict adherence to the normal tour of duty would cause undue hardship or restrict employment, placement, or advancement opportunities for seriously disabled veterans and other seriously disabled individuals. Before a special tour of duty may be authorized under this subparagraph, all factors should be considered, such as: the nature and extent of an individual's disability; the extent to which a disabling condition precludes adherence to a normal tour; the needs, desires and abilities of the individual who would be affected; and management considerations such as essential staffing requirements and organizational needs. In no case, however, will a special tour of duty be authorized against the wishes of an individual.

(6) Where more than one tour of duty exists for any category of employees in an organizational segment, employees affected shall be afforded the opportunity of rotation. Periodic rotation on an impartial and reasonable basis is encouraged so that all employees concerned will share in assignments between the less desirable and more desirable tours of duty.

(7) All employees are expected to be on duty during the full period of their tours of duty unless absent on approved leave; to observe the opening and closing hours established for the tour of duty; and to adhere to established luncheon periods.

(8) Except where the functions of specific employees, such as chaplains, may be seriously disabled, breaks in working hours of more than 1 hour will not be scheduled in any basic workday.

b. **Tours of Duty Including Standby Time.** VACO office directors and field facility directors, or designees, are authorized to establish regularly scheduled administrative workweeks for employees in non-patient care General Schedule positions requiring standby duty meeting the conditions set forth in 5 CFR 550.143. This authorization applies to two types of duty tours, which include standby duty. These are: (1) the situation in which an employee has a basic workweek requiring full-time performance of actual work and is required, in addition, to perform standby duty on certain nights, or to perform standby duty on certain days not included in the basic workweek; and (2) the situation requiring a longer than 40-hour tour of duty in which a substantial part of the entire tour of duty, at least 25 percent, is spent in a standby status which occurs throughout the entire tour. All tours of duty involving standby status shall be clearly delineated, as appropriate, as to the total hours of duty, the number of hours of actual work required, the number of hours of standby required, the specific hours of duty scheduled, and, where applicable, the hours constituting the basic workweek of 40 hours. The length of the regularly scheduled administrative workweek in these cases is the total number of regularly scheduled hours of duty within each administrative workweek.

c. **Periodic Review of Schedules.** Duty schedules should be reviewed periodically to ensure that they meet the needs of the service efficiently with due consideration being given to employee needs. Particular attention should be given to tours of duty which include standby time or regular overtime.

d. **Labor Relations.** Management should meet its local labor relations responsibilities when implementing policies under this chapter.

**NOTE:** *The establishment of workweeks in accordance with the provisions of 5 CFR 610.111(b) is not authorized within VA.*

**2. WORK SCHEDULE INFORMATION.** Approved tours of duty, by Time and Leave Unit, are available electronically to all employees from the Payroll Office.

**3. OVERTIME**

a. **General.** Overtime work means each hour of work in excess of 40 hours in an administrative workweek or in excess of 8 hours in a day, whichever is the greater number of overtime hours. Excluded are employees on compressed work schedules or the Baylor Plan (see paragraph 11 of this chapter and VA Handbook 5007). [(Guidance for overtime requirements for hybrid employees designated to receive premium pay on the same basis as registered nurses can be found in Part II, Chapter 3, paragraph 5g(2)(a).] Overtime is considered an expedient to be used only under conditions wherein necessary operations cannot be performed through planned coverage by on-duty personnel during their regular non-overtime basic workweek. Supervisory personnel must obtain proper authorization for overtime before permitting or requiring the performance of overtime work by an employee. Administration heads and other top officials are authorized to prescribe, in their responsible areas, such limitations as are necessary to provide control and prevent abuse of the use of overtime. Each responsible official must assure that the rights of employees to compensation for overtime services are observed. Each responsible official shall also adhere to a policy of authorizing only such overtime as can be readily demonstrated as wholly supported from the standpoint of emergency and/or efficiency in carrying out his/her responsibilities, and with due regard to cost and the availability of current funds. (See also part III of this handbook regarding use of annual leave in proximity to overtime.) Any overtime duty required of employees should be equitably distributed consistent with the needs of the office. However, overtime duty should not be required of employees when it will impair their health or efficiency or cause extreme hardship to them.

**NOTE:** *See VA Directive 4100 regarding procedures for use of VA Form 1098, Request for and Authorization of Overtime Work (if not utilizing the Enhanced Time and Attendance (ETA) program).*

b. **Regular Scheduled Overtime.** A regularly scheduled administrative workweek consisting of a period of overtime work, either as a part of or in addition to the 40-hour basic workweek, may be established by administration heads or staff office heads, or their designees, for their respective personnel within Central Office, and by field facility heads. When a National Cemetery is involved, the Director of the appropriate National Cemetery Area Office will make this determination. If the regular overtime work is not expected to recur over an extended period of time (at least 2 consecutive administrative workweeks), it may be authorized by the officials listed above. For purposes of leave and overtime pay administration, the authorization shall specify for such employee(s), by calendar days and number of hours a day, the overtime periods included in the regularly scheduled administrative workweek. Compensatory time off in lieu of premium pay may not be granted for such overtime work. (See definition of "regular overtime work" in part I, paragraph (3)(i).)

c. **Irregular or Occasional Overtime**

(1) **Authorizing Officials.** Except as indicated in paragraph 3c(3)(b)3, below, staff office heads, administration heads, facility directors, or their designees, are authorized to order and approve irregular or occasional overtime.

(2) **Callback Overtime.** Any unscheduled overtime work performed by an employee who is called back to work on an off-duty day, or on a regular workday after completion of a regular schedule of work and has left the place of employment, will be considered to be at least 2 hours in duration and should be so credited. Further, the employee shall be credited with a minimum of 2 hours of overtime for each time called back, notwithstanding the fact that the second or subsequent returns may be required before the expiration of 2 hours from the time the employee previously reported for duty (35 Comp. Gen. 448, 37 Comp. Gen. 1, 45 Comp. Gen. 53).

(3) **Compensatory Time Off for Irregular or Occasional Overtime**

(a) **Granting Compensatory Time Off in Lieu of Payment.** Compensatory time off in lieu of payment for irregular or occasional overtime may be granted within the provisions of subparagraphs (b) and (c), below, to General Schedule, Wage Grade and title 38 employees and non-U.S. citizen employees overseas.

1. An official authorized to approve overtime work may, at the request of an eligible employee, grant such employee compensatory time off from the scheduled tour of duty in lieu of overtime pay. The amount of compensatory time off will be equal to the amount of time spent in the irregular or occasional overtime work.

2. In the absence of a specific request by the employee for compensatory time off in lieu of payment, an employee who is covered by the Fair Labor Standards Act (FLSA), or an employee who is not covered by FLSA and whose basic rate of compensation is not in excess of the maximum rate provided for GS-10 of the General Schedule, must be paid for the overtime services rendered.

3. In the case of an employee, who is not covered by FLSA, whose rate of basic compensation is in excess of the maximum rate for GS-10, the official authorized to approve overtime work may, at his own discretion, provide for compensatory time off in lieu of overtime pay. Such determination shall take into account all pertinent factors, including the employee's views. If, after consideration of all factors, paid overtime is indicated, prior approval will be requested from the facility director, or designee. No such approval will be in effect for more than 3 months without a specific re-determination. An employee for whom compensatory time off is directed should be so notified at the time the overtime duty is ordered.

(b) **Time Limits on Compensatory Time**

1. Compensatory time off should be taken as soon as possible after it is earned, but not later than the end of the [26th] pay period following the pay period in which it is earned. Compensatory time off may be taken only during the employee's basic workweek.

2. For employees covered by the FLSA, compensatory time off not taken within the time limit prescribed above must be paid at the overtime rate. For employees not covered by the FLSA, compensatory time off not taken within the time limit prescribed above because of the exigencies of the service will be paid at the overtime rate. If compensatory time is not taken within this period because of personal reasons not due to the exigencies of service, the right to compensatory time off or overtime pay for the duty performed is lost.

3. In cases of inter-facility transfers, compensatory time off must be taken or paid for prior to the effective date of the transfer. Under no circumstances will an obligation for compensatory time off be transferred to the receiving facility.

4. The date of separation stated in an employee's advance notice of separation due to reduction in force may be administratively extended so as to include any compensatory time due. However, where, due to reasons beyond the control of the employee, compensatory time off is not taken prior to separation and no extension of the separation date is granted, overtime compensation is payable in lieu of the compensatory time off (26 Comp. Gen. 750).

d. **Limitation on Overtime Pay.** 5 U.S.C. 5547 provides that premium compensation is not payable where it results in an aggregate rate which exceeds the rate of basic compensation provided for grade GS-15, step 10. An employee who is prohibited by that aggregate compensation limitation from receiving overtime compensation may not receive compensatory time off in lieu of such prohibited compensation (26 Comp. Gen. 750).

## 4. LUNCH PERIOD

a. Normally, during each 8-hour tour, employees will be allowed a specific period of time off to eat a meal. A meal period during which employees are regularly and totally excused from their official duties may not be considered as an official duty period for which compensation is payable. When a meal period is set aside, the length of the tour or workday will be extended by the length of the non-work period.

b. In some types of situations, however, it may not be administratively practicable to allow a specified period of time off for a meal. For example, when around-the-clock shifts are employed, the scheduling of meal periods would require overlapping of shifts and the vacating of official duties by employees in a work situation requiring constant service and function. In another instance, the job situation may be such as to require the constant attention and skill of specific employees, and a suitable relief that would permit reasonable continuity of function is not available. In these types of cases, it is proper to schedule shifts without a meal period. Although under such unusual circumstances, employees may not be excused from their official duties, they may be permitted to eat on the job when it is possible to do so without stopping or

interrupting the work assignment and responsibility. Such exceptional tours of duty shall be carefully examined as to justification by the approving official, and fully documented.

## 5. HOLIDAYS

a. **General.** It is VA policy to excuse from duty on legal holidays (and non-workdays designated by Federal Statute or Executive Order) all employees except those required to maintain the usual essential services. Employees who are notified to appear for duty on legal holidays and fail to report for work will be, in the absence of satisfactory explanation or justification, determined to be AWOL (absence without leave) and will lose pay for the day. However, notwithstanding the preceding provisions of this subparagraph, full-time nurses and nurse anesthetists on the Baylor Plan shall not be entitled to holidays.

b. **Identification and Determination of Legal Holidays**

(1) For identification and determination of legal holidays, see 5 U.S.C. 6103 and 6104, and Executive Orders 10358 (as amended by E.O. 11226 and 11272) and 10552.

(2) For purposes of section 4(b) of Executive Order 10358, the employee's first full day off in the calendar week will be considered the day off in lieu of Sunday.

(3) For purposes of 5 U.S.C. 6103(b)(2), the employee's second day off in the calendar week will be considered the day off in lieu of Saturday.

(4) All other holidays shall be observed on the day they occur. Part-time employees who are excused from duty on a holiday are entitled to their regular pay for that day.

(5) An in-lieu non-workday may be granted to full-time non-physician facility directors, physicians, dentists, podiatrists, [chiropractors,] and optometrists, for work performed on a holiday or the day observed as a holiday, provided the full-time employee’s services can be spared without detriment to patient care. Such in-lieu day, if authorized, must be taken within 90 days by the full-time employee concerned. Full-time employees who are assigned to work on holidays and whose absences were not authorized will be reported as being on unauthorized absence and will lose pay for that day.

**NOTE:** *An in-lieu non-workday shall not be authorized for a nurse, nurse anesthetist, PA or EFDA who works on a holiday or the day designated as a holiday.*

c. **Religious Holidays.** While there is no official observance of religious holidays, except those which may also be legal holidays, it is the policy of VA to permit, insofar as practicable, absence from work for those employees who desire to observe religious holidays. Absence of employees on religious holidays will be charged to annual leave, if they have annual leave to their credit, otherwise to LWOP. Employees may, under provisions of 5 U.S.C. 5550a, and applicable regulations, elect to work compensatory overtime for the purpose of taking time off without charge to leave when their personal religious beliefs require that they abstain from work during certain periods of the workday or workweek, thereby avoiding an annual leave or leave without pay charge.

d. **State and Local Holidays.** Except as provided below for non-U.S. citizen employees overseas, State and local holidays will not be observed by the mere fact of their occurrence and such days will be treated as

regular workdays if they fall within an employee's basic workweek. Absence on such days will be charged to leave. Directors may close facilities on State or local holidays only if it is determined that Federal work may not be properly performed. In determining when Federal work may not be properly performed, employees of the office must be actually prevented from working by one of the following circumstances:

(1) The building or office in which the employees work is physically closed; or building services essential to proper performance of work are not operating.

(2) Local transportation services are discontinued or interrupted to the point where employees are prevented from reporting to their work location.

(3) The duties of the employees consist largely or entirely of dealing directly with employees and officials of business or industrial establishments or local government offices, and all such establishments are closed in observance of the holiday, and there are no other duties (consistent with their normal duties) to which the employees can be assigned on the holiday. When such determination is made, the records of the facility shall be fully documented to reflect the basis and justification for the action. When the office is thus closed, such days are not chargeable to annual leave. The directors of the Manila Regional Office and the VA Office for Europe are authorized to excuse non-U.S. citizen employees from duty on legal holidays of the country therein without charge to leave. Employees (including non-U.S. citizen employees) required to work on a State or local holiday, however, are not entitled to premium compensation or to compensatory time off.

e. **Holiday Benefits in Connection with Absence in Non-pay Status**

(1) Employees (except full-time nurses and nurse anesthetists on the Baylor Plan) are entitled to payment for the holiday if they are absent in a non-pay status (including LWOP or AWOL) on the day immediately following the holiday, provided they were in a pay status (duty or leave) the day preceding the holiday, and provided the holiday was not included within the period of non-pay status. If the holiday was included within the period of non-pay status, payment for the holiday will not be made. Wherever possible, periods of LWOP should not be scheduled so as to begin or end on a holiday.

(2) Employees (except full-time nurses and nurse anesthetists on the Baylor Plan) in a non-pay status (including LWOP or AWOL) the day preceding the holiday will receive payment for the holiday, provided they are in a pay status (duty or leave) the next regularly scheduled workday immediately following the holiday, and provided the holiday was not included within the period of non-pay status.

(3) The provisions of subparagraphs e(1) and (2) [ ] also apply to in-lieu days granted to full-time non-physician facility directors, physicians, dentists, podiatrists, [chiropractors,] and optometrists.

**6. TEMPORARY CLOSING OF OFFICES.** Under some circumstances, it may be necessary to temporarily suspend or reduce operations at a facility because of flood, fire, or a similar "Act of God" or for emergency repairs. Directors are authorized to temporarily close an activity under their jurisdiction when required by those circumstances. For information concerning determination of authorized absence or leave status for employees in such cases, refer to part III, chapter 1, paragraph 12u(8) of this handbook. A report of such emergency closing should be made as soon as practicable to the appropriate Administration in Central Office.

**7. DAYLIGHT-SAVINGS TIME**

a. VA will observe daylight-savings time in those localities where it is in effect. Employees working on a tour when daylight-saving time goes into effect, and whose tour of duty is thereby shortened 1 hour, will be charged 1 hour of leave for the hour lost (26 Comp. Gen. 921).

b. Employees working on a tour when standard time goes into effect will be credited with the number of hours they are actually on duty (26 Comp. Gen. 921).

**8. LIMITATIONS ON TOURS FOR MINORS.** State and municipal labor laws generally prescribe special limitations on arrangement of tours of duty for minors. Although these laws are not binding upon VA, all VA installations should comply with them insofar as practicable.

**9. EMPLOYEES PARTICIPATING IN DISASTER AND CIVIL DEFENSE PROGRAMS.** In the case of employees who are assigned to participate in VA disaster and civil defense programs or in civil defense pre-emergency training programs and test exercises conducted by any State or political subdivision thereof, the tours of duty of such employees will, insofar as practicable, be so adjusted that they do not exceed the basic workweek or regularly scheduled administrative workweek. Executive Order 10529, dated April 22, 1954, restricts the period of official time that may be authorized for any such assignment of an employee to not to exceed a total of 40 working hours during a calendar year.

**10. DRESS-UP TIME/WEARING OF UNIFORMS**

a. In consideration of local circumstances and needs, field facility heads may (1) permit employees to wear uniforms to and from work or (2) require that uniforms be changed at the facility. The practice adopted should take into consideration the views of employees, the adequacy and location of locker facilities, recommendations of local Infection Committees, and the effect on replacement cost of uniforms. A facility's policy concerning the exercise of this discretionary authority shall be clearly set forth in local issuances.

b. When employees are permitted to wear their uniforms to and from work, no time will be set aside within the employees' scheduled tours of duty nor will any additional time be added to the employees' scheduled tours, for the purpose of changing into or out of uniform.

c. When employees are not permitted to wear uniforms to and from work, the following provisions shall apply:

(1) Except as indicated, the employees shall be granted a reasonable amount of time within their tours of duty to change into or out of uniform. In situations involving successive shifts requiring continuity of service and exchange of information and instructions between employees, overlapping hours of duty shall be provided to the extent feasible so as to facilitate apportionment of time for purposes of changing into or out of uniforms within the prescribed tour of duty. In all such cases, tours of duty shall be so established as to assure that all full-time employees will be scheduled for a 40-hour basic workweek each calendar week.

(2) If administrative necessity requires the changing into and out of uniform outside the employees' tours of duty, adequate additional time shall be officially scheduled for the employees before and after their regular tours of duty for such purpose. These scheduled periods of time shall be compensated under regulations pertinent to overtime pay, when appropriate.

d. As a convenience for employees permitted to wear their uniforms to and from work, facilities should be made available for those who prefer to change at the facility.

## [11. WORKPLACE ACCOMMODATIONS FOR NURSING MOTHERS

a. An employee who is a nursing mother should be granted time to express breast milk for her nursing child, up to one year after the child's birth, each time the employee has a need to express milk. The employee may use her authorized rest periods/breaks, accumulated annual leave, compensatory time off, credit hours, and approved leave without pay for this purpose.

b. The space provided for nursing mothers to express breast milk shall be shielded from view and free from intrusion from coworkers and the public. The location designated for the nursing mother to express breast milk shall be in a place other than a bathroom/restroom.

## 12.] ALTERNATIVE WORK SCHEDULES (FLEXIBLE AND COMPRESSED WORK SCHEDULES)

a. **General.** This chapter implements Department of Veterans Affairs (VA) policies and procedures concerning flexible and compressed work schedules. It applies to employees under the General Schedule, members of the Senior Executive Service (SES), non-U.S. citizen employees outside the United States, and unless excepted under subparagraph b(2), employees compensated under the Federal Wage System and employees appointed under "hybrid" 38 United States Code (U.S.C.) 7401(3) and 7405 (a)(1)(B) appointments, such as physical therapists and registered respiratory therapists, nurses, nurse anesthetists, physician assistants and expanded-function dental auxiliaries. This paragraph does not apply to:

(1) Veterans Health Administration employees appointed under chapter 73 or chapter 74, title 38, U.S.C., except as noted in the preceding subparagraph.

**NOTE:** *VA policies on flexible and compressed schedules for nurses, nurse anesthetists, physician assistants and expanded function dental auxiliaries are contained in chapter 3 of this part. VA policies on compressed schedules for physicians, dentists, podiatrists, chiropractors, and optometrists, as well as the Chief Nursing Officer who is appointed under 38 U.S.C. 7306, are also contained in chapter 3, this part.*

(2) Veterans Canteen Service employees appointed under 38 U.S.C. ch. 78.

(3) Purchase and hire employees appointed under Schedule A, 5 CFR part 213.

(4) Employees compensated under the Executive Schedule (5 U.S.C. ch. 53).

b. **References**

(1) 5 U.S.C. 6120--6133.

(2) 5 CFR 610.401--610.407.

(3) 38 U.S.C. 7421(a) and 7423(a)

(4) Managing Time – Alternative Work Schedule Options/A Guide for Supervisors

c. **Definitions**

(1) **Administrative Workweek.** A period of 7 consecutive calendar days, which coincide with the calendar week, Sunday through Saturday.

(2) **Alternative Work Schedule.** A work schedule that is other than the traditional work schedule (8 hours per day/40 hours per week with fixed starting and quitting times), which consists of either a flexible work schedule or compressed work schedule.

(3) **Basic Work Requirement.** The number of hours during a biweekly pay period, excluding overtime hours, which an employee is required to work or is required to account for by leave or otherwise.

(4) **Biweekly Pay Period.** The pay period covering two administrative workweeks authorized under 5 U.S.C. 5504.

(5) **Compressed [Work] Schedule**

(a) In the case of a full-time employee, an 80-hour biweekly basic work requirement which is scheduled for less than 10 workdays.

(b) In the case of a part-time employee, a biweekly basic work requirement of less than 80 hours which is scheduled for less than 10 workdays.

(6) **Core Time Band.** Those designated hours and days during the biweekly pay period when an employee on a flexible schedule must be present for work.

(7) **Credit Hours.** Those hours within a flexible schedule that an employee elects to work in excess of the basic work requirement so as to vary the length of a workday or workweek (not applicable to SES employees).

(8) **Flexible Time Band.** That part of the schedule of working hours during which, under procedures contained herein, employees may choose their time of arrival and departure from the worksite, within limits consistent with the duties and responsibilities of their position.

[(9)] [**Flexible Work Schedule**:

(a) In the case of a full-time employee, an 80-hour biweekly basic work requirement which an employee may elect the time of arrival and departure from work within limits consistent with the duties and responsibilities of their position.

(b) In the case of a part-time employee, a biweekly basic work requirement of less than 80 hours which an employee may elect the time of arrival and departure from work within limits consistent with the duties and responsibilities of their position.]

[(10)] **Flexitime.** A system of work scheduling which splits the workday into two distinct kinds of time: Core time and Flexible time.

[(11)] **Flexitour.** A type of flexitime where an employee, having selected starting and stopping times within the flexible time band, continues to adhere to these times. Employees may request different starting and stopping times. Such tours, and changes to such tours, however, must be approved by the employee's supervisor and documented in accordance with the procedures in this paragraph.

[(12)] **Gliding Flexitour.** A type of flexitime in which a full-time employee has a basic work requirement of 8 hours in each day and 40 hours in each week, may select an arrival time each day, and may change that arrival time daily as long as it is within the flexible hour band established by the supervisor.

[(13)] [**Maxiflex Work Schedule.** A type of flexible work schedule for Senior Executive Service (SES) and SES Equivalents, including Title 38 executive-level appointments, that contains core hours on fewer than 10 workdays in the biweekly pay period and in which a full-time employee has a basic work requirement of 80 hours for the biweekly pay period, but in which an employee may vary the number of hours worked on a given workday or the number of hours each week within the limits established for the organization.]

[(14)] **Modified Flexitour.** Another type of flexitime where the employee selects a starting time within the established flexible time band which establishes the employee’s assigned schedule; however, in this case the employee is given 15 minutes of flexibility on either side of the selected arrival time. The actual time of arrival becomes the employee's starting time for that day. For example, an employee selecting 7:30 a.m. as a starting time under the modified flexitour may report for work anytime between 7:15 a.m. and 7:45 a.m. If an employee arrives for duty at 7:20 a.m., this becomes the employee's starting time for that day. Assuming a half-hour lunch period and an 8-hour tour of duty, the departure time would be 3:50 p.m. If the same employee reports at 7:05 a.m., his or her starting time would not begin until 7:15 a.m. The same employee arriving for work at 7:50 a.m. is 5 minutes tardy. Under the modified flexitour, the starting time and changes in the starting time must be approved by the supervisor and documented in accordance with the procedures in this chapter.

[(15)] **Overtime Work**

(a) For the purposes of flexitime, all hours of work in excess of 8 hours in a day or 40 hours in a week which are officially ordered and approved.

(b) For the purposes of compressed work schedules:

1. For full-time employees, the term overtime hours refers to officially ordered or approved hours of work performed in excess of the employee's basic work requirement.

2. For part-time employees, overtime hours are those hours of work performed in excess of the basic work requirement for a day (but must be in excess of 8 hours) or for a week (but must be in excess of 40 hours).

[(16)] **Tour of Duty.** Under a flexible work schedule, the limits set by the authorizing official within which employees must complete their basic work requirement. Under a fixed schedule, such as a compressed work schedule, an employee's tour of duty is synonymous with the employee's basic work requirement.

[(17)] **Work Unit.** An organizational entity located in one place with a specific mission and with homogeneous procedures or technology headed by a supervisor or manager authorized to certify a group of employees' time and attendance.

d. **Planning Flexible and Compressed Work Schedules.** Flexible and compressed work schedules require careful advance planning and good employee communication. The possible positive and negative effects of flexible and compressed schedules must be explored. If affected employees are in an exclusive unit of recognition, the employee involvement will be provided by, or coordinated with, their exclusively recognized labor organization. An analysis of the work requirements in the work unit and an evaluation of the potential impact of flexible and compressed work schedules on the functions of the work unit should be made. This should include special attention to the following:

(1) **Workload Characteristics**

(a) Tasks which must be performed within a specific period or according to a predetermined schedule;

(b) How much workflow can be adjusted to accommodate a system of flexible or compressed work schedules;

(c) The coordination required between work units and functions, as well as employee scheduling;

(d) The period of daily or weekly peak workloads where all or most of the employees in the work unit must be present;

(e) The employee coverage required during public service hours; and

(f) The effect of such schedules on efficiency and productivity.

(2) **Other Considerations**

(a) Work unit costs (additional staff, premium pay, space and equipment), potential increased heating and cooling costs, impact on employee commuting, operation of the cafeteria and employee health unit, potential increased rent or standard level user charges, increased security, cleaning, and maintenance service expenses;

(b) Effects on recruitment and retention, opportunities for full and part-time employment, and opportunities for women and disabled individuals;

(c) Method and extent of training required to acquaint employees and supervisors with changes in their responsibilities;

(d) Potential adverse impact on morale of employees who, for operational reasons, may not be placed on flexible or compressed work schedules, or the adverse impact on employees not desiring such placement;

(e) Impact of extending the hours during which employees may work thereby requiring more management control for both preparing and certifying time and attendance reports; and

(f) Ability of employees to work independent of supervision.

e. **Responsibilities**

(1) The Secretary or designee is the approving official for flexible and compressed work schedules for employees occupying positions centralized to that office.

(2) Administration Heads, Assistant Secretaries, Other Key Officials, and Deputy Assistant Secretaries are responsible for approving, disapproving, or discontinuing flexible and compressed work schedules for VA Central Office employees in their organizations[, along with periodically reminding employees of workplace flexibilities available.]

(3) Facility directors are responsible for approving or discontinuing flexible and compressed work schedules for employees under their jurisdiction[, along with periodically reminding employees of workplace flexibilities available.]

(4) The Deputy Assistant Secretary for Human Resources Management and Labor Relations will advise management and operating officials on the policies and procedures in this part.

(5) Supervisors are responsible for assuring that sufficient numbers and kinds of personnel are scheduled to be present to carry out operations in an efficient and economical manner. They must also ensure adequate coverage during public business hours and that participating employees are treated equitably.

(6) Employees on flexible or compressed work schedules are responsible for fulfilling their obligation to account for a full day's work. Abuse of flexible or compressed work schedules may result in restrictions on the employee's starting and stopping times, discontinuing the flexible or compressed work schedules under subparagraph g(7)(b) and/or appropriate disciplinary action.

f. **Flexitime**

(1) **General Requirements**

(a) The establishment of flexible tours of duty is limited to the flexitour, modified flexitour, and gliding flexitour, as defined in paragraph 11c above.

(b) Core time bands shall be determined by the authorized official; however, they should be the same for employees in the same work unit performing similar tasks and for employees in different work units performing interrelated tasks. The appropriate official may authorize deviations from approved core time bands for individual employees in unusual cases.

(c) The approving official, or designee, may determine the numbers and kinds of employees on duty during the core hours of any given day. Further, to assure essential services are provided outside core hours,

the approving official, or designee, may restrict the employee's choice of arrival and departure time if participation in flexible schedules proves disruptive or otherwise impedes efficient operations.

(d) A flexible work schedule under this paragraph and a compressed workweek under subparagraph g may not be simultaneously established in the same work unit.

(e) The modified flexitour will not be used in combination with standby tours of duty or on-call duty.

(f) Flexible schedules will not be established if they will result in payment of night differential to an employee, or group of employees, who would not normally perform night work.

(g) If it is found that a flexible schedule has had or would have an adverse impact (see subparagraph g(7)(b)), the approving official shall not establish, or shall discontinue, it.

(2) **Credit Hours** (not applicable to SES employees)

(a) Credit hours may be earned at the option of employees with supervisory approval.

(b) Employees do not receive overtime pay for credit hours and, unlike overtime, credit hours are not ordered in advance by management. Employees on flexible work schedules may work them to shorten the length of another workday or workweek. However, they may be used only after approval by the appropriate approving official.

(c) Full-time employees may carry over no more than 24 credit hours into the next pay period (part-time employees may carry over no more than 25 percent of the hours in their biweekly basic work requirement). [ ]

(d) When an employee ceases to work in a work unit where credit hours may be earned, the employee will be given the following options:

1. Sufficient advance notice to use earned credit hours prior to leaving the work unit;

2. Compensation for the earned credit hours at the employee's current rate of basic pay; or

3. Transfer of the earned credit hours to the new work unit, if credit hours have been authorized for that work unit.

(e) If compensated for credit hours, a full-time employee will be paid for not more than 24 credit hours. A part-time employee will be paid for not more than 25 percent of the hours in the employee's basic work requirement. Credit hours will not be transferred between facilities.

(3) **Time and Attendance Records**

(a) The arrival and departure times will be recorded for each employee, including supervisors, in any work unit using flexible work schedules. A Time and Attendance Report (VA Form 5631 or an electronic time and attendance system authorized for use in VA) must be used as the official means to record, certify, and report employees' time and attendance, including the accumulation and use of credit hours, if applicable.

(b) When the employee's work schedule is the same as that of the timekeeper's or supervisor's, no documentation, other than the Time and Attendance Report or electronic system, will be used to record employee attendance. When the employee's work schedule varies from that of the supervisor, some other method must be used to provide reasonable assurance of employee attendance, e.g., (a) observation by another supervisor; (b) occasional telephone calls to the employee when the employee is scheduled to be on-duty; or (c) determining reasonableness of work output for time spent.

(c) Sign-in/sign-out sheets, including VA Form 5283, Weekly Attendance Record (Flexitime) will not be used to document employee attendance. In rare situations, such as to record the attendance of employees with attendance problems, alternative methods may be used to document attendance. These may include logging on to a computer terminal, reporting in to a supervisor on duty, or a personal log maintained by the employee. Alternate reporting requirements should be limited to specific time periods and designated in writing.

(d) Supervisors may determine which available method works best for their unit.

(4) **Computation of Premium Pay for Employees on Flexible Schedules** (not applicable to SES)

(a) **Overtime and Compensatory Time Off in Lieu of Overtime Premium Pay**

1. **Overtime Hours.** Subparagraph c(13) contains a definition of overtime hours for employees on flexible schedules. Employees on flexible and compressed work schedules are eligible for callback overtime.

2. **Compensatory Time Off in Lieu of Overtime Pay**

a. Except as provided in subparagraph b below, appropriate officials, or their designees, may, at the request of a GS or Federal Wage System (FWS) employee on a flexible schedule under this paragraph, grant compensatory time off in lieu of overtime pay, whether such overtime hours are regularly scheduled or irregular or occasional in nature. If the employee does not request compensatory time off in lieu of overtime pay, or if the employee's request for compensatory time off in lieu of overtime pay is not granted, the employee shall be compensated for such overtime under the applicable statutory provisions.

b. For GS employees on a flexible schedule under this paragraph who have a rate of basic pay in excess of the maximum rate for GS-10, the approving official, or designee, may require the use of compensatory time in lieu of overtime. If that option is not exercised, the provisions of the preceding paragraph shall apply.

c. The time limits and other provisions in this chapter concerning compensatory time shall apply to all compensatory time taken under this chapter. It should be noted, however, that if an employee covered by the FLSA on flexible schedules fails to take the compensatory time within twenty-six pay periods, he or she shall be compensated for the overtime work under the FLSA.

(b) **Night Differential**

1. **[ ] General Schedule Employees**

a. If the tour of duty includes 8 or more hours available for work during daytime hours (6 a.m. to 6 p.m.), the employee is not entitled to night differential.

b. If the core time band is during daytime hours (i.e., 6 a.m. to 6 p.m.), but an 8-hour tour of duty includes less than 8 daytime hours, the employee is entitled to night differential for the difference between 8 hours and the available number of daytime hours in the tour of duty.

c. If the core time band includes night work, the employees are entitled to night pay for any non-overtime work performed at night.

[ ]

[2]. **FWS Employees.** If the core time band includes night work, a FWS employee is entitled to the appropriate night differential if a majority of the non-overtime hours of the tour of duty falls between either 3 p.m. and midnight or 11 p.m. and 8 a.m.

**NOTE:** *Meal breaks of 1 hour or less that occur when a night shift differential is authorized shall be included for the purposes of determining a FWS employee's entitlement to night differential.*

(c) **Holiday Premium Pay**

1. Full-time employees on flexible schedules, who perform non-overtime work on a day designated as their holiday, are entitled to their rate of basic pay, plus premium pay equal to the basic pay for that non-overtime holiday work.

2. Part-time employees on flexible schedules are entitled to holiday premium pay for the number of non-overtime hours they work on the holiday, up to a maximum of 8 hours.

(d) **Sunday Premium Pay.** A full-time [and part-time] employee[s] on a flexible schedule shall be entitled to Sunday premium pay for non-overtime work performed during a regularly scheduled tour of duty, when any part of that tour of duty is on a Sunday. [ ]

(e) **SES.** Members of the SES are not entitled to any form of premium pay.

(5) **Temporary Duty.** If an employee is temporarily detailed, reassigned or promoted, and is moved from or to a position which has flexible scheduling, the approving official, or designee, may allow the employee to continue to use his or her previous work schedule.

(6) **Absence and Leave**

(a) **Sick and Annual Leave**

1. For employees on flexible schedules, time off work during the flexible and core time band must be charged to the appropriate leave category, compensatory time off or excused absence, as appropriate.

2. The maximum amount of sick or annual leave an employee may apply to a basic work requirement for any day is the number of hours the employee is scheduled to work that day.

(b) **Holidays.** A full-time employee on a flexible schedule, relieved from working on a day designated as his or her holiday, shall be entitled to pay with respect to that day for 8 hours. A part-time employee prevented from working on the holiday shall be entitled to basic pay for the number of hours he or she was scheduled to work on that day, up to a maximum of 8 hours. Part-time employees are not entitled to a day off in lieu of the holiday.

(c) **Excused and Unexcused Absences.** On the flexitour, the employee's selected starting and stopping times shall be used to determine the amount of excused or unexcused absence to be granted and/or charged. On the modified flexitour, the employee's selected starting and stopping times shall be used to record absences unless the employee has actually reported for work. If at work, the time the employee reported and his or her basic work requirement for that day shall be used to determine absences.

(7) **Travel**

(a) Travel outside regularly scheduled duty hours must be officially ordered or approved and must meet one of the four conditions specified in 5 U.S.C. 5542(b)(2)(B).

(b) 5 CFR 610.123 provides additional information about employees traveling outside regularly scheduled duty hours.

(c) On the flexitour, the employee's selected starting and stopping times shall be used to determine if the employee is traveling during regularly scheduled hours. On the modified flexitour, the employee's selected starting and stopping times shall be used unless the employee has already reported for work. If at work, the actual time the employee reported, and his or her basic work requirement for that day, shall be used in making the determination. Nonexempt employees under the FLSA should use this method also in determining corresponding hours for travel and non-workdays.

g. **Compressed Work Schedules**

(1) **Criteria**

(a) A compressed workweek may be established only if all daily tours of duty within the compressed workweek are in whole hour increments, excluding the meal period (e.g., eight 10-hour tours, eight 9-hour tours and one 8-hour tour, etc., each biweekly pay period). If, however, the meal period is considered hours of work, any daily tour of duty on such a day shall be in whole hour increments, including the meal period.

(b) A work unit employee participating in a compressed workweek under this paragraph may not simultaneously work a flexible schedule under subparagraph f of this chapter.

(c) A compressed workweek should not be established in a work unit if it will overlap a standby tour of duty.

(d) An employee in a work unit which is not covered by a collective bargaining agreement shall not be required to participate in any compressed workweek unless a majority of employees (i.e., more than half of affected employees in the work unit) have voted to be included. The specific procedures for this vote are left to the approving official. Use of written secret ballots are encouraged; subparagraph (8) below contains a prohibition against the coercion of employees making such determinations.

(e) Exclusion because of personal hardship:

1. An official, or designee authorized to approve compressed workweeks, who, upon written request of an employee determines that participation of the employee would cause a personal hardship, shall:

a. Except the employee from the compressed workweek; or

b. Reassign the employee to the first vacant position in the organization not on a compressed tour, which is acceptable to the employee and for which he or she qualifies.

2. Determinations under this subparagraph shall be made no later than 10 days after the written request is received by the deciding official.

(f) The establishment of compressed workweeks does not relieve approving officials, or their designees, from the requirement to establish workweeks to accomplish the mission and goals of the organization and to correspond with the employee's actual work requirements.

(g) The approving official may exclude from compressed workweeks any employee or group of employees whose coverage would create an adverse impact.

(2) **Time and Attendance Records.** Under fixed work schedules, such as compressed work schedules, the supervisor usually has personal knowledge of each employee’s number of hours on duty, attendance, and the nature and length of absences and can, therefore, certify each employee’s entitlement to pay

without the use of special time accounting devices. The VA Form 5631, Time and Attendance Report, is the official means for recording, certifying and reporting time and attendance.

(3) **Computation of Premium Pay.** (not applicable to SES)

(a) **Overtime Hours and Compensatory Time Off in Lieu of Overtime Premium Pay for Irregular or Occasional Overtime Work**

1. For full-time employees, the term "overtime hours" refers to hours of work officially ordered or approved and performed in excess of the basic work requirement. For part-time employees, overtime hours are those hours of work performed in excess of the basic work requirement for the day (but must be in excess of 8 hours) or for the week (but must be in excess of 40 hours). In order to qualify for callback overtime on a compressed tour, the period of callback must be outside of and unconnected with the employee's basic work requirement and must qualify as overtime as stated above.

2. GS employees on compressed workweeks may receive (or be required to take, if appropriate) compensatory time off in lieu of premium pay for irregular or occasional overtime work. If the employee is on a compressed work schedule, compensatory time off may not be authorized in lieu of premium pay for regularly scheduled overtime work.

(b) **Night Differential**

1. GS employees are entitled to night differential for regularly scheduled night work between the hours of 6 p.m. and 6 a.m.

2. FWS employees are entitled to the applicable night differential if a majority of the non-overtime hours of the tour of duty falls between 3 p.m. and midnight or 11 p.m. and 8 a.m.

(c) **Holiday Premium Pay**

1. Full-time employees on a compressed work schedule, who perform non-overtime work on the day designated as their holiday, are entitled to their basic rate of pay, plus premium pay equal to basic pay for that non-overtime holiday work. Employees may not, however, receive holiday pay for work in excess of their basic work requirement for the day.

2. Part-time employees on a compressed schedule are only entitled to holiday premium pay for non-overtime work performed on the holiday. Part-time employees are not entitled to a day off in lieu of the holiday.

(d) **Sunday Pay.** Full-time [and part-time] employees on a compressed schedule who perform non-overtime work during a period of service, a part of which is performed on Sunday, are entitled to Sunday premium pay for the entire period of service. [ ]

(4) **Absence and Leave**

(a) **Holidays**

1. **Full-time Employees**

[ (a) **In Lieu of Holidays**

(1) All full-time employees on compressed work schedules are entitled to an "in lieu of" holiday when a holiday falls on a nonworkday. In such cases, the employee's holiday is the basic workday immediately preceding the nonworkday.

(2) There are three exceptions:

(a) If the nonworkday is Sunday, the next basic workday is the "in lieu of" holiday.

(b) If Inauguration Day falls on a nonworkday, there is no provision for an "in lieu of" holiday.

(c) If the head of an agency determines that a different "in lieu of" holiday is necessary to prevent an "adverse agency impact," he or she may designate a different "in lieu of" holiday for full-time employees under compressed work schedules. (See 5 U.S.C. 6131(b).)

(3) An employee is not entitled to another day off as an "in lieu of" holiday if a Federal office or facility is closed on a holiday because of a weather emergency or when employees are furloughed on a holiday.]

2. **Part-time Employees.** If a holiday falls on a day during part-time employees' scheduled compressed workweeks and, if the employees are prevented from working, they are entitled to pay for the number of hours they were scheduled to work that day. Part-time employees are not entitled to a day off in lieu of the holiday.

(b) **Leave.** Time off from an employee's basic work requirement must be charged to the appropriate leave category, unless the employee is authorized compensatory time off or excused absence.

(c) **Excused and Unexcused Absences.** The amount of excused or unexcused absence shall be based on the employee's compressed work schedule in effect at the time.

**NOTE:** *An employee excused for part of a day is expected to return to duty, except when there is so little time remaining that no appreciable amount of service would be rendered or the duty station is so distant that it would be an unreasonable requirement.*

(d) **Temporary Duty.** When an employee covered by a compressed work schedule is temporarily detailed, reassigned or promoted to a position subject to another schedule, the approving official, or designee, may allow the employee to continue to use the compressed schedule, require use of the work schedule at the new organization, require return to the home site to make up the difference, or grant excused absence for the difference between the daily compressed work requirement and the number of hours of work possible under the schedule at the temporary site. It is important that the work schedule at the receiving site and the effective date of any change be fully resolved and understood prior to the assignment to ensure complete understanding about days off, overtime, time spent in a travel status, etc.

(e) **Travel.** Since compressed work schedules are fixed schedules, guidance for time spent in a travel status away from the official duty station may be found in 5 CFR 550.112 and 551.422.

(5) **Review of Alternative Work Schedules**

[(a) **Procedures to request an Alternative Work Schedule.**

(1) Employees may submit a written request to their immediate supervisor for any workplace flexibility. The request must state the specific alternative work schedule, as well as the proposed work days, hours, etc. as applicable.

(2) The immediate supervisor must meet or confer directly with the requesting employee within 10 business days after receipt of a written request for an alternative work schedule to understand fully the nature of and need for the requested flexibility.

(3) The supervisor must carefully consider the request and any supporting information provided by the employee and provide a written decision to the employee within 20 business days after receipt of the initial request, or within the timeframes set forth in an applicable collective bargaining agreement. Supervisors must consider VA's mission-related requirements and the impact on VA operations when rendering a decision. If the supervisor is unable to grant the employee's request due to mission-related requirements and the impact on VA operations, the supervisor should work with the employee to determine if there are alternatives available that are beneficial to VA and the employee.

(4) If the supervisor denies the employee's request for a workplace flexibility, the employee has the right to file a grievance in accordance with the procedures outlined in VA Handbook 5021, Part IV, or applicable collective bargaining agreement.]

[(b)] **Determinations to Establish or Discontinue Flexible or Compressed Schedules.** Notwithstanding the previous provisions of this paragraph, and subject to subparagraph (7)(a) and (b) below, any approving official who finds that a particular flexible or compressed work schedule has had or would have an adverse impact shall promptly determine not to establish the schedule, or shall discontinue it if it has already been established.

[(c)] **Adverse Impact.** For the purposes of the preceding subparagraph, adverse impact means a reduction in productivity, a diminished level of service, or an increase in the cost of operations (other than reasonable administrative costs relating to the establishment of a flexible or compressed schedule.

(6) **Records Maintenance.** Each VA facility is encouraged to maintain records regarding the development, maintenance, or termination of a flexible or compressed work schedule. These records should address any increased cost, changes in productivity, and any effect on providing services. An approving official who thinks that establishing a flexible or compressed work schedule would have an adverse VA impact or that a modification or discontinuance of an existing schedule is necessary due to such impact, should maintain sufficient records to support such actions.

(7) **Employees Covered by a Collective Bargaining Agreement.** Flexible or compressed work schedules for employees in a unit represented by an exclusive representative shall be subject to the provisions of this paragraph and the terms of any applicable collective bargaining agreement.

(a) **Determination Not To Establish Flexible or Compressed Work Schedules.** If the approving official and the exclusive representative reach an impasse in collective bargaining with respect to a determination not to establish a flexible or compressed work schedule, the impasse shall be presented to the Federal Service Impasses Panel (FSIP) for resolution. The panel shall take final action in favor of VA's determination if it is supported by evidence that the schedule is likely to have an adverse impact.

(b) **Termination of a Flexible or Compressed Work Schedule.** If the approving official and the exclusive representative have entered into a collective bargaining agreement providing for the use of flexible
or compressed work schedules, and the approving official determines under subparagraph (5)(a) above to terminate it, the approving official may reopen the agreement to seek termination. Impasses concerning such termination shall be presented to the FSIP for resolution. A flexible or compressed work schedule may not, however, be terminated until agreement is reached or the FSIP so rules.

(c) **Further Information.** Contact the appropriate labor management specialist in the Office of Labor-Management Relations in VA Central Office for further guidance.

(8) **Prohibition of Coercion.** An employee may not be directly or indirectly intimidated, threatened or coerced by any other employee for the purposes of interfering with an employee's rights under this chapter.

# CHAPTER 3. ESTABLISHMENT OF WORKWEEKS, TOURS OF DUTY, AND WORK SCHEDULES FOR EMPLOYEES APPOINTED TO TITLE 38 POSITIONS

## 1. SCOPE

a. **Coverage.** This chapter contains basic policies and instructions governing duty for full- time, part-time, intermittent and fee basis physicians, dentists, podiatrists, chiropractors, optometrists, nurses, nurse anesthetists, physician assistants (PAs), and expanded-function dental auxiliaries (EFDAs) appointed under authority of 38 U.S.C., chapter 73 and 74.

b. **Covered employees.** Except as otherwise indicated in part III, chapter 3, paragraph 13 of this handbook, hours of duty provisions for full-time physicians and dentists contained in this chapter are applicable to full-time residents appointed under authority of 38 U.S.C. 7406. The term "resident" as used in this paragraph refers to medical and dental residents. As used in this chapter, any reference to "nurse(s)" includes nurse anesthetist but does not include the Chief Nursing Officer, Office of Nursing Services; and "employee(s)" includes those personnel indicated in subparagraph a (both full-time and part-time, unless otherwise specified).

c. **Excluded Employees.** This chapter does not apply to employees in occupations other than those indicated in subparagraph a above, and who are appointed under authority of 38 U.S.C. chapter 73 and 74, including employees appointed under 38 U.S.C. 7306 and title 38 hybrid employees appointed to positions listed in 38 U.S.C. 7401(3).

d. **Intermittent and Fee Basis Employment.** Persons employed on an intermittent basis, per annum fee basis, or lump-sum fee basis, under [the] authority of 38 U.S.C. 7405 are paid for actual service rendered and therefore their duty schedules shall be determined by procedural requirements issued by the Under Secretary for Health.

## 2. BASIC WORKWEEK AND OFFICIAL DUTY

a. **Basic Workweek.** Unless otherwise indicated, the "basic workweek" for full-time employees shall be 40 hours in length. The normal tour of duty within the 40-hour basic workweek shall consist of five 8-hour days, exclusive of the meal period. Directors of field facilities, or their designees, are authorized to fix the hours of duty constituting the normal tours of duty within the 40-hour basic workweek.
[For full-time physicians and dentists appointed under 38 U.S.C. chapters 73 or 74, the basic workweek consists of a 40-hour tour of duty during the administrative work week (i.e., Sunday through Saturday). The workday shall not be less than 2 hours and may not exceed 12 hours. The 40-hour tour of duty may vary each administrative workweek, but must be determined prior to the beginning of the workweek. The basic workweek shall be completed within the 7-day period from Sunday to Saturday and must not cross over into the following administrative workweek of the 80-hour bi-weekly pay period.] Full-time physicians, dentists, podiatrists, chiropractors, and optometrists to whom the provisions of this chapter apply shall be continuously subject to call unless officially excused by proper authority. This requirement as to availability exists 24 hours per day, 7 days per week. However, full-time nurses and nurse anesthetists on the Baylor Plan shall be scheduled in advance for a 24-hour basic workweek in each administrative workweek. The basic workweek for nurses on the Baylor Plan shall consist of two regularly scheduled 12-hour tours of duty contained entirely within the first and last day of the administrative workweek, Sunday and Saturday.

b. **Administrative and Non-Duty Days and Days Off**. Full-time physicians, dentists, podiatrists, chiropractors, and optometrists shall be permitted some periods of time free from official duty to the extent that this does not impair provision of essential services in patient treatment and care. Each such full day granted shall be called an "administrative non-duty day." Full-time VA Central Office and VA outpatient clinic employees will normally perform duty Monday through Friday of each workweek. The remaining 2 days (Sunday, the first day of the workweek and Saturday, the last day of the workweek) shall be designated as the administrative non-duty days of the workweek for physicians, dentists, podiatrists, chiropractors, and optometrists or the days off for nurses, nurse anesthetists, PAs and EFDAs. Unusual circumstances may make it necessary, however, for the Under Secretary for Health, chief consultants, or facility directors, as appropriate, to alter these provisions for specific individuals or groups of individuals in the best interests of the service.

c. **Establishment of Regularly Scheduled Administrative Workweeks**.

(1) When the official responsible for work scheduling knows in advance of an administrative workweek that the specific days and/or hours of a day actually required of an employee in that administrative workweek will differ from those required in the current administrative workweek, that official shall reschedule the employee's regularly scheduled administrative workweek to correspond with those specific days and hours. The official shall inform the employee of the change and shall be responsible for ensuring that the change is recorded on the employee's time card or its electronic equivalent.

(2) In the exercise of this authority, officials shall prescribe individual hours of duty and changes to such hours as far in advance as possible. Such officials are also to give employees consideration in arranging schedules so long as such consideration is compatible with VA work requirements.

(3) Full-time nurses, nurse anesthetists, PAs, and EFDAs shall be scheduled in advance for a 40-hour basic workweek in each administrative workweek, except that full-time nurses and nurse anesthetists Alternate Work Schedules such as a 72/80 Work Schedule and the Baylor Plan shall be scheduled in advance in each administrative workweek.

(a) The basic workweek for a registered nurse working a 72/80 Alternate Work Schedule will consist of six regularly scheduled 12-hour tours of duty [ ] within a[ ] pay period. Under this work schedule the registered nurse is considered for all purposes to have worked a full 80 hour pay period. [A registered nurse on a 72/80 Alternate Work Schedule that has a scheduled 12-hour tour of duty that begins in one pay period and ends in a new pay period should be credited for time worked in the new pay period to the pay period that the registered nurse's tour of duty actually began.]

(b) The basic workweek for a registered nurse working the 9-Month Alternate Work Schedule will consist of five 8-hour days, exclusive of the meal period, with 3 months off duty within a fiscal year.

(c) The basic workweek for registered nurses working the Baylor Plan work schedule will consist of two regularly scheduled 12-hour tours of duty contained entirely within the first and last day of the administrative workweek (Sunday and Saturday).

(d) The normal tour of duty within the 40-hour basic workweek shall consist of five 8-hour days, exclusive of the meal period. A full-time nurse or nurse anesthetist shall be placed on an Alternate Work Schedule only at the beginning of the administrative workweek and taken off at the end of the administrative workweek.

d. [**Patient Care Requirements.**] Because of the continuous nature of the services rendered at hospitals, the facility Director, or designee (in no case less than a chief of service), has the authority to prescribe any tour of duty to ensure adequate professional care and treatment to the patient, consistent with these provisions. [This includes the obligation to arrange for continuous medical supervision required by policy in M-2, part I, chapter 4, "Medical Officer of the Day."]

e. [**Tours of Duty for Part-Time and Intermittent Employees.** Except as provided in paragraph f below, part-time employees perform duty on less than a full-time basis and have a regularly scheduled tour of duty that is less than 80 hours in a biweekly pay period. Such employees may perform occasional unscheduled duty in addition to the regular tour of duty. Employees serve on an intermittent duty basis when employed on less than a full-time basis and have no prescheduled regular tour of duty.]

f. [**Adjustable Work Hours for Part-Time Physicians.** This is a program to accommodate varying VA patient care needs and part-time VA physicians who have VA or non-VA patient care, research, or educational responsibilities that make adherence to the same regularly scheduled tour of duty every pay period difficult. Part-time physicians with fixed work requirements and those who do not routinely need to adjust their tours are not to be placed on adjustable work hours. Adjustable tours would be appropriate, for example, for part-time physicians at active affiliated facilities with extensive patient care, research, and educational responsibilities who frequently encounter emergencies and other unanticipated obligations that prevent them from maintaining a regularly scheduled tour of duty. Under such circumstances, it is difficult for management to administratively change or adjust the prescheduled tour and communicate this to the timekeeper in a timely manner. Adjustable work hours provide a means for minimizing this problem. After assessing their particular needs, facility Directors may authorize the use of adjustable work hours using the procedures in Appendixes I and J to this chapter.]

g. [**Guidance on Determining Whether Activities of Health Care Professionals Constitute VA Work**

(1) Principles

(a) The statutory missions of VHA include patient care, research and education, and supporting these broad missions entail a variety of different work activities. The primary focus is patient care; however, research, education, and administrative activities also contribute to increasing the quality of care provided to veterans. Positions covered by this chapter are to be supported by appropriate staffing guidelines. Officials approving tours of duty are responsible for structuring tours of duty based on these allocations and for ensuring that employees meet their patient care and other VA work requirements. Off site patient care, research, academic, or administrative activities must also be directly related to VA's mission and approved by the facility Director or designee and properly documented. For examples, see paragraph 2g(3) below.

(b) Guidance in this handbook applies to all health care professionals whether employed in full-time or part-time status. VHA employees must be in a leave status or outside their regular tours of duty when generating money or benefits for themselves such as receiving pay or other benefits from a non-VA entity. VHA employees are also legally barred from billing Medicare, Medicaid, or CHAMPUS for services not related to the performance of their official duties while on VA duty.

(c) Prior to engaging in scarce medical specialist contracts or sharing agreements, VHA employees, especially those who have appointments with an affiliated university that provides services or resources to VA, should first consult with the Regional Counsel to ensure that their participation in such contracts or agreements do not result in a conflict of interest or prohibited salary supplementation.

(2) Physicians and Others Working in Academic Settings

(a) For over 50 years VA has used attending physician-resident and physician teams as the predominant care providers in VA facilities affiliated with academic medical centers. The affiliation relationship as defined in Policy Memorandum No. 2. (January 30, 1946) and applicable VHA policy defines the parameters of this relationship. These documents serve as the basis for approving any off-site activities in support of VA's role in the affiliation. Frequently, attending physicians are employed part-time both by the academic affiliate and VA. However, VA work must be solely supported by VA, while work for the affiliate must be distinct and separately accounted for by the affiliate.

(b) To support the accreditation of VA training experiences, full-time VA physicians and other VA professionals may hold faculty appointments at affiliates. The duties of these individuals, whether full-time or part-time VA, will involve providing care to VA patients, but may also involve administrative, academic, and research activities in support of VA.

(c) Academic work performed at VA's request and paid for by VA must be distinguished from work for the affiliate. This distinction and accounting for VA time requires the collaboration between the affiliate and the local VA Clinical work at VA and at the affiliate must be carefully considered. Income-generating professional activities are allowable only outside of regular tours of duty or in a leave status. This is particularly important in situations where time at the affiliate has been approved as part of professional VA duties. While on VA duty status at the affiliate, professionals must take care to avoid any income-generating activities. Professionals who provide services both as employees and under sharing agreements should obtain guidance from their Regional Counsel.

(3) Examples. VA managers are responsible for assigning work, and for ensuring VA employees are performing work that supports VA's missions. VA work can consist of veteran patient care, research, educational or administrative work performed either at the VA Medical Center or off-site. Off-site work must be directly related to VA's mission and approved by the Director or designee. The list below includes examples of on-site and off-site work, but is not inclusive.

(a) On-Site**:** (VA grounds)

1. Clinical. Clinical duties involve providing and/or supervising patient services at VA, clinical teaching at VA related to the care of VA patients, providing patient care at an outpatient clinic, or

participating in interdisciplinary patient care conferences at VA. For example, patient evaluation, invasive procedures, consultation, attending rounds, journal club, follow-up calls, clinical documentation, care coordination, or care planning conferences.

2. Administrative. Administrative duties involve activities such as attending meetings at VA regarding program development, enhancement of clinical or teaching services, continuing medical education, patient care and medical staff issues (e.g., Drug Usage and Infection Control Committees, Clinical Executive Board, etc.).

3. Research. Research activities include such things as conducting either funded or unfounded approved VA research activities in assigned VA lab space and attending meetings at VA related to research activities (e.g., Research and Development Committee).

(b) Off-Site:

1. Clinical. This includes providing services for VA patients at a non-VA location (e.g., a VA physician uses the affiliate catheterization lab to treat VA patients with no professional charge to VA); participating in interdisciplinary patient care conferences at an affiliate to discuss VA patients (e.g., approved VA representation at clinical conferences such as a Tumor Board); teaching related to the care of VA patients (e.g., Grand Rounds), approved attendance at Medical Executive Committee meetings; public service or other professional activities when the activity is considered to be of substantial benefit to VA in accomplishing its general mission or one of its specific functions; or providing services regarding a VA patient from another site (e.g., reading x-rays from home or entering patient notes via remote computer log-on).

**NOTE:** *Health care professionals cannot receive any compensation from other sources for activities carried out when they are in a duty status; they must be in a leave status or outside their VA tour of duty.*

2. Administrative. This includes approved attendance at lectures, conferences, or off-site meetings related to VA duties (e.g., national or VISN committees or meetings); activities required to maintain academic status (appropriately shared with the affiliate in the case of part-time employees); approved VA representation at meetings at affiliates regarding curriculum development or resident selection; or other administrative issues related to VA activities for which employees are not compensated by the affiliate.

3. Research. Conducting off-site funded research activities with written waiver from VACO (e.g., research space not available at VAMC); developing a letter of intent; VA representation on a joint IRB; or, if approved, non-funded research related to VA's mission.

**NOTE:** *Time allocated for non-funded research will be at the discretion of the supervisor and approved by the COS or Director.*

4. Education. This involves such things as providing orientation or training to house staff or other students at the affiliate regarding information related to VA and its mission.

h. **Accountability.** Timekeeping documents shall reflect actual hours worked by full-time, part-time, and intermittent employees. Failure to appropriately monitor compliance with the policies and procedures in this handbook, or failure to properly account for time and attendance may result in appropriate disciplinary and/or legal action.]

**3. HOLIDAYS.** Employees shall be excused to the extent possible for observance of the following holidays and non-workdays designated by Federal Statute or Executive Order: January 1, the third Monday in January, the third Monday in February, the last Monday in May, July 4, the first Monday in September, the second Monday in October, November 11, the fourth Thursday in November, December 25, and any other calendar day designated as a holiday or non-workday by Federal Statute or Executive Order. However, notwithstanding the preceding provisions of this subparagraph, full-time nurses and nurse anesthetists on the Baylor Plan shall not be entitled to holidays.

a. **Full-Time Employees (Except Nurses and Nurse Anesthetists on the Baylor Plan)**

(1) For employees whose basic workweek is Monday through Friday, holidays falling on a Sunday shall be observed the following Monday; holidays falling on Saturday shall be observed on the preceding Friday; and all other holidays shall be observed on the day they occur.

(2) For employees whose basic workweek is other than Monday through Friday, [the following guidance is provided:

(a) When a holiday falls on [a nonworkday which is] Sunday, the employee's next workday shall be the day observed as the holiday for that employee.

(b) When a holiday falls on [any other nonworkday], the employee's preceding workday shall be the day observed as the holiday for that employee.

b. **Part-Time Employees.** Part-time employees who are excused from duty on a holiday are entitled to their regular pay for that day. Otherwise eligible part-time employees required to work on holidays are [ ] entitled to holiday premium pay for such service. However, employees whose absence is not authorized will be considered absent without leave and shall lose pay for the day.

c. **In-Lieu Non-workday.** An in-lieu non-workday may be granted to full-time physicians, dentists, podiatrists, chiropractors, and optometrists, for work performed on a holiday or the day observed as a holiday, provided the full-time employee's services can be spared without detriment to patient care. Such in-lieu day if authorized must be taken within 90 days by the full-time employee concerned. Full-time employees who are assigned to work on holidays and whose absences were not authorized will be reported as being on unauthorized absence and will lose pay for that day**.**

**NOTE:** *An in-lieu non-workday shall not be authorized for a nurse, nurse anesthetist, PA or EFDA who works on a holiday or the day designated as a holiday. Nurses working on 72/80 work schedules who are not scheduled to work on a holiday shall not be entitled to an in-lieu of holiday.*

d. **Holiday Benefits in Connection With Absence in a Non-pay Status**

(1) Employees (except full-time nurses and nurse anesthetists on the Baylor Plan) are entitled to payment for the holiday if they are absent in a non-pay status (including LWOP or AWOL) on the day immediately following the holiday, provided they were in a pay status (duty or leave) the day preceding the holiday, and provided the holiday was not included within the period of non-pay status. If the holiday was included within the period of non-pay status, payment for the holiday will not be made. Wherever possible, periods of LWOP should not be scheduled so as to begin or end on a holiday.

(2) Employees (except full-time nurses and nurse anesthetists on the Baylor Plan) in a non-pay status (including LWOP or AWOL) the day preceding the holiday will receive payment for the holiday, provided they are in a pay status (duty or leave) the next regularly scheduled workday immediately following the holiday, and provided the holiday was not included within the period of non-pay status.

(3) The provisions of subparagraphs d (1) and (2) also apply to in-lieu days granted to full-time physicians, dentists, podiatrists, chiropractors, and optometrists.

e. **Religious, State and Local Holidays**

(1) While there is no official observance of religious holidays, except those which may also be national holidays, it is the policy of VA to permit, when practicable, absence from work for those employees who desire to observe religious holidays. Employees may, under provisions of Public Law 95-390, and applicable regulations, elect to work compensatory overtime for the purpose of taking time off without charge to leave when their personal religious beliefs require that they abstain from work during certain periods of the workday or workweek, thereby avoiding an annual leave or leave without pay charge.

(2) If a facility is closed on a State or local holiday because it is determined that Federal work may not be properly performed as provided in chapter 2, this part, absence on such day is not chargeable to leave for an employee of the facility. Such approved time off is considered authorized absence without charge to leave.

**4.** [**WORKPLACE ACCOMMODATIONS FOR NURSING MOTHERS**

a. An employee who is a nursing mother should be granted time to express breast milk for her nursing child, up to one year after the child's birth, each time the employee has a need to express milk. The employee may use her authorized rest periods/breaks, accumulated annual leave, compensatory time off, credit hours, and approved leave without pay for this purpose.

b. The space provided for nursing mothers to express breast milk shall be shielded from view and free from intrusion from coworkers and the public. The location designated for the nursing mother to express breast milk shall be in a place other than a bathroom/restroom.

**5.] ADJUSTABLE WORK HOURS FOR PART-TIME PHYSICIANS**

See paragraphs 2f and g above and Appendixes I and J to this chapter.

## [6.] FLEXIBLE AND COMPRESSED WORK SCHEDULES FOR EMPLOYEES IN TITLE 38 POSITIONS

a. **General.** This paragraph contains Veterans Health Administration policies and procedures concerning flexible and compressed work schedules for VHA title 38 health care employees. All of the provisions of this paragraph apply to full and part-time nurses, graduate nurse technicians, nurse technicians pending graduation, nurse anesthetists, PA's (physician assistants) and EFDAs (expanded function dental auxiliaries) appointed under authority of 38 U.S.C. 7401(l) or 7405(a)(1.). [ ] [T]he provisions on compressed work schedules [and flexible work schedules] apply to full-time [and part-time] physicians, dentists, podiatrists, chiropractors, or optometrists appointed under 38 U.S.C., sections 7306, 7401(1), 7405 or 7406. The provisions in this paragraph do not apply to student nurse technicians or nurses and nurse anesthetists on the Baylor Plan.

**NOTE:** *Instructions for compressed work schedules for employees in VA Central Office have been published in VA Directive 5610.3.*

b. References

(1) Federal Employees Flexible and Compressed Work Schedules Act of 1982 (Pub. L. 97-221, 5 U.S.C. 6120-6133.)

(2) 5 CFR 2472

(3) 38 U.S.C. 7421(a) and 7423(a)

c. **Definitions**

(1) **Administrative Workweek.** A period of 7 consecutive calendar days, which coincide with the calendar week, Sunday through Saturday.

(2) **Alternative Work Schedule.** A work schedule that is other than the traditional work schedule (8 hours per day/40 hours per week with fixed starting and quitting times), which consists of either a flexible work schedule or compressed work schedule.

(3) **Basic Work Requirement.** The number of hours during a biweekly pay period, excluding overtime hours, which an employee is required to work or required to account for by leave or otherwise.

(4) **Biweekly Pay Period.** The pay period covering two administrative workweeks.

(5) **Compressed Schedule**

(a) In the case of a full-time employee, an 80-hour biweekly work requirement which is scheduled for fewer than 10 workdays.

(b) In the case of a part-time employee, a biweekly basic work requirement which is scheduled for less than 10 workdays.

(6) **Core Time Band.** Those designated hours and days during the biweekly pay period when an employee on a flexible schedule must be present for work.

(7) **Flexible Time Band.** That part of the schedule of working hours during which, under procedures contained herein, employees may choose their time of arrival and departure from the worksite, within limits consistent with the duties and responsibilities of their positions.

[(8)] **Flexible Work Schedule**

[(a) In the case of a full-time employee, an 80-hour biweekly basic work requirement which an employee may elect the time of arrival and departure from work within limits consistent with the duties and responsibilities of their position.

(b) In the case of a part-time employee, a biweekly basic work requirement of less than 80 hours which an employee may elect the time of arrival and departure from work within limits consistent with the duties and responsibilities of their position.]

[(9)] **Flextime.** A system of work scheduling which splits the workday into two distinct kinds of time: the core time band and the flexible time band.

[(10)] **Flexitour.** A flexible schedule in which an employee, having once selected starting and stopping times within the flexible time bands, continues to adhere to these times. Employees may request different starting and stopping times. Such tours, and changes to such tours, however, must be approved by the employee's supervisor and documented in accordance with the procedures contained herein.

[(11)] [**Maxiflex Work Schedule.** A type of flexible work schedule for Senior Executive Service (SES) and SES Equivalents, including Title 38 executive-level appointments, that contains core hours on fewer than 10 workdays in the biweekly pay period and in which a full-time employee has a basic work requirement of 80 hours for the biweekly pay period, but in which an employee may vary the number of hours worked on a given workday or the number of hours each week within the limits established for the organization.]

[(12)] **Modified Flexitour.** A type of flextime where the employee selects a starting time and stopping time within the established flexible time band and, once selected, this becomes the employee's assigned schedule. The employee, however, is given 15 minutes of flexibility on either side of the selected arrival time. The actual time of arrival becomes the employee's starting time for the day. For example, an employee selecting 7:30 a.m. as a starting time under the modified flexitour may report for work anytime between 7:15 a.m. and 7:45 a.m. If the employee arrives at 7:20 a.m., this becomes the employee's starting time for that day. Assuming a half-hour lunch period, the departure time would be 3:50 p.m. If the same employee reports at 7:05 a.m., his or her starting time would not begin until 7:15 a.m. The same employee arriving at 7:50 a.m. is 5 minutes tardy. Under the modified flexitour, the starting time, and changes in the starting time, must be approved by the supervisor and documented in accordance with the procedures contained herein.

[(13)] **Overtime Work**

(a) For the purpose of flexitime, overtime means all hours of work in excess of 8 consecutive hours or 40 hours in a week which are officially ordered or approved in advance.

(b) For the purposes of compressed work schedules, overtime work means:

1. For full-time employees, the term “overtime hours” refers to officially ordered or approved hours of work performed in excess of the employee's basic work requirement.

2. For part-time employees, overtime hours are those hours of work performed in excess of the basic work requirement for a scheduled period of service day (but must be in excess of 8 consecutive hours) or for a week (but must be in excess of 40 hours), or in excess of 80 hours in the pay period.

[(14)] Tour of Duty. Under a flexible work schedule, the limits set by the authorizing official within which employees must complete their basic work requirement. Under a fixed schedule, such as a compressed work schedule, an employee's tour of duty is synonymous with the employee's basic work requirement.

**[(15) Variable Work Schedule (Full-time Physicians).**

(a) The variable work schedule is an irregular work schedule only available to full-time physicians in which a full-time physician has a basic work requirement of more or less than 80 hours each biweekly pay period, but for the purpose of determining pay and leave benefits, such a physician shall receive 80 hours of pay for each biweekly pay period. VHA may require a covered physician on a variable work schedule to work core hours (those designated hours and days during the biweekly pay period when an employee on a variable schedule must be present for work ). Prior to working a variable work schedule, a physician must submit a request in writing (Variable Work Schedule Agreement – see Part II, Chapter 3, Appendix C) to his/her supervisor and have the variable work schedule approved in advance. As part of the variable work schedule, a physician is obligated to account for at least 2080 hours of employment in a calendar year or the prorated equivalent ratio of 80 hours per biweekly pay period. Hours of employment include: performance of work, use of leave, or other paid time off. The 2080 hour requirement can be accomplished on a current basis, or retroactively, due to an annual or earlier reconciliation or upon termination of the agreement (Restrictions on retroactive use of leave are as follows: (1) cannot charge more than 80 hours of leave in any pay period; (2) cannot use paid leave in excess of the amount available in the pay period for retroactive use that also remained available through reconciliation; and (3) retroactive LWOP used may remove some accrued leave and can result in additional debt). Retroactive use of LWOP is not intended to meet the 2080 hour requirement under this policy. Frequent use of LWOP should be addressed as noted in paragraph c below.

(b) In order to ensure that the 2080 hours of employment in a calendar year requirement is accomplished, Supervisors are required to conduct a quarterly reconciliation of the physician's subsidiary time card and provide the physician with his/her status toward accomplishing the 2,080 work requirement.

(c) If a full-time physician on a variable work schedule fails to meet the requirement to account for 2080 hours of employment for a calendar year agreement period during two separate Variable Work Schedule Agreement periods, the variable work schedule arrangement will be terminated. The physician will not be eligible to participate in the variable work schedule again unless justification is provided by the Service Chief/Service Line Manager to support the physician's participation and to identify what the factors that have changed that will allow for the physician to complete the requisite 2080 hour requirement of the variable work schedule. This justification must be made in writing and approved by the Medical Center Director. Copies of the supporting documentation must be retained. This approval may not be delegated below the Medical Center Director level.

*Note: In order for the physician to remain in full-time pay status, a standard 80-hour time card must be certified each pay period. The only adjustment to the standard time card will be leave or other absences that reduce the physician's hours worked from the 80 hour standard. No more than 80 hours may be accounted for as hours absent in any pay period. A subsidiary time card of actual hours worked must be maintained and approved following the end of the administrative pay period by the Supervisor.* Physicians on variable work schedules remain ineligible for premium pay.*]*

[(16)] **Work Unit.** An entity located in one place with a specific mission and with homogeneous procedures or technology, and headed by a supervisor or manager authorized to certify the employee's VA Form 4-5631, Time and Attendance Report, or other applicable agency documents for reporting employees' work schedules.

d. **Planning Flexible and Compressed Work Schedules.** (See chapter 2, paragraph 11d of this part.)

e. **Review of Alternative Work Schedules.** (See chapter 2, paragraph 12g(5).)

f. **Approval Authority and Responsibilities**

(1) Facility directors are authorized to approve flexible and compressed work schedules for employees under their jurisdiction. They are also responsible for ensuring that approved flexible and compressed work schedules are consistent with the criteria contained herein[, and with periodically reminding employees of workplace flexibilities available.

(2) Supervisors are responsible for assuring that sufficient numbers and kinds of personnel are scheduled to be present to carry out operations in an efficient and economical manner. To meet this responsibility, supervisors may place restrictions on the starting and stopping times of individual employees. Supervisors are also responsible for taking appropriate action if an employee under his or her jurisdiction fails to meet his or her responsibilities under subparagraph (3) below.

(3) Employees using flexible or compressed work schedules are responsible for fulfilling their obligations to account for a full day's work. Abuse of flexible or compressed work schedules may result in restrictions on the employee's starting and stopping times, termination of the employee's flexible schedule and/or appropriate disciplinary action.

g. **Flexitime**

(1) **General Requirements**

(a) The establishment of flexible tours of duty is limited to flexitour and modified flexitour, as defined in paragraph 5c above.

(b) Core time bands shall be determined by field facility directors; however, core time bands should be the same for employees performing similar work under similar situations. Facility directors may authorize deviations from approved core times in individual cases.

(d) A flexible work schedule under this paragraph and a compressed workweek under paragraph g may not be established in the same work unit.

(e) The modified flexitour may not be used in combination with on-call duty (see chapter 3, paragraph 5c(12) above.

(f) Flexible schedules shall not be established if they would result in the payment of any additional premium pay for work to an employee, or group of employees, who would not normally be entitled to premium pay (e.g., night differential, overtime, holiday pay, etc.).

(g) If it is found that a particular flexible schedule has had or would have an adverse impact (see par. 8), the facility Director shall not establish or shall discontinue the flexible schedule(s) of affected employees.

(2) **Credit Hours**

(a) Credit hours may be earned at the option of employees with supervisory approval.

[(b)] [Full-time and part-time physicians, dentists, podiatrists, chiropractors, and optometrists on a flexible schedule may earn credit hours for work in excess of their basic work requirement.]

[(c)] Employees do not receive overtime pay for credit hours and, unlike overtime, credit hours are not ordered in advance by management. Employees on flexible work schedules may work them to shorten the length of another workday or workweek. However, they may be used only after approval by the appropriate approving official.

[(d)] Full-time employees may carry over no more than 24 credit hours into the next pay period (part-time employees may carry over no more than 25 percent of the hours in their biweekly basic work requirement).

[(e)] When an employee ceases to work in a work unit where credit hours may be earned, the employee will be given the following options:

1. Sufficient advance notice to use earned credit hours prior to leaving the work unit;

2. Compensation for the earned credit hours at the employee's current rate of basic pay [(see (2)(f) below)]; or

3. Transfer of the earned credit hours to the new work unit, if credit hours have been authorized for that work unit.

[(f)] If compensated for credit hours, a full-time employee will be paid for not more than 24 credit hours. A part-time employee will be paid for not more than 25 percent of the hours in the employee's basic work requirement. Credit hours will not be transferred between facilities.[Full-time and part-time physicians, dentists, podiatrists, chiropractors, and optometrists will not be compensated for unused credit hours under any circumstances.]

(3) **Time and Attendance Records.** (See chapter 2, paragraph [12]f(3) of this part.)

(4) **Computation of Additional Pay for Employees on Flexible Schedules**

(a) **Overtime Hours.** Paragraph 5c of this chapter contains a definition of overtime hours for employees on flexible schedules. Such employees, however, are also eligible for callback overtime if they meet the conditions outlined in VA Handbook 5007.

(b) **Additional Pay for Night Work**[**.** An employee on a flexible schedule, who performs work within the period commencing at 6 p.m. and ending at 6 a.m., shall be entitled to additional pay for such work under the provisions of VA Handbook 5007.]

1. **Full-Time Employees.** If the core time band is during daytime hours (i.e., 6 a.m. to 6 p.m.) and the core time plus the flexible time are less than 8 daytime hours, the employee is entitled to night differential for the difference between 8 hours and the available number of daytime hours in the period of service. The employee, however, is entitled to the appropriate night differential for the entire period of service if at least 4 or more hours fall between 6 p.m. and 6 a.m.

2. **Part-Time Employees.** A part-time employee is entitled night differential for nightwork performed during his or her basic work requirement.

(c) **Additional Pay for Holiday Work**

1. A full-time employee on a flexible schedule, who performs non-overtime work on a day designated as his or her holiday, is entitled to his or her rate of basic pay, plus the applicable amount of additional pay for holiday work authorized under VA Handbook 5007, Pay Administration, for each hour of non-overtime holiday worked.

2. A part-time employee on a flexible schedule is entitled to the applicable amount of additional pay for holiday work, authorized under VA Handbook 5007 and chapter 2 of this part, for the number of hours he or she was scheduled to work that day, up to a maximum of 8 hours. Part-time employees are not entitled to a day off in lieu of the holiday. (See subparagraph (6) below.)

(d) **Additional Pay for Saturday or Sunday Work.** An employee on a flexible schedule, who performs work on a Saturday or Sunday, shall be entitled to additional pay for such work under the provisions of VA Handbook 5007.

(5) **Absence and Leave**

(a) For employees on flexible schedules, time off during the flexible and core time bands must be charged to the appropriate leave category, compensatory time off or excused absence, if appropriate.

(b) The maximum amount of sick or annual leave an employee may apply to his or her basic work requirement for any given day is the number of hours the employee is scheduled to work that day.

(6) **Holidays.** A full-time employee on a flexible schedule, relieved from working on a day designated as his or her holiday, shall be entitled to pay with respect to that day for 8 hours. A part-time employee prevented from working on the holiday shall be entitled to basic pay for the number of hours he or she was scheduled to work that day, up to a maximum of 8 hours. Part-time employees are not entitled to a day off in lieu of the holiday.

(7) **Excused and Unexcused Absences.** On the flexitour, the employee's selected starting and stopping times shall be used to determine the amount of excused or unexcused absence to be granted and/or charged. On the modified flexitour, the employee's selected starting and stopping times shall be used unless the employee has actually reported for work. In the latter instance, the actual time the employee reports, and his or her basic work requirement for that day, shall be used in making the determination.

(8) **Travel.** Time spent traveling away from the official duty station by an employee during the hours and days of his or her regularly scheduled tour of duty is considered hours of employment for the purposes of this appendix. Time spent in travel status by an employee outside of the regularly scheduled hours is compensable under the following conditions:

(a) Travel outside regularly scheduled duty hours must be officially ordered or approved and must meet one of the four conditions specified in section 7453(e)(5) of title 38, United States Code; and

(b) On the flexitour, the employee's selected starting and stopping times shall be used to determine if the employee is traveling during his or her regularly scheduled hours. On the modified flexitour, the employee's selected starting and stopping times shall be used unless the employee has already reported for work. In this instance, the actual time the employee reports, and his or her basic work requirements for that day, shall be used in making the determination.

g. **Compressed Workweeks**

(1) **General Requirements**

(a) Compressed work schedules shall be consistent with patient care requirements. For example, compressed work schedules may be adopted to expand clinic service hours, staff mobile clinics, or otherwise improve service to veterans.

(b) The method of charging employees leave remains unchanged.

(c) Full-time physicians, dentists, podiatrists [, chiropractors,] and optometrists participating in compressed workweeks remain continuously subject to call unless officially excused by proper authority. They will fulfill their minimum tour of duty and meet all other obligations that require their attendance beyond the minimum tour of duty (e.g., Medical or Admitting Office of the Day).

(d) Officials responsible for establishing work schedules may establish compressed work schedules for employees covered by this chapter. These officials may also restrict the types of compressed work schedules that may be approved if necessary to meet patient care needs.

(e) Officials authorizing compressed work schedules for residents are responsible for ensuring that they are adequately supervised.

(f) A compressed workweek may only be established if all daily tours of duty within the compressed workweek are in whole hour increments, excluding the meal period (e.g., eight 10-hour tours, eight 9-hour and one 8-hour tour, or six 12-hour and two 4-hour tours of duty each biweekly period). If, however, the meal period is considered hours of work under this chapter, any daily tour of duty on such a day must be in whole hour increments, including the meal period.

(g) Any previous method used to establish a compressed workweek (i.e., compensatory time off in lieu of regular overtime) shall be discontinued upon the establishment of a compressed workweek under this subparagraph.

(h) A compressed workweek under this subparagraph and a flexible work schedule under subparagraph f may not be simultaneously established in the same work unit.

(i) A compressed workweek shall not be established in a work unit if it will overlap an on-call tour of duty. A compressed workweek will not be established if it would result in an entitlement to premium pay to which an employee would not normally be entitled (e.g., night differential, overtime, holiday pay, etc.).

(j) An employee in a work unit of an organization, which is not covered by a collective bargaining agreement, shall not be required to participate in any compressed workweek unless a majority of employees in the work unit who would be included in the compressed workweek have voted to be included. For the purpose of this vote, a majority is obtained whenever the number of affirmative votes exceeds one-half the number of employees in the work unit proposed for inclusion in the compressed workweek. The specific procedures for this vote are left to the approving official. Use of written secret ballots are encouraged, however, since chapter 2, paragraph 11(g) of this part contains a prohibition against the coercion of employees making such determinations.

(k) If, upon written request of an employee, the official, or designee, authorized to approve compressed workweeks, determines that participation of an employee in a compressed workweek would be a personal hardship, the approving official, or designee, shall:

1. Except the employee from the compressed workweek; or

2. Reassign the employee to the first position in the affected organization:

a. Which becomes vacant after such determination;

b. Which is not included in a compressed workweek

c. For which the employee is qualified: and

d. Which is acceptable to the employee.

3. Determinations under this subparagraph shall be made no later than 10 days after the written request is received by the appropriate deciding official.

(l) The approving official may exclude from compressed workweeks any employee or group of employees whose inclusion would create an adverse impact (see chapter 2, paragraph 11g(5).

(2) **Computation of Additional Pay**

(a) **Overtime Hours.** For full-time employees, the term "overtime hours" refers to hours of work officially ordered or approved and performed in excess of the basic work requirement [for the scheduled period of service (but must be in excess of 8 consecutive hours) or the administrative workweek (but must be in excess of 40 hours), or in excess of 80 hours for the pay period]. [ ] In order to qualify for callback overtime on a compressed tour, the period of callback must be outside of and unconnected with the employee's basic work requirement and must qualify as overtime as stated above.

(b) **Night Differential**

1. [An employee who performs service within the period commencing at 6 p.m. and ending at 6 a.m. shall receive additional pay for each hour of service provided 4 or more hours] fall between 6 p.m. and 6 a.m.

2. If less than 4 hours of [service] fall between 6 p.m. and 6 a.m., the employee will be entitled to night differential for each hour of service performed between those hours.

(c) **Additional Pay for Holiday Work.** Employees on compressed work schedules who perform non-overtime work on the day designated as their holiday are entitled to their basic rate of pay, plus premium pay equal to basic pay for that holiday work.

(d) **Saturday Pay.** Employee on compressed schedules are entitled to additional pay for Saturday work if they perform work for which such additional pay is authorized (see part V, chapter 6 of VA Handbook 5007).

(e) **Sunday Pay.** Employees on compressed schedules who perform work during a period of service, a part of which is performed on Sunday, are entitled to Sunday premium pay for the entire period of service (see part V, chapter 6 of VA Handbook 5007).

(3) **Absence and Leave**

(a) **Holidays**

1. **Full-Time Employees**

[(a) **In Lieu of Holidays**

(1) All full-time employees on compressed work schedules are entitled to an "in lieu of" holiday when a holiday falls on a nonworkday. In such cases, the employee's holiday is the basic workday immediately preceding the nonworkday.

(2) There are three exceptions:

(a) If the nonworkday is Sunday, the next basic workday is the "in lieu of" holiday.

(b) If Inauguration Day falls on a nonworkday, there is no provision for an "in lieu of" holiday.

(c) If the head of an agency determines that a different "in lieu of" holiday is necessary to prevent an "adverse agency impact," he or she may designate a different "in lieu of" holiday for full-time employees under compressed work schedules. (See 5 U.S.C. 6131(b).)

(3) An employee is not entitled to another day off as an "in lieu of" holiday if a Federal office or facility is closed on a holiday because of a weather emergency or when employees are furloughed on a holiday.]

2. **Part-time Employees.** If a holiday falls on a day during a compressed workweek for part-time employees, and if the employees are prevented from working, they are entitled to pay for the number of hours they were scheduled to work that day. Part-time employees are not entitled to a day off in lieu of the holiday.

(b) **Leave.** Time off from an employee's basic work requirement must be charged to the appropriate leave category unless the employee is authorized compensatory time off or excused absence.

(c) **Excused and Unexcused Absences.** The amount of excused or unexcused absence shall be based on the employee's established compressed work schedule in effect for the period of the absence.

(4) **Criteria and Review.** See chapter 2, paragraph 11g(5).

(5) **Prohibition of Coercion.** See chapter 2, paragraph 11g(8).

## 7. ALTERNATE WORK SCHEDULES FOR REGISTERED NURSES

a. **General**. This section provides mandatory hours of duty and leave policies and procedures related to a 72/80 Work Schedule and the Baylor Plan and applies to nurses and nurse anesthetists appointed at

VA health-care facilities under 38 U.S.C. 7401(1) or 7405a(1)(A). This section also provides procedures related to the 9-Month Work Schedule for certain nurses and nurse anesthetists appointed under 7405a(1)(A). This section applies to all such nurses who are providing direct patient care services. The use of Alternate Work Schedules is authorized by the Secretary in order to obtain or retain the services of registered nurses at any Department health-care facility.

b. **References**

(1) 38 U.S.C. 7401(1), 7405a(1)(A) and 7456A.

c. **Definitions.** The following definitions shall apply:

(1) **Administrative Workweek.** A period of seven consecutive calendar days, which coincide with the calendar week, Sunday through Saturday.

(2) **Alternate Work Schedules for Registered Nurses.**

(a) **72/80 Work Schedule.** Six regularly scheduled 12-hour tours of duty [ ] within a pay period that is considered for all purposes to be a full 80 hour pay period.

(b) **9-Month Work Schedule.** Nine months full-time with three months off duty within a fiscal year, paid at 75 percent of the full-time rate for such nurse's grade and step each bi-weekly pay period of the fiscal year.

(c) **Baylor Plan.** Two regularly scheduled 12-hour tours of duty contained entirely within the first and last day of the administrative workweek (Sunday and Saturday).

(3) **Basic Work Requirement.** The number of hours during a bi-weekly pay period, excluding overtime hours which an employee is required to work or required to account for by taking official leave.

(4) **Bi-weekly Pay Period.** The pay period covering two administrative workweeks.

(5) **Overtime Work.** For full-time Alternate Work Schedule employees the term overtime hours refer to hours of work officially ordered or approved and performed outside of and in addition to the basic work requirements.

(6) **Nurses.** A registered nurse (RN) or nurse anesthetist appointed under 38 U.S.C. 7401(1) or 7405a(1)(A), but does not include graduate nurse technicians, nurse technicians, student nurse technicians, or the Chief Nursing Officer of the Nursing Services in VA Central Office, who is appointed under 38 U.S.C. 7306.

(7) **Tour of Duty.** Under Alternate Work Schedules, an employee's tour of duty is synonymous with the employee's basic work requirement set by the authorizing official.

(8) **Work Unit.** An entity located in one place with a specific mission and with homogeneous procedures or technology and headed by a supervisor or manager authorized to certify the employee's

VA Form 4-5631, Time and Attendance Report, or other applicable agency documents for reporting employees' work schedules.

d. **Planning Alternate Work Schedules.** A [72/80], 9-Month, and/or the Baylor Plan Alternate Work Schedule require advanced planning and effective employee communication. The positive and negative effects of such Alternate Work Schedules must be carefully considered. If employees affected are in an exclusive unit of recognition the employee involvement will be provided by or coordinated with their exclusively recognized labor organization (only to the extent that Section 7422 does not apply). Questions in this regard should be referred to the Labor Relations staff. A comprehensive analysis of the work require-ments in the work unit and evaluating the potential impact on the three types of Alternate Work Schedules on the functions of the work unit should be made. This includes special attention to the following:

(1) Workload Characteristics

(a) Tasks which must be performed within a specific period or according to a predetermined schedule;

(b) How workflow can be adjusted to accommodate a system of a [72/80], 9-Month, or the Baylor Plan work schedules;

(c) The coordination required between work units and functions and employee scheduling;

(d) The period of daily or weekly peak workloads where all or most of the employees in the work unit must be present;

(e) The employee coverage required during public service hours; and

(f) The effect of such schedules on efficiency and productivity of the workload.

(2) **Criteria to Implement the Alternate Work Schedules for Registered Nurses**

(a) **VA Nurses Who May Request a** [**72/80**] **Work Schedule**. All full-time or part-time registered nurses and nurse anesthetists under 7401(1) and 7405 appointed to title 38 positions are eligible to request a [72/80] Work Schedule authorized by PL 108-445, except the following:

(1) Graduate nurse technicians

(2) Nurse technicians pending graduation

(b) **Justification**: To maximize the recruiting and retention benefits authorized under PL 108-445 all title 38 RNs except those noted above may request the [72/80] Work Schedule.

(c) **VA Nurses Who May Request a 9-Month Work Schedule**. All full-time or part-time registered nurses and nurse anesthetists under 7401(1) and 7405 appointed to title 38 positions are eligible to request a 9-Month Work Schedule authorized by PL 108-445, except the following:

(1) Graduate nurse technicians

(2) Nurse technicians pending graduation

(d) **Justification**: While it is anticipated that the employee will work 9-months consecutively within a fiscal year, the Facility Director may approve a non-consecutive work schedule. To maximize the recruiting and retention benefits authorized under PL 108-445, all title 38 RNs except those noted above may request a 9-Month Work Schedule.

(e) **VA Nurses Who May Request a Baylor Plan Work Schedule**. All full-time or part-time registered nurses and nurse anesthetists under 7401(1) and 7405 appointed to title 38 positions are eligible to request the Baylor Plan work schedule authorized by PL 97-251, except the following:

(1) Graduate nurse technicians

(2) Nurse technicians pending graduation

(f) **Justification**: To maximize the recruiting and retention benefits authorized under PL 97-251, all title 38 RNs except those noted above may request the Baylor Plan work schedule.

e. **Delegation of Authority and Responsibilities.**

(1) Directors of field facilities or their designees are authorized to grant permission for any applicable RN who requests to work one of the Alternate Work Schedules authorized by Section 4 of PL 108-445 or by PL 97-215 (Baylor Plan).

(2) The Facility Director will make the decision based on the recruiting and retention needs of the unit or facility in general.

(3) Supervisors are responsible for assuring that sufficient staff and personnel specialists are scheduled to be present to carry out operations in an efficient and economical manner. To meet this responsibility, supervisors may place restrictions on the shift start and stop times of individual employees. Supervisors are also responsible for taking appropriate action if an employee under his or her jurisdiction fails to meet his or her responsibilities in subparagraph (4).

(4) Registered nurses or nurse anesthetist working under Alternate Work Schedules are expected to work their full tour of duty. Abuse may result in termination of an employee's Alternate Work Schedule and/or appropriate disciplinary action.

(5) The Director has the option not to establish the work schedule if it is found that a particular Alternate Work Schedule would have an adverse impact on the Departments health-care facility.

(6) The Director may discontinue the Alternate Work Schedule(s) of the affected employees if it is determined that a particular Alternate Work Schedule has an adverse impact on the Departments health-care facility.

f. **Appointments.** Nurses shall only be placed on an Alternate Work Schedule at the beginning of administrative workweek and taken off at the end of an administrative workweek.

(1) [**72/80**] **Work Schedule**. Nurses on a [72/80] Work Schedule are considered a 0.90 full-time equivalent employee [ ] for the purposes of determining compliance with personnel ceilings. The use of this Alternate Work Schedule is authorized by the Secretary in order to obtain or retain the services of registered nurses at any Department health-care facility.

(2) **9-Month Work Schedule**. Nurses on a 9-Month Work Schedule with 3 months off shall be considered a 0.75 full-time equivalent employee in computing full-time equivalent employees for the purposes of determining compliance with personnel ceilings. An appointment under Section 7405, requires the employee's written consent, to work full-time for nine months with 3 months off duty, within a fiscal year. The use of this Alternate Work Schedule is authorized by the Secretary in order to obtain or retain the services of registered nurses at any Department health-care facility.

(3) **Baylor Plan**. Nurses on the Baylor Plan are considered to be serving on a full-time basis for all personnel management purposes, except for the computation of full-time equivalent employees for the purposes of determining compliance with personnel ceilings. Therefore, employees serving on less than a full-time basis must be converted to a full-time appointment in accordance with VA Handbook 5005, upon or before being placed on the Baylor Plan. When selecting nurses to be placed on the Baylor Plan, preference shall be given to current employees appointed under 38 U.S.C. 7401(1). Temporary nurses may only be used as a last resort in order to obtain adequate nurse staffing.

g. **Benefits.**

(1) Nurses appointed under the Alternate Work Schedule will receive a written notice of the effect, if any, that the Alternate Work Schedule will have on the employee's health and life insurance premiums, retirement, probationary status, or other benefits or condition of employment. Part-time nurses have no tenure or appeal rights related to tenure. The notice shall be provided not later than 14 days (work days) before the employee consents to the Alternate Work Schedule.

(2) [**72/80**] **Work Schedule**. Nurses on a [72/80] Work Schedules are considered to be full-time employees for all purposes related to benefits.

(3) **9-Month Work Schedule**. Nurses on a 9-Month Work Schedule are considered part-time employees (0.75 full-time equivalent) for purposes of computing benefits under Chapters 83 and 84 of title 5 and are considered full-time employees for purposes of Chapter 89.

(4) **Baylor Plan**. Nurses on the Baylor Plan are considered to be serving as a full-time employees for all purposes related to benefits.

h. **Implementation Procedures.**

(1) Nurses requesting the [72/80] Work Schedule or the Baylor Plan must complete VA Form 0870a, Request for Alternate Work Schedule. The completed form is to be submitted to the employee's servicing Human Resources (HR) office.

(2) Nurses requesting the 9-Month Work Schedule must complete VA Form 0870a, Request for Alternate Work Schedule and VA Form 0870b, Consent of Appointment for 9-Month/3-Month Off Alternate Work Schedule. The completed forms are to be submitted to the employee's servicing HR office.

(a) The employee will initiate the process by completing VA Form 0870a, Request for Alternate Work Schedule. Once this schedule has been approved, HR will contact the employee and provide them with either the Notice on the 9-Month Work Schedule Regarding the Impact on Benefits and Other Conditions of Employees for New Hires **or** the Notice on the 9 Month Work Schedule Regarding the Impact on Benefits, Probationary Status and Other Conditions of Employment – Conversion from Full-Time to Part-Time/Current Part-time to 9-Month Work Schedule, as appropriate. Employees must be provided a copy of the appropriate Notice at least 14 days (work days) prior to completion and signing of VA Form 0870b, Consent of Appointment for 9- Month/3-Month Off Alternate Work Schedule. Employees will be responsible for submitting this form to their servicing HR office. A copy of the approved VA Form 0870a must be given to the employee and the original filed on the left side of the employee's Official Personnel Folder (OPF). HR staff should annotate that this form should not be removed from the OPF until the employee is no longer on a 9-Month Work Schedule.

(b) A sample copy of the Notices for new hires and conversion to a 9-Month/3-Month Off Work Schedule are respectively located in Appendix E and F. A copy of the Notice, signed and dated by the employee, should be filed on the left side of the employee's OPF. HR staff should annotate that the Notice should not be removed from the OPF until the employee is no longer on a 9-Month Work Schedule.

(c) Although a 9-Month Work Schedule is based on the fiscal year, it is permissible for an RN to start a 9-Month Work Schedule anytime during the fiscal year, as long as the effective date is the beginning of a pay period.

(d) Employees approved to work a 9-Month/3-Month Off Alternate Work Schedules are expected to fulfill their work schedule obligations. The scheduling of off duty days must have supervisory approval and need to be made in advance at the time of initial appointment and at the beginning of each fiscal year thereafter as long as the schedule is in effect. If an employee receives pay for off- duty days prior to earning the entitlement and subsequently separates from VA for personal reasons, (e.g., life event situation, retirement, resignation) or for cause (e.g. unacceptable performance or conduct), the employee may be subject to debt collection actions for any salary overpayments. Salary overpayments will be subtracted from the employee's final pay. Employees who separate prior to receiving pay for off duty time earned will receive a lump sum payment of the total pay due upon separation.

[ ]

i. **Time and Attendance Records.** (see chapter 2, paragraph [12]f(3)) of this part.

j. **Computation of Pay for Registered Nurses on Alternate Work Schedules.** Policies concerning pay administration for nurses on Alternate Work Schedules such as a 72/80, 9-Month and the Baylor Plan are contained in VA Handbook 5007, Pay Administration.

k. **Computation of Additional Pay for Registered Nurses on Alternate Work Schedules.** Policies concerning pay administration for nurses on Alternate Work Schedules such as a 72/80, 9-Month and the Baylor Plan are contained in VA Handbook 5007, Pay Administration.

l. **Overtime Hours.** Paragraph 6(c) of this chapter contains a definition of overtime hours for employees on Alternate Work Schedules. Such employees, however, are also eligible for call-back overtime if they meet the conditions outlined in VA Handbook 5007. To ensure the continuity of patient care services, and only when necessary, management can require mandatory overtime. For nurses working under the Alternate Work Schedule, overtime means:

(1) **72/80 Work Schedule.** A registered nurse is entitled to overtime pay for performing officially ordered or approved overtime services as follows:

(a) Service in excess of 72-hour tour of duty within a 80 hour pay period.

(b) Service in excess of 12 hour for any day included in the nurse's regularly scheduled 72-hour tour of duty.

(c) Service in excess of 8 consecutive hours on a day other than a day the nurse is regularly scheduled to work a 12-hour tour of duty.

(d) Service in excess of 80 hours during a pay period.

(2) **9-Month Work Schedule.** A]nurse is entitled to overtime pay for performing officially ordered or approved overtime service as follows, regardless of whether it is performed during the 9-month duty period or the 3-month off duty period:

(a) Service in excess of 40 hours in an administrative workweek.

(b) Service in excess of 8 consecutive hours. For nurses on compressed work schedules, overtime pay is payable for service performed in excess of the employee's daily work requirement.

(3) Baylor Plan. A nurse on the Baylor Plan is entitled to overtime pay under 38 U.S.C. 7453(e) or (i) for performing officially ordered and approved overtime service as follows:

(a) Service in excess of 24 hours on the weekend.

(b) Service in excess of 8 consecutive hours on a day other than Saturday or Sunday.

(c) All or part of actual service performed in excess of 40 hours in an administrative workweek, provided such payments were officially authorized. NOTE: *Hours of duty during the basic workweek shall be credited on an hour-for-hour basis when computing the amount of service performed during the administrative workweek.*

[m.] **Additional Pay.** Policies concerning pay administration for registered nurses on Alternate Work Schedules such as a [72/80], 9-Month and the Baylor Plan are contained in VA Handbook 5007, Pay Administration. This includes night differential, weekend pay, holiday, and on-call pay.

[n.] **Absence and Leave**

(1) [**72/80**] **Work Schedule**. For nurses on a [72/80] Work Schedule, time off on approved sick leave or annual leave during a regularly scheduled 12-hour tour of duty should be charged for such leave at a rate of ten hours of leave for every nine hours of absence (charged 1.111 for each hour).

(2) **9-Month Work Schedule**. For nurses on a 9-Month Work Schedule, time off on approved sick leave or annual leave during a regularly scheduled tour of duty should be charged one hour for each hour of sick or annual leave taken.

(3) **Baylor Plan**. [For n]urses on the Baylor Plan [time off on] approved sick leave or annual leave [during a regularly scheduled tour of duty should be charged one hour for each hour of sick or annual leave taken].

[o.] **Holidays.** (See part III, chapter 3, paragraph 8(a)(b)). *An in-lieu non-workday shall not be authorized for a nurse, nurse anesthetist, PA or EFDA who works on a holiday or the day designated as a holiday.*

[p.] **Excused and Unexcused Absences.** On a [72/80] and the Baylor Plan Alternate Work Schedule, the hours unavailable during the expected tour of duty shall be used to determine the amount of excused or unexcused absence to be granted and/or charged (1.111 leave per hour for [72/80]-hour work schedule and [one hour] leave per hour for the Baylor Plan). On the 9-Month Alternate Work Schedule, the employee's selected shift start and stop time shall be used unless the employee has actually reported for work. In the latter instance, the actual time the employee reports and his or her basic work requirement for that day, shall be used in making the determination.

[q.] **Prohibition of Coercion.** See chapter 2, paragraph 11g(8).

[**8. OVERTIME DUTY FOR NURSING STAFF**. For the purpose of this paragraph "nursing staff" is defined as registered nurses (including nurse anesthetists), licensed practical or vocational nurses, and nursing assistants.

a. Limitations

(1) Full-Time Nursing Staff. Such staff may not be required to work more than 40 hours in an administrative work week or more than 8 consecutive hours in a day.

(2) **Full-Time Nurses and Nurse Anesthetists on the Baylor Plan.** Such nurses and nurse anesthetists on the Baylor Plan may not be required to work more than:

(a) 12 hours in a day on Saturday or Sunday; or

(b) 24 hours on the weekend.

(3) **Full-Time Nurses and Nurse Anesthetists on the 72/80 Work Schedule.** Such nurses and nurse anesthetists on the 72/80 Work Schedule may not be required to work more than:

(a) 12 hours in a day; or

(b) 72 hours in a pay period.

b. **Voluntary Overtime**

(1) Nursing staff may on a voluntary basis elect to work approved overtime hours otherwise prohibited by subparagraph a above.

(2) The refusal of nursing staff to work hours otherwise prohibited by subparagraph a may not be grounds for any adverse action.

c. **Overtime Under Emergency Circumstances**

(1) Full-time nursing staff may be required to work hours otherwise prohibited by subparagraph a above (mandatory overtime) if:

(a) the work is a consequence of an emergency that could not have been reasonably anticipated;

(b) the emergency is non-recurring and is not caused by or aggravated by inattention or lack of reasonable contingency planning;

(c) management has exhausted all good faith and reasonable attempts to obtain voluntary workers;

(d) the nurse staff have critical skills and expertise that are required for the work; and

(e) the work involves work for which the standard the standard of care for a patient assignment requires continuity of care through completion of a case, treatment, or procedure.

(2) Nursing staff may not be required to work hours under this subsection after the need for a direct role by the staff responding to medical needs resulting from the emergency ends.

d. **Policy Against Certain Work Hours.** Registered nurses on any work schedule shall not provide direct patient care in excess of 12 consecutive hours or in excess of 60 hours in any 7-day period, except in the case of nurses providing emergency care.]

## CHAPTER 4. ALTERNATIVE WORKPLACE ARRANGEMENTS (TELEWORK [AND REMOTE WORK])

1. **PURPOSE.** This chapter sets forth Departmental policies and procedures on alternative workplace arrangements (telework [and remote work]). Telework [and remote work] provide[] employees with the opportunity to perform their work at locations other than the traditional office setting.

2. **COVERAGE.** This chapter covers all VA employees in telework [and remote work] suitable positions.

3. **EXCLUSIONS.**

   a. Employees who have been officially disciplined for absence without approved leave (AWOL) for more than [five] days in any calendar year after December 9, 2010.

   b. Employees who have been officially disciplined for violations of subpart G of the Standards of Ethical Conduct for Employees of the Executive Branch for viewing, downloading or exchanging pornography, including child pornography, on a Federal Government computer or while performing official Federal Government duties.

4. **RESPONSIBILITIES.**

   a. Under Secretaries, Assistant Secretaries, Other Key Officials, or their designees, are responsible for the administration of telework [and remote work] programs and [for implementing] this policy within their organizations; [including for employees in VA Central Office, the Office of Information and Technology, and Program Offices of the Veterans Health Administration. Administration of telework and remote work programs includes approving or discontinuing alternative work arrangements,] ensuring that managerial, logistical, organizational, or other barriers to implementation and successful functioning of the telework [or remote work] program[s] are removed. [The responsibility for approving or discontinuing telework or remote work arrangements may be delegated as far down as first level] supervisors. Each Administration and Staff Office will be required to ensure employee telework [and remote work] data is being recorded in a timely manner in [the VA personnel system of records (currently HR·Smart)] and the VA electronic time and attendance systems.

   b. [Where responsibility for approving or discontinuing telework or remote work arrangements is delegated to] Facility Directors, [they] are responsible for [the administration of telework and remote work] programs [for employees under their jurisdiction]. [Facility Directors will] periodically remind employees of the workplace flexibilities available. The responsibility for approving or discontinuing telework [or remote work] arrangements may be delegated as far down as first level supervisors. The approval of telework [and remote work] arrangements must be coordinated with facility Human Resources Officers and supervisors.

c. The [Chief Human Capital Officer, Human Resources and Administration/ Operations, Security and Preparedness shall] advise management and operating officials on the policies and procedures in this chapter.

d. Supervisors [shall]:

(1) [D]etermin[e] position suitability and employee eligibility for telework [and remote work] arrangements;

(2) Coordinat[e] the completion of the User's Remote Computing Security Agreement with employees (available in the "VA Remote Access Guidelines.");

(3) Ensur[e] that the employee has remote access;

(4) Ensur[e] adequate coverage during public business hours; that operations continue to be carried out in an efficient and economical manner; and that participating and non-participating employees are treated equitably;

(5) [Verify employee required training is completed and complete supervisor telework training, as indicated on VA Form 0740;

(6) Ensure VA Form 0740 (or electronic equivalent) is complete prior to employee starting telework or remote work;]

(7) Coordinat[e] updates to the telework indicator code in HR·Smart with their servicing Human Resources (HR) office[, including the submission of a request for processing personnel action when an employee's telework or remote work request requires a change in duty station location for locality-based pay]; and

(8) Coordinat[e] changes to employee telework [or remote work] schedules with their servicing timekeeper.

e. Timekeepers are responsible for coding employee timecards with the appropriate descriptors for regularly schedule[d] telework or ad-hoc/situational telework each pay period.

f. Employees [shall]:

(1) Maintain productivity and fulfill their obligation to account for their scheduled daily tour of duty. Participants may be permitted to work at home or other telework worksites full days or a portion of a day. Leave [must] be requested for the period of time not worked;

(2) Work[ ] with their supervisor in completing the remote access request through the Remote Access Self Service Portal;

(3) Request permanent and temporary changes to their telework schedules through their supervisors; and;

(4) [Ensure that they are working from the approved alternative worksite location and to request supervisory approval in advance for any temporary changes to the alternative worksite location.]

**5. DEFINITIONS.**

a. **Ad Hoc Telework**. Telework that occurs on an occasional, non-routine basis. Telework that occurs to complete short-term special assignments or to accommodate special circumstances even though the telework arrangement may occur continuously for a limited and specific period of time.

b. [**Agency Worksite**. The official agency location where the employee reports and work activities are based, absent a telework agreement.]

c. **Alternative Work[s]ite**. [The location where the employee is approved to work when not at the agency worksite. Generally, this is the employee's residence (home).]

d. **Classified Documents.** Documents that have been officially designated as either Confidential, Secret or Top Secret.

e. **Continuity of Operations Planning (COOP)**. Planning to ensure that the capability exists to continue agency essential functions across a wide range of emergencies, either natural or declared.

f. **Docking Station.** A piece of equipment that is used with an agency issued laptop computer to allow for the convenient and quick connection of peripheral and/or telecommunications.

g. **Domestic Employee Teleworking Overseas (DETO) Arrangement**. A telework arrangement wherein an employee temporarily performs the work requirements and duties of their domestic civil service position from an approved [foreign] overseas location. Employees may not telework from a foreign location without an approved DETO agreement.

h. **DETO Agreement**. A written agreement, in addition to the VA Form 0740, Telework Agreement, which is required for all VA employees conducting official U.S. Government business in a foreign location. DETO agreements are extremely rare but may be approved on a case-by-case basis in accordance with the guidance and procedures specified in [VA financial policy Volume XIV, Chapter 6 and U.S. Department of State policy guidelines.]

i. **[Locality Payment**. A locality-based comparability payment payable under 5 U.S.C. § 5304 and 5 C.F.R. § 531.605. An employee's locality payment is the

difference between the employee's locality rate and the employee's scheduled annual rate of pay.]

j. **Mobile Work.** Work which [requires] routine and regular travel to conduct work [with] customers or [several] worksites as opposed to a single authorized alternative worksite. Examples of mobile work include site audits, site inspections, investigations, property management, and traveling between worksites, or on Temporary Duty (Note: Normal commuting time from home to work and from work to home is not counted as hours of work).

k. **Official Worksite.** The [official worksite where the employee regularly performs their duties as determined by 5 C.F.R. § 531.605. For most employees, the official worksite is the agency worksite, including a teleworker. For a remote employee, the official worksite is the worksite to which the supervisor and employee agreed (e.g., the employee's residence) for location-based pay entitlements and travel. See VA Handbook 5007, Chapter 9, Part III for guidance on official worksite determinations for pay purposes.]

l. **Regular and Recurring Telework**. An approved telework schedule where eligible employees work at an alternative work site on a regular, recurring, and ongoing basis. [ ]

m. **Remote Work**. [An alternative work arrangement in which an employee, under a written remote work agreement, is scheduled to perform their official duties at an alternative worksite and is not expected to perform work at an agency worksite on a regular and recurring basis. A remote worker's official worksite may be within or outside the commuting area of an agency worksite.

n. **Remote Work Agreement**. A required written agreement, completed and signed by an employee and appropriate officials, outlining the terms and conditions of a remote work arrangement. VA Form 0740 or the electronic equivalent will be used to document the remote work agreement.]

o. **Telework.** An [ ] arrangement under which an employee[, under a written telework agreement,] performs the duties and responsibilities of such employee's position, and other authorized activities, from an approved [alternative] worksite other than the location from which the employee would otherwise work. [Unlike remote work, the employee is expected to report to the agency worksite on a regular and recurring basis. If less than two-days a pay period, this may impact locality payments.]

p. **Telework Agreement**. A required written agreement, completed and signed by an employee and appropriate officials, outlining the terms and conditions of an alternative workplace arrangement (telework). [VA Form 0740 or the electronic equivalent will be used to document the telework agreement.]

q. **Telework Coordinator**. A VA employee designated in each organization to handle the responsibilities of maintaining a record of employees under telework

agreements and any other duties requested by management to help manage a facility's telework program.

r. **Virtual Work**. Work performed on a full-time basis using a VA-leased space or at a VA facility other than the facility that hired the employee.

## 6. POLICIES AND PROCEDURES [FOR TELEWORK].

a. It is [VA] policy [ ] to encourage the use of [telework as an] alternative workplace arrangement[ ]. Managers and supervisors should permit eligible employees to participate in telework to the maximum extent possible provided it does not diminish employee performance or Departmental operations. Telework supports VA goals for improving environmental stewardship and providing employees with greater worklife flexibilities, as well as providing [] cost savings and an effective and efficient means to continue performing mission critical functions during local or national incidents.

b. Managers and supervisors must determine whether a position is suitable for telework and whether the employee is eligible to participate in a telework arrangement. Managers and supervisors also must issue notification letters and/or emails to employees apprising them of their eligibility to participate in telework (see sample letters in appendices A and B of this part). The procedures for the notification may be determined at the local level with appropriate bargaining unit involvement.

c. Telework is not an employee entitlement. An employee's participation in telework is voluntary, and approval will be based on management's determination that [participation in] telework supports the mission of the organization and [is consistent with individual performance, team, and organizational work requirements]. Management may disapprove or terminate a [telework] arrangement if it is not compatible with or does not contribute to the organization's mission [or results in diminished individual, group, team, or organizational performance.] Telework notification letters should be provided in writing and include the business-based rationale for the decision. This is a matter for local negotiation.

d. Employees who meet the criteria for telework may participate in telework arrangements in accordance with applicable laws and collective bargaining agreements. Participation in a telework arrangement is subject to supervisory approval. Whenever appropriate, management may consider establishing telework arrangements to meet its needs as well as those of employees. Telework provides managers, supervisors, and employees with alternatives to the [agency] worksite in accomplishing work objectives.

e. Adequate coverage must be maintained. Teleworkers, therefore, may be required to return to the [agency] worksite on scheduled telework days based on the needs of the office. In such instances, a recall to the office for operational reasons or in support of a mission requirement is not a termination of the

telework agreement. Requests by teleworkers to change their scheduled telework days in a particular week or bi-weekly pay period should be accommodated by the supervisor where practicable, and consistent with mission requirements.

f. [ ]Telework may be used as a reasonable accommodation for employees with qualifying disabilities under the [Rehabilitation Act of 1973, as amended. Telework may also be used as an accommodation under Title VII of the Civil Rights Act of 1964 and the Pregnancy Discrimination Act]. Detailed guidance on [requests for] reasonable accommodation [related to disability] is found in VA Handbook 5975.1. [Refer to VA Directive 5975 for guidance on requests related to religious accommodation or pregnancy.]

g. [With supervisory approval,] telework arrangements may be established at the employee's residence, satellite centers, and other temporary alternative workplace arrangements such as hoteling (workspaces assigned for use by reservation on an as-needed basis), hot desking (locating workspaces assigned on a first come, first served basis), [and] hotel rooms [ ] when determined by work unit supervisors to be consistent with the mission of VA.

h. Prior to initiating, modifying, or terminating a telework arrangement that affects employees in a collective bargaining unit, appropriate labor relations obligations must be fulfilled.

i. It is recommended that telework agreements be reviewed at least annually, but no more than quarterly (unless there are specific concerns with the agreement) to determine the impact on work operations.

j. If management determines that a telework arrangement is not meeting the operational needs of the organization, the arrangement will be modified no sooner than two weeks after the employee is notified, or in accordance with the required notice periods specified in applicable collective bargaining agreements. Supervisor modification or termination of the arrangement or an employee's request to terminate an arrangement requires two weeks' notice except where:

(1) Otherwise specified in a collective bargaining agreement;

(2) Work-related circumstances require otherwise, e.g., an emergency situation;

(3) Management determines that the teleworker is not meeting performance criteria;

(4) The employee breached information security protocol or;

(5) The employee works overtime without prior advanced approval [See Part I, Paragraph 4r]. Employees are not authorized to work overtime unless ordered and approved by the supervisor in advance. Unauthorized

overtime will not be credited. Telework agreements may be terminated for employees who work unauthorized overtime. The decision to terminate the agreement should be made on a case-by-case basis based upon the circumstances after discussion with the employee.

k. Equal employment opportunity principles are fully applicable to the operation of this program.

l. Employees with mission-critical duties and those who may be required to telework in the case of a Continuity of Operations (COOP) event, office closure to the public due to adverse or inclement weather, or pandemic health crisis must have an approved telework agreement in place.

m. A new telework agreement should be completed if the employee is assigned to work under a new supervisor or if the terms of the telework agreement change.

n. Telework is not intended to serve as a substitute for dependent/elder care. [The primary intent of the telework program is to support the mission of the office in an alternative work setting. Telework may not be used as an alternative to or in lieu of dependent care/elder care. Employees may not telework with the intent of or for the sole purpose of meeting dependent care responsibilities while performing official duties. While performing official duties, employees are expected to arrange for dependent care/elder care in the same manner as they would if they were working at an agency worksite].

o. The opportunity to participate in telework is offered only with the understanding that it is the responsibility of the employee to ensure that a proper work environment is maintained (e.g., dependent/elder care arrangements are made so as not to interfere with the work, personal disruptions such as non-business telephone calls and visitors are kept to a minimum, etc.). [While the presence of dependents in the home is not an absolute bar to teleworking, employees must not engage in dependent care/elder care activities when performing official VA duties. Employees may take leave, with supervisory approval, or adjust their work schedule under a flexible schedule to complete a full workday while attending to dependent care/elder care responsibilities.] A special exception may only be authorized in circumstances such as a pandemic or other emergency. When telework is authorized under such exception, the employee is expected to account for work and non-work hours during the tour of duty and take appropriate leave (paid or unpaid) to account for time away from normal work-related duties. Supervisors and employees should discuss this scenario in advance to determine the limits of the employee’s ability and how communication and workflow will be affected.

p. [An employee may participate in telework while working an alternate work schedule such as a compressed or flexible work schedule.]

## 7. TELEWORK CRITERIA.

a. **Participation.** Employee participation in a telework arrangement is voluntary. Managers should allow eligible employees to telework to the maximum extent practicable without diminished employee or organizational performance.

(1) VA employees authorized for telework arrangements must occupy a suitable position [ ]. Employees may be denied eligibility to telework if they do not have a history of being “reliable, responsible, and able to work independently.” Both full-time and part-time employees may participate in a telework arrangement. Telework is not recommended for trainee or intern positions or during the first 90 calendar days of any probationary period. However, under emergent or extenuating circumstances there may be authorized exceptions on a case-by-case basis.

(2) The employee’s immediate supervisor is responsible for determining the requirements and expectations of a telework arrangement to include the appropriate number of days and which job duties may or may not be performed remotely by the employee. This should be done in collaboration with the employee. Each arrangement to telework is to be considered individually and documented in a written agreement [, on VA Form 0740 or the electronic equivalent (through the appropriate VA personnel system of record). The supervisor should maintain a copy of the agreement and provide a copy] to the employee. The supervisor shall [also] inform the timekeeper so that telework is recorded appropriately in the electronic time and attendance system. [Paper submissions on VA Form 0740 additionally require the supervisor provide information to the HR office so the telework agreement is coded into the VA personnel system of record HR Smart.]

(3) All teleworkers and their immediate supervisors must receive training designed to provide the employee and supervisor with a smooth transition to telework. The training module is available via the Talent Management System (TMS) [under course title TMS Training for Employees (VA 1367006) and TMS Training for Managers (VA 1366994).]

b. **Position Suitability.**

(1) Management officials are responsible for determining which positions are [eligible] for telework arrangements consistent with labor relations obligations. Position suitability must be reviewed by management officials based on the functions and job duties of the position rather than the title alone. Tasks that can be performed away from the traditional office are generally more suited for a telework arrangement. Even positions that are generally not suitable for telework may have tasks that may be deemed suitable. This approach to "job reengineering" can assist in providing appropriate avenues toward telework. Guidelines for determining position suitability include but are not limited to:

(a) Work activities must be portable and can be performed effectively outside the traditional office location;

(b) Job tasks are quantifiable or primarily project-oriented;

(c) Contact with other employees, the supervisor or manager, and serviced clientele is predictable and normally scheduled;

(d) The computer technology needed to perform work off-site is currently available or can be acquired;

(e) Employees may be linked electronically to the traditional office location using Government Furnished Equipment (GFE) or a personal computer via the internet, based on specific guidance contained in VA Directive 6500, or if VA network access is not required, the employee may simply take approved work to the alternative worksite;

(f) Classified documents may not be taken to, used or stored at an employee's home office or [alternative worksite]. The employee must return to the [agency worksite for classified work] to access and work on such documents or materials; and

(g) Privacy Act materials, evidence or sensitive documents (hard copy or electronic) may be accessed, and if required, printed remotely, provided the employee agrees to protect Government/VA records from unauthorized disclosure, loss, compromise or damage, and will comply with the security requirements in the Telework Agreement, all applicable VA and local facility policies, Privacy Act of 1974, 5 U.S.C. § 552a, and all applicable Federal laws and regulations, VA Directive and Handbook 6210, and other applicable VA policies. Any hard copy or printed sensitive material shall be kept securely at the alternative site and retained in accordance with the National Archives and Records Administration, facility Records Management guidelines, and VA and facility sensitive material disposition.

(2) Telework may not be suitable for some positions. However, these positions may be eligible for telework on an ad hoc basis or in an emergency situation. These positions require on a daily basis:

(a) Extensive [in-person] contact with supervisors, co-workers, clients and Veterans;

(b) Special facilities or equipment that can not readily or economically be provided; or

(c) Frequent access to classified material and/or sensitive information.

## 8. PROCESS FOR ESTABLISHING A TELEWORK AGREEMENT.

a. Management must first identify an employee's position as suitable for telework, determine whether the employee is eligible to participate in telework, and notify the employee of the employee eligibility in writing, regardless of whether the employee has submitted a request to telework.

b. Eligible employees interested in telework should discuss the matter with their supervisor and, if they would like to telework, submit a request [in writing on a VA Form 0740 (or the electronic equivalent) before completing the training or requesting remote network access.]

c. The supervisor will consider the request and determine whether telework is an appropriate work arrangement. When the supervisor and employee agree that the alternative workplace arrangement is an acceptable option, additional discussions should be held regarding the employee's work schedule, work requirements and job expectations.

d. Upon completion of the mandatory telework training course, including the Information Security Awareness Training and Veterans Health Administration (VHA) Privacy Policy Training, as applicable, the employee must complete VA Form 0740, Telework Agreement, [or the electronic equivalent] which lists all terms and conditions for the telework alternative workplace arrangement, and collaborate as needed with the facility's Telework Coordinator.

## 9. PROCEDURES TO REQUEST A TELEWORK AGREEMENT.

a. Employees m[ust] submit a written request to their immediate supervisor to telework. [Submission of the electronic equivalent of the VA Form 0740 is encouraged for non-bargaining unit employees. Use of an electronic equivalent to the VA Form 0740 for bargaining unit employees is defined in collective bargaining agreements and/or memoranda of understanding.] The request must state the specific work schedule, as well as the proposed workdays, hours, etc. as applicable.

b. The immediate supervisor must meet or confer directly with the requesting employee within ten business days after receipt of a written request to telework to understand fully the nature of and need for the requested flexibility.

c. The supervisor must carefully consider the request and any supporting information provided by the employee and provide a written decision to the employee within 20 business days after receipt of the initial request, or within the timeframes set forth in an applicable collective bargaining agreement. Supervisors must consider VA's mission-related requirements and the impact on VA operations when rendering a decision.

d. If the supervisor is unable to grant the employee's request due to mission-related requirements and the impact on VA operations, the supervisor should

work with the employee to determine if there are alternatives available that are beneficial to VA and the employee. If the supervisor denies the employee's request to telework the employee has the right to file a grievance in accordance with the procedures outlined in VA Handbook 5021, Part IV, or applicable collective bargaining agreement.

**[10. POLICIES AND PROCEDURES FOR REMOTE WORK.**

a. VA fully supports and promotes remote work arrangements for employees occupying remote work eligible positions. The remote work policy as described in this Handbook is intended to enhance the worklife balance for employees. While employees and organizations benefit from remote work arrangements, such arrangements are subject to the business case and operational needs of the VA organization and budget allocation.

b. Remote work arrangements should be cost-neutral or low-cost, to the extent practical, after factoring in the net cost savings accrued moving each employee to a remote arrangement.

c. Managers and supervisors must determine whether a position is suitable for remote work and whether the employee is eligible to participate in a remote work arrangement. Remote work is an arrangement under which an employee is scheduled to perform their position's job duties at an approved alternative worksite (typically the employee's residence) and is not expected to perform work at an agency worksite on a regular and recurring basis. A remote worker's official worksite may be within or outside the commuting area of an agency worksite.

d. Remote work arrangements may be established when the supervisor hires the employee to work from a remote worksite location or approves the employee's change in duty location. Remote work is not an employee entitlement. The approval will be based on management's determination that remote work supports the mission of the organization and does not diminish either employee performance or agency operations.

e. Employees who meet the criteria for remote work may participate in remote work arrangements in accordance with applicable laws, regulations, and collective bargaining agreements. Participation in a remote work arrangement is subject to supervisory approval. Prior to initiating, modifying, or terminating a remote work arrangement that affects employees in a collective bargaining unit, appropriate labor relations obligations must be fulfilled.

f. With supervisory approval, remote work arrangements may be established at the employee's residence or other approved locations when determined by work unit supervisors to be consistent with the mission of VA.

g. Remote work arrangements may be used for a variety of business reasons, including, but not limited to:

(1) Retaining high performing employees who must move for personal reasons and would otherwise leave the VA;

(2) Recruiting employees with specialized skills, who may not want or be able to relocate for personal reasons;

(3) Achieving VA Administration or Staff Office real estate cost savings, or other business cost reductions (e.g. utility costs or reduction in leased space);

(4) Reducing costs associated with filling vacancies when employees must relocate; and

(5) Increasing employee work-life balance, resulting in increased morale.

h. It is recommended that remote work agreements be reviewed at least annually, but no more than quarterly (unless there are specific concerns with the agreement) to determine the impact on work operations.

i. A new remote work agreement should be completed if the employee is assigned to work under a new supervisor or if the terms of the remote work agreement change.

j. Remote work is not intended to serve as a substitute for dependent/elder care. The primary intent of the remote program is to support the mission of the office in an alternative work setting. Remote work may not be used as an alternative to or in lieu of dependent care/elder care. Employees may not participate in remote work with the intent of or for the sole purpose of meeting dependent care/elder care responsibilities while performing official duties. Refer to Paragraph 6 under Telework Policy and Procedures for dependent care/elder care guidance.

k. Equal employment opportunity principles are fully applicable to remote work programs.

l. Remote work may be used as a reasonable accommodation for employees with qualifying disabilities under the Rehabilitation Act of 1973. Detailed guidance on reasonable accommodation may be found in VA Handbook 5975.1.

m. An employee may participate in remote work while working an alternate work schedule such as a compressed or flexible work schedule.

n. Remote employees must be treated equitably for appraisals of job performance, training, awards, reassignment, promotions, changes in grade, work requirements, approval of overtime work, flexible and compressed work schedules, and other actions within management's discretion.

## 11. REMOTE WORK CRITERIA.

a. **Participation.** Employee participation in a remote work arrangement is voluntary. Managers should allow eligible employees to participate in remote work to the maximum extent practicable without diminished employee or organizational performance.

(1) **Position Suitability.** At a minimum, the following conditions or criteria will be considered when a remote work arrangement is requested or when included in a Job Opportunity Announcement (JOA):

(a) (a) As part of the ongoing position management processes, each VA Administration and Staff Office will review positions to determine eligibility for a remote work arrangement. Eligibility must be determined prior to posting a JOA; and

(b) (b) VA Administrations and Staff Offices must consider the job duties that only can be performed onsite and the amount of time required to complete such duties in a typical bi-weekly pay period;

(c) (c) The amount of time required each week to participate in other aspects of the work unit operations such as training, meetings or collaboration, including collaboration with stakeholders that cannot be conducted virtually; the type and frequency of travel associated with the position.

(d) (d) Employees with mission-critical duties and those who may be required to work in the case of a COOP event, office closure to the public due to adverse or inclement weather, or pandemic health crisis must have an approved telework agreement in place.

(2) **Employee eligibility.** Employees are [also] eligible for remote work arrangements pursuant to management's determination that the duties and responsibilities of the position can be successfully performed from an alternative worksite. Employees must be capable of accomplishing work assignments without close on-site supervision or continual in-person interaction with other staff.

b. All remote workers and their immediate supervisors must receive the telework training designed to provide the employee and supervisor with a smooth transition to remote work. The training module is available via the TMS under course title TMS Training for Employees (VA 1367006) and TMS Training for Managers (VA 1366994).

c. In considering remote work requests, the following factors should be evaluated:

(1) Whether remote work is in the best interest of the agency.

(2) Potential impact to the organization and/or work unit.

(3) Whether remote work is cost neutral or low cost.

(4) Characteristics and competencies of the employee align with being a remote worker. Whether other pay and human resources flexibilities have been considered and why they would not be effective for recruiting or retaining an employee in the position.

(5) Whether an employee requested relocation to a remote work location is for the employee's own convenience and benefit. Pursuant to Federal Travel regulations (41 C.F.R. Chapter 302), VA is prohibited from paying relocation expenses to a new remote work location.

## 12. PROCESS FOR ESTABLISHING A REMOTE WORK AGREEMENT.

a. The VA Form 0740 or the electronic equivalent will be used to document the remote work agreement. Upon completion of the mandatory telework training courses, including the Information Security and Awareness Training and Privacy Act Training, as applicable, the employee must complete VA Form 0740, Telework Agreement (or the electronic equivalent), outlining the terms and conditions of a remote work arrangement. The agreement must be completed and signed by the employee and appropriate official(s), with the supervisor maintaining a copy of the agreement and providing a copy to the employee. The supervisor shall also inform the timekeeper so that remote work is recorded appropriately in the electronic time and attendance system. Paper submissions on VA Form 0740 additionally require the supervisor provide information to the HR office so the remote work agreement is coded into the VA personnel system of record, HR Smart.

b. The official duty station is the location of the employee's alternative worksite. The alternative worksite determines certain location-based pay entitlements, such as the amount of General Schedule locality pay an employee will receive. The locality pay for those employees who are remote work employees will be the employee's alternative worksite as determined at the time of hire. Servicing HR personnel must process the following required actions:

(1) Update OF-8 to reflect the Remote Duty Station (Block 5)

(2) Process SF-52, changing "Duty Station" blocks 38 and 39 of the SF-50 and

(3) Process SF-52 to document position reclassification action when necessary

(4) Update HR database(s) to reflect change in telework status codes, etc.

c. Remote work employees generally will not have an assigned or dedicated workspace at the VA organization staff office worksite.

d. Although remote employees generally are not expected to report to the agency worksite, the supervisor can require the presence of a remote employee at the worksite in certain situations, e.g., training, or an official meeting. Supervisors should provide as much advance notice as possible but at least 24 hours. If applicable, this should be stated in the Supervisor/Employee Specific Terms and Conditions section of the agreement. When a supervisor authorizes a remote employee to travel to an office worksite for official duty, the agency will pay travel costs consistent with applicable travel regulations and policies.

## 13. PROCEDURES TO REQUEST OR MODIFY A REMOTE WORK AGREEMENT.

a. **Recruitment.** HR personnel, in coordination with the hiring manager, must ensure that all VA JOAs indicate whether the position is suitable for remote work and identify:

(1) Eligibility for a remote work arrangement; and

(2) Whether a remote work arrangement is required for the position. Candidates accepting a position where a remote work arrangement is required must accept the arrangement as a condition of employment.

b. **Employee Requests.** VA employees may request to work remotely, change an existing remote work arrangement, or terminate their remote work arrangement by submitting a VA Form 0740 (or the electronic equivalent) to the supervisor. Relocation expenses are not authorized for voluntary change in worksite requests, including for remote work requests due to reasonable accommodations.

(1) The employee requesting a change must:

(a) Discuss the request with their supervisor. Changing the employee's duty station likely will affect the employee in several ways (e.g., locality pay, Reduction-in-Force (RIF) competitive area, bargaining unit status, unemployment compensation). When discussing such requests with the employee, management must address other available workplace flexibilities, including but not limited to, alternative work schedules, details, leave options (e.g., extended leave without pay (LWOP)), and shared leave programs, if applicable.

(b) The employee then may submit a request for a remote work arrangement, change to a remote work arrangement, or termination of a remote work arrangement in writing. The request must include the proposed duty station and effective date. Supervisors may consider, however, whether there is a need to limit the geographic location of the duty station for the remote work arrangement due to travel or other mission requirements.

(c) Following approval, the employee will be responsible for notifying their supervisor of any changes in address within 48 business hours of the official change of location and for ensuring locality pay is accurately reflected in official documentation. Failure to notify the supervisor of any changes in address may result in disciplinary action, up to and including removal from Federal Service. Note: The official worksite must be located within the United States, including Alaska or Hawaii, and Puerto Rico unless the employee has an approved DETO request to conduct official VA business from an alternative worksite located in a foreign country.

(d) Denial of a remote work request should not prevent an employee from requesting to telework on a regular and recurring and/or ad hoc basis.

(2) Supervisory considerations of employee requests to establish, change or terminate a remote work arrangement include:

(a) That the proposed creation or change of a remote work arrangement does not negatively affect the VA Administration or Staff Office's budget or ability to execute its mission;

(b) Supervisors considering establishing or changing a remote work arrangement must first coordinate with their chain of command prior to providing a final determination to the employee(s) request and adhere to any collective bargaining unit obligations. Under Secretaries, Assistant Secretaries, Other Key Officials, or their designees are authorized to approve and discontinue remote work arrangements. The responsibility may be redelegated to lower management official(s). Facility directors and field facility heads are authorized to approve or discontinue remote work arrangements for employees under their jurisdiction. The authority to approve, modify, or terminate remote work arrangements may be re-delegated to lower management official(s); and

(c) Employee requests to terminate a remote work arrangement may be denied due to space limitations within a VA Administration or Staff Office worksite.

(3) Remote workers may still be eligible for telework with supervisory approval, if they wish to regularly or on an ad hoc basis work from an additional alternative site (i.e., a co-working arrangement). Travel back to their work unit's primary worksite is covered by travel policy.

c. **Termination Due to Business/Organizational Needs.** Remote work agreements may be terminated by management with adequate prior advanced notice to the employee when necessary due to changing business or organizational needs, or other mission/business related reasons. In such

circumstances the affected employee will be offered a position at the same grade and pay in the commuting area of the current official worksite or will be offered the opportunity to move to the agency worksite.

(1) If the employee accepts an offer to move, relocation costs will be paid by VA in accordance with regulation and VA Financial policy.

(2) If there is no suitable position available in the local commuting area, or the employee declines a suitable position and the offer to move to the agency worksite, management will initiate appropriate action to separate the employee for failure to accept a management-directed reassignment outside the commuting area in accordance with applicable regulations, policies, and collective bargaining agreements. The employee will be entitled to transition assistance in accordance with applicable regulations, policies, and collective bargaining agreements, including the VA Career Transition Assistance Plan (CTAP). In addition to transition services, CTAP provides selection priority for positions announced within the employee's commuting area, for which the employee applies and is well-qualified.

d. **Termination due to Performance or Misconduct.** Remote work arrangements may be terminated by management at any time when it can be demonstrated that the work arrangement has contributed to performance that falls below the fully successful level, or to misconduct as outlined in VA Handbook 5021, Employee Management Relations. Managers who are considering termination of a remote work arrangement will consult with the servicing human resources office before taking any action. When the decision is made to terminate the remote work arrangement, the employee will be directed to report to the agency worksite or may be offered a position at the same grade and pay within the commuting area of the employee's current official worksite/duty station.

(1) If the employee accepts an offer to move to the agency worksite, any relocation expenses will be paid by the employee in accordance with GSA Federal Travel Regulations (see § 302-1.1 (b)).

(2) If the employee declines to move to the agency worksite, management will initiate appropriate action to separate the employee for failure to accept a management-directed reassignment outside of the commuting area, in accordance with applicable regulations, policies, and collective bargaining agreements.

(3) Remote work may be temporarily suspended to address performance issues. Management considering suspension of a remote work arrangement will consult with the servicing human resources office before taking any action, including whether the employee will work from the closest VA location or the agency worksite.

e. Prior to initiating, modifying or terminating a remote work arrangement that affects employees in a collective bargaining unit, appropriate labor relations obligations must be fulfilled. ]

**[14. OTHER CONSIDERATIONS FOR TELEWORK AND REMOTE WORK].**

a. **Automated Information System Security.** Each Administration and Staff Office with a telework [or remote work] program will ensure that Departmental information security policies, established by the Office of Information and Technology, are strictly enforced and that telework employees are informed that periodic remote computer surveillance may be conducted on GFE to ensure information security policy compliance. Technical requirements for computer connections to the VA network by teleworkers will be published and issued by the Chief Information Officer (CIO). Offices sponsoring telework [or remote work] must also ensure that adequate technological security protections are in place on all electronic devices issued to telework [or remote work] participants. If Federal and VA information security policies, procedures and guidelines are not followed, telework [and in some cases, remote work arrangements,] must be terminated. Prior notice to the employee is not required for enforcement and reporting of security violations. Additional security policy information and clarification can be obtained from the VA Office of Information and Technology, [Information Security Knowledge Service Portal at: https://dvagov.sharepoint.com/sites/OITOIS/KnowledgeService/Pages/Home.aspx] (see also VA Directive 6500, Automated Information Systems Security).

b. **Security and Privacy Considerations.**

(1) Classified documents (hard copy or electronic) may not be taken to, used or stored at an employee's home office or telecenter. The employee must return to the traditional office to access and work on such documents or materials. Privacy Act materials, VA sensitive data and systems may be accessed remotely provided that the employee agrees to protect Government/VA records from unauthorized disclosure or damage. See paragraphs 7.b.(1)(f) and (g) for the differences between classified and sensitive material. The employee must also comply with all policy and legal requirements (in accordance with the Privacy Act of 1974, 5 U.S.C. § 552a and the policies and procedures set forth in VA Directive and Handbook 6500). Prior notice to the employee is not required to terminate telework [and remote work] arrangements due to security violations.

(2) If any legal requirements are made to the Privacy Act of 1974, 5 U.S.C. § 552a, or if there are any updates to VA Directive and Handbook 6500, or other Departmental policies and procedures, the employee, upon proper notice, must agree to comply with the changed requirements. Failure to do so constitutes a basis for potential termination of the telework [or remote work] agreement.

c. **Emergency Closure and Dismissal Impact on Telework [and Remote Work].** On a day when the official duty station facility is closed for all or part of a day, the following weather and safety rules apply:

(1) **Unscheduled Leave and Unscheduled Telework.** In the event of an emergency, Government agencies may be closed to the public with telework [and remote] employees continuing to work. Employees are expected to perform unscheduled telework [or remote work] for the entire workday at the alternative work site, take other leave (paid or unpaid) or other time off, or use a combination of telework and leave or other paid time off. Telework [and remote work] program participants do not receive weather and safety leave when a closure is announced unless an exception in subparagraph (4) below applies.

(2) **Late Openings.** On a day when an employee is scheduled to work at the alternative worksite and the employee's official duty station facility opens late, the employee is required to perform their full alternative worksite schedule if scheduled to work from that alternative location.

(3) **Late Arrivals and Early Dismissals.** On days when a late arrival or early dismissal occurs, the employee is required to perform their full alternative worksite schedule if scheduled to work from that alternative location.

(4) **Emergency Situations.** On a case-by-case basis, a supervisor may excuse a telework [or remote work] employee from duty during an emergency if the emergency adversely affects the telework [or remote work] site (e.g., disruption of electricity, loss of heat, etc.). Under these circumstances, employees excused from duty may be granted weather and safety leave in accordance with Part III, Chapter 2, paragraph 12.u. and Chapter 3 paragraph 9.o. of this handbook.

(5) **Ad Hoc Arrangements.** All employees approved for regular and recurring telework are eligible for ad hoc telework. An employee who does not have an agreement for scheduled telework must have an ad hoc agreement in place before the employee can telework on an ad hoc basis. Exceptions to the telework agreement requirement may be authorized during emergent situations, when one or more employees are evacuated from their worksite and perform work from their home (or at an alternative location mutually agreeable to the supervisor and employee). In these circumstances, the ad hoc telework agreement should be completed as soon as practicable. An employee approved only for ad hoc telework should telework periodically throughout the year to ensure that the employee is prepared for ad hoc telework. While ad hoc telework is generally used for unforeseeable and unavoidable emergency circumstances, management may approve ad hoc telework for any reason for an employee with an approved telework agreement. The type of assignments that employees are expected to perform should be determined prior to approval of ad hoc telework.

[(6) **Remote Work.** An employee on a remote work agreement whose home is considered the employee's official duty station (i.e., a 100 percent telework employee) will generally not be granted weather and safety leave unless the employee is unable to safely perform work at their official duty station due to the conditions described in Part III, Chapter 2, paragraph 12(u)(1)(a) (e.g., employee is unable to safely perform remote work due loss of power as a result of a hurricane).]

d. **The Alternative Worksite.**

(1) An alternative worksite must be suitable for conducting business. Before a telework [or remote work] agreement is approved, the employee must complete the Telework Self-Certification Safety Checklist, included on VA Form 0740, [or the electronic equivalent] certifying that the location where work will be accomplished meets the safety and security criteria, and submit it to the immediate supervisor.

(2) The supervisor and employee will identify resources needed to facilitate the work assignment, assuring all property and equipment needs are satisfied in accordance with the telework [or remote work] agreement.

e. **Expenses and Equipment.**

(1) Basic computer equipment and software (either GFE or owned by employee [OE]) must be coordinated with the Office of Information and Technology (OIT) to ensure all information and technology (IT) requirements are satisfied. The decision to provide GFE may be based on the availability of equipment and possibly the availability of purchasing funds. Where applicable, OE may be used in conjunction with VA OIT approved gateway access that permits secure access to VA systems. An option for GFE may be to request OIT to provide the employee with a docking station. The employee then is able to use the same computer at the [official duty station/agency worksite] and the [alternative worksite].

(2) Remote printing is permitted for employees on approved telework [and remote work] agreements when the ability to create and/or print documents is required as part of the employee's assigned job duties. Supervisors seeking authorized remote printing for [an employee with a proposed or existing telework or remote work agreement] must certify the employee's position requires remote printing on the VA Form 0740, Telework Request/Agreement [(Section IX, Technology/Equipment Checklist) or the electronic equivalent] and obtain a second level supervisory [approval,] in accordance with VA OIT guidelines [(which may be indicated in block 8a, Comments, of Section IX of VA Form 0740)]. Printer supplies such as ink and paper will be provided by the employee's program office. A GFE shredder is also required if the employee will print documents that may contain VA sensitive and/or personally identifiable information that are not

deemed official Government records. The shredder is to be issued by the employee's VA program office in addition to the printing supplies. The following guidance applies to remote printing:

(a) The use of personally owned printers is strictly prohibited.

(b) Employees approved for remote printing as part of their assigned job duties must comply with VA and local facility policies regarding information security or the appropriate storage and destruction of printed VA sensitive and personally identifiable information in a remote setting. Remotely printed documents containing VA sensitive and/or individually identifiable information that are not deemed official Government records (i.e., working papers) must be shredded when no longer of use. Shredding is to be done in accordance with VA and local facility policy. GFE shredders will be purchased and assigned to authorized full-time remote or telework staff by their program office.

(c) Employees who participate in telework on a less than full-time basis must ensure documents requiring destruction are securely transported to their official duty station to be shredded and disposed of in accordance with VA and local facility policy.

(3) The supervisor must determine the level of telephonic support necessary for the teleworker [and employees on remote work agreements]. Local and toll-free calls can be made on employee equipment. Long distance dialling may be supported by OIT provision of a cell phone, calling card, voice over internet protocol or other modality as determined by OIT.

(4) Employees will incur the cost of utilities (such as electricity, monthly service charges for telephone, cable or internet service providers) associated with working at home. In some limited situations, VA (through the office responsible for the teleworker [or employee on a remote work agreement]) may pay for telephone installation when the service is considered essential and the employee agrees that the installed telephone will only be used for work assignments and contact with the VA office.

f. [**Travel.** Travel entitlements are based on the employee's official duty station as indicated on the employee's Standard Form (SF)-50, Notification of Personnel Action for the purposes of determining travel entitlements. Telework and remote work employees will follow the travel policy as outlined in VA Financial policy.]

g. **Liability and Worker's Compensation.** Employees on telework or [remote work] arrangements are covered under the Federal Tort Claims Act and the Federal Employees' Compensation Act [if injured in the course of actually performing official duties at the agency worksite or the alternative worksite]. As with injuries which occur in the traditional office setting, for injuries that occur during telework arrangements, supervisors may only attest to what they reasonably know.

**[15. PAY, HOLIDAYS, TRAVEL, AND TIME AND ATTENDANCE.**

a. The basic rate of pay of a remote employee is determined by the pay rate setting rules applicable to the remote employee's appointment type for their official duty station of record, as recorded on the employee's OPM SF-50, Notification of Personnel Action. For remote employees, the official duty station typically is their residence. Teleworker and remote workers are required to follow Departmental policies and procedures for requesting and using approved leave. Leave should be requested and approved in accordance with standard leave approval procedures, with leave hours accurately recorded in the time and attendance system.

b. VA organization staff offices generally should not pay relocation expenses related to remote work arrangements such as expenses to relocate to a new official duty station or to return to the VA organization staff office worksite when such arrangements were requested by the employee and is not the result of a directed reassignment. VA policy on the payment of relocation expenses is found in VA Handbook 5007.

c. Remote work employees traveling on official business are eligible for the same travel benefits as non-remote work employees. Supervisors should, whenever possible and to the greatest extent, leverage alternate communication technologies to minimize travel unless necessary. However, if a position requires travel, travel should not be minimized specifically because the employee is a remote worker. VA policy on travel is found in VA Financial Policy, Volume XIV.

**16. DOMESTIC EMPLOYEES TELEWORKING OVERSEAS (DETO).**

a. A DETO arrangement is an overseas work arrangement that allows Federal Executive Branch employees to perform the work requirements and duties of their positions temporarily from an approved foreign overseas location via a DETO agreement. Employees have no authorization to telework from a foreign location without approval from VA and the Department of State (DOS).

b. Employees interested in teleworking from an overseas location must follow guidance and procedures outlined in VA Financial Policy Volume XIV, Chapter 6 and DOS policy guidelines, as well as complete the VA Form 0740, Telework Agreement form.

c. DETO agreements are extremely rare and employees should allow adequate time to complete the DETO process, prior to the date upon which they request to begin working overseas. Employees may not telework from a foreign location without an approved DETO agreement. HR Offices should contact the VA Travel Office for additional information on current processing timeframes.]

**17. REFERENCES.**

a. 5 C.F.R., part 531, subpart F, (Locality Pay).

b. 5 U.S.C. § 552a, Privacy Act of 1974.

c. 38 U.S.C. § 501, 5701, and 7421(a). Public Law 104-52, § 620 (31 U.S.C. 1348).

d. Public Law 104-191, the Health Portability and Accountability Act of 1996 (HIPAA).

e. Public Law 106-346 Sec. 359.

f. Public Law 111-292, Telework Enhancement Act of 2010.

g. [VA Directive and Handbook 5007, Pay Administration]

h. VA Directive and Handbook 6500, VA Cybersecurity Program.

i. VA Directive 6502, VA Enterprise Privacy Program.

j. [2021 Guide to Telework and Remote Work in the Federal Government]

## APPENDIX A. SAMPLE LETTER ELIGIBLE TO TELEWORK

**DATE:**

**TO:** Employee

**FROM:** Deciding Official

**SUBJ:** Telework Notification Letter – Employee Eligible to Telework

1. The Telework Enhancement Act of 2010 (Public Law 111-292) requires the Department of Veterans Affairs to determine the eligibility of all employees to participate in telework and notify all employees of their eligibility to telework. In order for an employee to be approved to telework, the employee's position must be identified suitable for telework and the employee must be determined eligible to telework. After careful review of your duties and responsibilities I have determined that you are eligible to telework.

2. This decision does not grant you permission to telework. Before you may be approved to telework,you must complete employee telework training in the Talent Management System. You must also submit VA Form 0740, Telework Request/Agreement, [or the electronic equivalent] to your supervisor for evaluation.

3. You may begin teleworking only after you have completed the required telework training and have an approved Telework Agreement. Mission needs, availability of equipment and internet access to the VA network will be considered when evaluating your request to telework.

_____
Signature of Decision Official

I acknowledge receipt of this letter.

_____ _____
Signature of Employee Date

## APPENDIX B. SAMPLE LETTER NOT ELIGIBLE TO TELEWORK

**DATE:**

**TO:** Employee

**FROM:** Deciding Official

**SUBJ:** Telework Notification Letter – Employee **Not** Eligible to Telework

1. The Telework Enhancement Act of 2010 (P.L. 111-292) requires the Department of Veterans Affairs to determine the eligibility of all employees to participate in telework and notify all employees of their eligibility to telework. In order for an employee to be approved to telework, the employee's position must be identified suitable for telework and the employee must be determined eligible to telework. After careful review of your duties and responsibilities I have determined that you are not eligible to telework for the following reason(s):

   □ Your position requires you to be present on-site for the performance of your duties every workday

   □ Your position requires access every workday to classified and/or sensitive information that cannot be accessed remotely or has not been approved for remote access

   □ Your position requires the use of special facilities and equipment that VA cannot readily or economically provide at an alternative work location

   □ Your position requires in-person contact with supervisors, co-workers, Veterans and/or clients every workday

   □ Your position requires oversight/observation every workday

   □ You have been officially disciplined for being absent without leave (AWOL) for more than 5 days in a calendar year [ ]

   □ You have been officially disciplined for violations of Subpart G of the Standards of Ethical Conduct for Employees of the Executive Branch for viewing, downloading or exchanging pornography, including child pornography, on a Federal government computer or while performing official Federal government duties (required by law)

Telework Notification Letter – Employee **Not** Eligible to Telework – Page 2

□ You lack the requisite work history of reliability, responsibility, and ability to work independently.

□ Other (Specify):

2. You will be notified in writing if there are changes in this determination.

3. This determination may be grieved under applicable administrative or negotiated grievance procedures.

_____ _____
[Signature of Deciding Official] [Date]

_____ _____
[Signature of Employee] [Date]

## [APPENDIX C. VARIABLE WORK SCHEDULE AGREEMENT

I (Physician's Name) request to establish a full-time tour of duty, which includes hours that are more or less than 80 hours in a pay period, with a minimum of 2080 hours of work in a calendar year. I understand that any hours I work in excess of 2080 in a calendar year will not result in an entitlement to additional compensation or premium pay of any kind.

I understand that under VA Handbook 5011, Part II, Chapter 3, I am to provide to the Veterans Health Administration (VHA) of the Department of Veterans Affairs (VA) a minimum of 2080 hours of service in a calendar year while approved for this work schedule. I understand that my pay will continue to be paid at the equivalent of an 80 hour per pay period rate while in a duty or paid leave status, and my benefits will be based on this rate, subject to the reconciliation of any difference in the actual hours I work, if less than 80 hours in a biweekly pay period, and the 80 hour full-time rate upon termination of the agreement.

I understand that it is recommended that I work the minimum required hours of (520) for each quarter of the calendar year. Should my work schedule for each quarter not reach a minimum of 520 hours, I understand I must request leave or work the additional hours with supervisory approval in the next quarter to ensure my hours of employment reach a minimum of 2080 hours in the calendar agreement period. I also understand that if I do not account for 2080 paid hours annually, my Thrift Savings Plan contributions, VA employer contributions, and any related interest earnings will be collected from my account for hours I did not work or use paid leave. I further understand that my failure to account for 2080 hours of employment within a calendar year may result in a debt for my federal employee's health benefit (FEHB) and/or federal employee's group life insurance (FEGLI) premiums and reduce my future federal retirement benefits.

This agreement shall be effective upon approval by the Secretary of Veterans Affairs, hereinafter referred to as the Secretary (or designee), provided I am otherwise eligible, and shall commence on the date prescribed in accordance with VA Handbook 5011, Part II, Chapter 3. I understand that I may request termination of this work schedule with 60 days' notice to my Supervisor. I also understand that if this agreement expires or is terminated, the hours of work I have provided and the salary and benefits I have received during the term of this agreement will be reconciled. A deficit in hours accounted for will result in additional leave charges; if Leave Without Pay (LWOP) is used, it may result in a debt. I further understand that when the agreement ends, any hours of work that are in excess of the required 80 hours per biweekly pay period as of the date the agreement is terminated will be forfeited.
If I have been compensated for hours of work I have not provided, I agree to to refund any such excess compensation to VA in accordance with VA Handbook 5011, Part II, Chapter 3. I understand that any amount due on my behalf will be considered to be a debt due to the United States and agree to pay such an amount in full as directed by VA.
I understand that VA may terminate my eligibility for the variable work schedule when any of the following occur:

a. Separation from VHA employment for any reason.

b. Transfer to another VHA facility.

c. Assignment to a position that does not have approved variable work schedules.

d. Failing to account for sufficient hours under any two separate Variable Work Schedule Agreement periods.

e. This agreement is otherwise terminated by the Secretary or designee.
I acknowledge that VA Directive 5011 and VA Handbook 5011, part II, is incorporated into and made a part of this agreement and I have read a copy.

_____ _____
Physician Signature Date Signed

_____
Physician Printed Name

_____ _____
Supervisor Signature Date Signed

_____
Supervisor Printed Name

_____
Supervisor Title

cc: Servicing VA HR and payroll offices]

Department of Veterans Affairs

# REQUEST FOR ALTERNATE WORK SCHEDULE

**INSTRUCTIONS:** Please check the alternative work schedule you are requesting, sign, date, and forward to your Associate Director, Nursing Services for action.

ALTERNATE WORK SCHEDULE OPTIONS *(Please check appropriate box)*

☐ **72/80-Hour Work Schedule** - Six regularly scheduled 12-hour tours of duty wholly within a pay period that is considered for all purposes to be a full 80 hour pay period.

☒ **9-Month Work Schedule** - Nine months full-time with three months off duty, within a fiscal year, paid at 75 percent of the full-time rate for such nurse's grade and step each bi-weekly pay period of the fiscal year. See additional statement. **NOTE: Employees selecting the 9-Month Work Schedule must sign VA Form 0870b, Consent of Appointment for 9-Month/3-Month off Alternate Work Schedule Agreement .**

☐ **Baylor Plan** - Two regularly scheduled 12-hour tours of duty contained entirely within the first and last day of the administrative work week, Sunday, and Saturday.

| NAME OF EMPLOYEE *(Type or print clearly)* | SIGNATURE OF EMPLOYEE | DATE SIGNED |
|---|---|---|
| Cheryl A. Thomas | Cheryl A. Thomas | 09/01/2011 |

**COMPLETED BY ASSOCIATE DIRECTOR, NURSING SERVICE**

| PROPOSED ACTION | NAME OF ASSOCIATE DIRECTOR, NURSING SERVICE *(Type or print clearly)* | SIGNATURE OF ASSOCIATE DIRECTOR, NURSING SERVICE | DATE SIGNED |
|---|---|---|---|
| ☒ APPROVED<br>☐ DISAPPROVED | Joyce P. Lee | Joyce P. Lee | 09/06/2011 |

**COMPLETED BY MEDICAL CENTER DIRECTOR**

| FINAL ACTION | NAME OF MEDICAL CENTER DIRECTOR *(Type or print clearly)* | SIGNATURE OF MEDICAL CENTER DIRECTOR | DATE SIGNED |
|---|---|---|---|
| ☒ APPROVED<br>☐ DISAPPROVED | Brenda M. Smith | Brenda M. Smith | 09/07/2011 |

COMMENTS

This is an excellent candidate to convert to the 9-Month/3-Month Off Alternate Work Schedule. She is a highly qualified nurse who is dedicated to her profession and will provide the necessary flexibility to make this a workable tour of duty.

**NOTE: Completed form must be submitted to your local servicing Human Resources Office.**

VA FORM AUG 2011 **0870a**

Date:

From: Chief, Human Resources Management Service (05)

Subject: Notice on the 9-Month Work Schedule Regarding the Impact on Benefits and Other Conditions of Employment (New Employee)

To: (Name of Employee), RN ( )

As a new employee who has elected the 9-Month Work Schedule under Title 38, Section 7456A(d) you are considered to be a part-time employee (0.75 full-time equivalent). As such, your conditions of employment at this Medical Center are as follows:

1. Tenure: Appointments under 38 U.S.C. 7405(a)(1) do not provide employees with job retention rights, grievance rights or appeal rights as it relates to separation. As a part-time employee you are employed at the will of the agency and your employment may be terminated from the Medical Center at any time without advance notice.

2. Retirement: Your annuity will be prorated based on the fraction that your part-time service bears to full-time service.

3. Leave: Sick leave accrues at the rate of 1 hour for each 20 hours in a pay status with no limitation on the amount which may be carried over to the next leave year. Annual leave accrues for part-time employees at the rate of 1 hour for each 10 hours in a pay status with a maximum carryover of 240 hours at the end of a leave year.

4. Health Benefits: You are entitled to the same health benefits as a full-time employee and your health insurance premiums will be computed at the full-time rate.

5. Life Insurance: You if may elect basic life insurance. Your basic life insurance benefit will be based according to your annual rate of basic pay, with a minimum benefit of $10,000 if your annual pay is $8,000 or less. If you have elect additional optional insurance, your benefit is based on your annual rate of basic pay. The premiums for basic and additional optional insurance will be based according to your annual basic pay. Standard optional and family optional insurance benefits and premiums will remain the same.

6. Thrift Savings Plan (TSP): You may contribute to TSP, up to the Internal Revenue Service elective deferral limits. Employees who are under the Federal Employees Retirement System (FERS) will receive an agency automatic 1% contribution and agency matching contributions, which will be based on your part-time annual salary.

7. Service Commitment: During your employment on a 9-Month/3-Month Off Alternate Work Schedule, you are expected to complete a specified period of service during the fiscal year. The

scheduling of off duty days must have supervisory approval and need to be made in advance at the time of initial appointment and at the beginning of each fiscal year thereafter as long as the schedule is in effect. If you separate from VA for personal reasons or cause (e.g. life event situation, retirement, resignation, removal due to unacceptable performance or conduct), you may be indebted for any pay received in excess of the amount to which you are entitled. By signing this notice you agree that any outstanding overpayment of salary will be offset from your final paycheck, and such offset may occur without prior notification. You will receive such notification, including your right to dispute the debt or request waiver, at the time of offset or as soon thereafter as possible. If you separate prior to receiving earned payments for periods of off duty time, you will receive any payments due in lump-sum upon separation.

Upon review of this notice, please sign and date the attached notice of acknowledgement and return it the Human Resources office.

To: Chief, Human Resources Management Service (05)

I understand that my appointment under the 9-Month Work Schedule is considered to be part-time and will provide me with reduced employee rights, benefits and salary. Appointments under 38 U.S.C. 7405(a)(1) do not provide employees with job retention rights, grievance rights or appeal rights as it relates to separation. As a part-time employee I am employed at the will of the agency and my employment may be terminated from the Medical Center at any time without advance notice.

_____ _____

Signature Date

Date:

From: Chief, Human Resources Management Service (05)

Subject: Notice on 9-Month Work Schedule Regarding the Impact on Benefits, Probationary Status and Other Conditions of Employment – Conversion from Full-time to Part-time/Current Part-time to 9-Month Work Schedule

To: (Name of Employee), RN ( )

Upon conversion to a 9-Month Work Schedule under Title 38, Section 7456A(d) you are considered to be a part-time employee (0.75 full-time equivalent). Your conversion from permanent full-time under 38 U.S.C 7401(1) to part-time employment under 38 U.S.C. 7405(a)(1) will change the conditions of your employment at this Medical Center in the following manner:

1. Tenure: Appointments under 38 U.S.C. 7405(a)(1) do not provide employees with job retention rights, grievance rights or appeal rights as it relates to separation. As a part-time employee you are employed at the will of the agency and your employment may be terminated from the Medical Center at any time without advance notice.

2. Probationary Status: If you were serving a probationary period at the time of conversion, the probationary period ceases. The period of time completed under the probationary period is frozen on the date of conversion to part-time status. If you return to a full-time appointment under 38 U.S.C 7401(1) you will resume completion of your remaining probationary period.

3. Retirement: Your annuity will be prorated based on the fraction that your part-time service bears to full-time service.

4. Leave: Sick leave accrues at the rate of 1 hour for each 20 hours in a pay status with no limitation on the amount which may be carried over to the next leave year. Annual leave accrues for part-time employees at the rate of 1 hour for each 10 hours in a pay status with a maximum carryover of 240 hours at the end of a leave year.

5. Health Benefits: You are entitled to the same health benefits you enjoyed as a full-time employee and your health insurance premiums will be computed at the full-time rate.

6. Life Insurance: If you elected basic life insurance, your benefit will be decreased according to your annual rate of basic pay, with a minimum benefit of $10,000 if your annual pay is $8,000 or less. If you have elected additional optional insurance, your benefit is decreased in proportion to the new annual rate of basic pay, with no minimum benefit. The premiums for basic and additional optional insurance will be adjusted according to the decreased benefit. Standard optional and family optional insurance benefits and premiums will remain the same.

7. Thrift Savings Plan (TSP): You may contribute to TSP up to the Internal Revenue Service elective deferral limit. Employees who are under the Federal Employees Retirement System (FERS) will receive

an agency automatic 1% contribution and agency matching contributions. The agency automatic 1% contributions will be based on your new reduced annual salary.

8. Service Commitment: During your employment on a 9-Month/3-Month Off Alternate Work Schedule, you are expected to complete a specified period of service during the fiscal year. The scheduling of off duty days must have supervisory approval and need to be made in advance at the time of initial appointment and at the beginning of each fiscal year thereafter as long as the schedule is in effect. If you separate from VA for personal reasons or cause (e.g. life event situation, retirement, resignation, removal due to unacceptable performance or conduct), you may be indebted for any pay received in excess of the amount to which you are entitled. By signing this notice you agree that any outstanding overpayment of salary will be offset from your final paycheck, and such offset may occur without prior notification. You will receive such notification, including your right to dispute the debt or request waiver, at the time of offset or as soon thereafter as possible. If you separate prior to receiving earned payments for periods of off duty time, you will receive any payments due in lump-sum upon separation.

Upon review of this notice, please sign and date the attached notice of acknowledgement and return it the Human Resources office.

To: Chief, Human Resources Management Service (05)

I understand that my conversion to part-time employment under 38 USC 7405(a) (1) from full-time permanent under 38 USC 7401(1) will provide me with reduced employee rights, benefits and salary. Appointments under 38 U.S.C. 7405(a) (1) do not provide employees with job retention rights, grievance rights or appeal rights as it relates to separation. As a part-time employee I am employed at the will of the agency and my employment may be terminated from the Medical Center at any time without advance notice.

I hereby voluntarily, knowingly and without coercion or undue influence, waive my rights and benefits under 38 USC 7401(1) and accept conversion to part-time employment under 38 USC 7405(a) (1) effective_____.

_____ _____
Signature Date

Department of Veterans Affairs

# CONSENT OF APPOINTMENT FOR 9-MONTH/3-MONTH OFF ALTERNATE WORK SCHEDULE AGREEMENT

| NAME OF VA FACILITY | FACILITY ADDRESS | FACILITY STATION NO. | PROPOSED WORK DATE |
|---|---|---|---|
| Manning VAMC | 3007 Freedom Avenue<br>Spoonville, KS 29102 | 010 | 1/09/06 |

**EMPLOYEE AGREEMENT/CERTIFICATION**

I understand that the 9-month Alternate Work Schedule, ***I am agreeing*** to work part-time for nine months with 3-months off within a fiscal year; I further understand that I will be paid 75 percent of the full-time rate for such nurse's grade for each pay period of the fiscal year.

I understand work under this schedule shall be considered part-time service for purposes of computing retirement benefits, but my health and life insurance premiums will be computed at the full-time rate. Life insurance will be computed based on the following factors: If you elected basic life insurance, your benefit will be decreased according to your annual rate of basic pay, with a minimum benefit of $10,000 if your annual pay is $8,000 or less. If you have elected additional optional insurance, your benefit is decreased in proportion to the new annual rate of bgasic pay, with no minimum benefit. The premiums for basic and additional optional insurance will be adjusted according to the decreased benefit. Standard optional and family optional insurance benefits and premiums will remain the same.

I acknowledge receipt of a written notice of the effects that the alternate work schedule will have on my retirement, health and life insurance premiums, probationary period, tenure and other conditions of employment.

I understand my current tenure entitlements are waived upon accepting a part-time appointment.

**CERTIFICATION:** I hereby certify that I am voluntarily accepting conversion to the 9-month alternate work schedule.

| NAME OF EMPLOYEE *(Type or print name)* | SIGNATURE OF EMPLOYEE | DATE SIGNED |
|---|---|---|
| Dorothy K. Rawlinson | Dorothy K. Rawlinson | 12/11/05 |
| NAME OF ASSOCIATE DIRECTOR, NURSING SERVICE *(Type or print name)* | SIGNATURE OF ASSOCIATE DIRECTOR, NURSING SERVES | DATE SIGNED |
| Susan A. Mack | Susan A. Mack | 12/13/05 |
| NAME OF MEDICAL CENTER DIRECTOR *(Type or print name)* | SIGNATURE OF MEDICAL CENTER DIRECTOR | DATE SIGNED |
| Ada K. MacDonald | Ada K. MacDonald | 12/14/05 |

START DATE

01/09/06

COMMENTS

The employee acknowledges understanding of all items listed in the "Alternate Work Schedule Agreement" for the 9-Month Work Schedule.

***NOTE:*** *Place a copy of this completed form on the left side of the employee's Official Personnel File Folder.*

VA FORM JAN 2006 **0870b**

Adobe Forms Designer 6.0

THIS PAGE BLANK

# [APPENDIX I. PRESCHEDULED PART-TIME TOURS AND THE UTILIZATION OF ADJUSTABLE WORK HOURS (TITLE 38)

## 1. PURPOSE OF ADJUSTABLE WORK HOURS

a. **Coverage.** Adjustable work hours is a program established to accommodate varying VA patient care needs and part-time VA physicians who have VA or non-VA patient care, research, or educational responsibilities that make adherence to the same regularly scheduled tour of duty every pay period difficult. Adjustable tours are appropriate, for example, for part-time physicians at active affiliated facilities with extensive patient care, research, and educational responsibilities who *frequently* encounter emergencies or other unanticipated obligations that require them to deviate from their scheduled tour of duty. Adjustable work hours provide a means for minimizing this problem.

b. **Exclusions.** The following employees shall not be placed in adjustable work hours:

(1) Part-time physicians with fixed work requirements and part-time physicians who do not routinely need to adjust their tours of duty; and

(2) Part-time title 38 employees other than physicians**.**

c. **Premium Pay.** Part-time physicians are ineligible for premium pay.

## 2. DEFINITIONS

a. **Adjustable Work Hours.** See paragraph 1a above.

b. **Administrative Workweek.** The administrative workweek includes Sunday through the following Saturday.

c. **Annual Service Level Expectation.** The number of hours in a service year part-time physicians on adjustable work hours are expected to be present during the service year.

d. **Biweekly Work Requirement.** For part-time physicians on adjustable work hours, the total number of hours an employee is scheduled to work during the pay period or to otherwise account for through the use of approved leave. The work requirements of part-time physicians on adjustable work hours are dependent upon VA patient care and other work requirements. All or a portion of the biweekly requirement may be set as a tour of duty (specific hours that the employee must be on duty). However, all of the hours in the biweekly work requirement can be variable if such an arrangement meets VA's needs. These physicians need not be scheduled for duty every biweekly pay period if VA duty is not required. The biweekly work requirement may remain stable throughout the life of the Memorandum of Service Level Expectations, or may be adjusted by the supervisor on a pay period to pay period basis.

e. **Memorandum of Service Level Expectations, VA Form 0880a.** VA Form 0880a is a written memorandum of understanding between VA and the part-time physician on adjustable work hours that specifies an expected level of service during a service year.

f. **Present**. To be considered present and to have time count toward the annual work requirement, a part-time physician on adjustable work hours must be engaged in VA clinical, administrative, research, or educational activities as outlined in chapter 3, paragraph 2g, this part.

g. **Service Year.** The one-year period covered by a signed VA (see paragraph 4d below).

h. **Tour of Duty.** Since the biweekly work requirement and schedule of part-time physicians on adjustable work hours may vary from pay period to pay period, they do not have a tour of duty, per se. However, a tour of duty will be noted in ETA reflecting the average number of hours to be worked per pay period as stipulated on the Memorandum of Service Level Expectations. The tour of duty forms the basis on which the employee will be paid while the Memorandum of Service Level Expectations is in effect.

## 3. RESPONSIBILITIES

a. **VISN Directors** are responsible for:

(1) Monitoring facility compliance with the provisions of this appendix and for incorporating such compliance into performance contracts of appropriate subordinate employees; and

(2) Recommending or taking disciplinary action against facility Directors or others who fail to meet the responsibilities outlined in this appendix.

b. **Facility Directors** are responsible for:

(1) Establishing local policies related to adjustable work hours. If adjustable work hours are used, the facility policy must contain procedures for auditing management and employee compliance (see paragraph 6 below);

(2) Adjusting the work hours of part-time physicians to levels that are consistent with VA physician staffing guidelines, patient care requirements, and other VA work requirements;

(3) Ensuring all current and newly appointed part-time physicians are made aware of their responsibilities with regard to VA time and attendance procedures;

(4) Enlisting the cooperation of affiliate officials in the implementation of VA time and attendance policies and procedures;

(5) Incorporating compliance into the performance contracts of appropriate subordinate employees and recommending or taking disciplinary action against employees or management officials who fail to fulfill their responsibilities; and

(6) Approving or terminating VA Form 0880a, or delegating this responsibility to appropriate facility official(s).

c. **Chiefs of Staff** are responsible for:

(1) Providing the facility Director with assistance in carrying out the provisions of this appendix;

(2) Reviewing proposals to establish or terminate a VA Form 0880a, and making recommendations to the facility Director level regarding appropriate utilization of such employees (whether part-time employment is appropriate, whether the proposed staff mix is appropriate, and whether the recommend level of part-time employment is consistent with VA patient care or other work requirements); and

(3) Ensuring part-time physicians and their immediate supervisors carry out their responsibilities. This includes recommending or taking disciplinary action where appropriate.

d. **Clinical Service Chiefs, Service Line Managers, and Other Supervisors** are responsible for:

(1) Recommending approval or termination of a VA Form 0880a for employees under their supervision;

(2) Ensuring subordinate employees have received required training related to time and attendance procedures;

(3) Monitoring levels at which part-time physicians are employed so they are consistent with appropriate staffing guidelines, as well as VA patient care or other work requirements; and for promptly recommending adjustments when appropriate;

(4) Establishing and adjusting biweekly work requirements for subordinate employees based on VA patient care and other work requirements (see paragraph 5a below); and for approving or disapproving written requests from employee to adjust their biweekly work requirements based on VA patient care or other work requirements;

(5) Notifying the timekeeper promptly whenever leave requests or changes to an employee’s biweekly work requirement have been approved;

(6) Certifying time and attendance records of employees under their supervision, and ensuring time and attendance records reflect actual attendance (see paragraph 6 below);

(7) Monitoring the amount and type of time part-time physicians under their supervision have worked during their service year to ensure it is consistent with the approved VA Form 0880a , and for promptly recommending termination of VA Form 0880a when appropriate;

(8) Investigating excessive requests for unscheduled hours or absences as these may be indicative of performance or staffing problems. An excessive number of requests may also indicate the type of appointment is inappropriate or the service level expectations should be changed (e.g., hours increased or decreased); and

(9) Recommending or taking appropriate disciplinary action whenever employees fail to comply with the provisions of this appendix or falsify time and attendance records.

e. **Chief, Human Resources Management Service or Equivalent Individual** is to:

(1) Provide advice and assistance to management officials and employees regarding VA work scheduling requirements and adjustable work hours for part-time physicians;

(2) Perform the reconciliation process as described in paragraph 9a below; and

(3) Ensure that supervisors have received required training related to time and attendance procedures.

f. **Chiefs of Fiscal Service or Equivalent Individuals** are responsible for:

(1) Ensuring timekeepers have received required training related to time and attendance procedures; and

(2) Ensuring required semi-annual audits of time and attendance reports have been completed as required by VA Manual MP-6, Part V, Supplement 2.2.

g. **Employees** are responsible for:

(1) Agreeing to service level expectations as outlined in paragraph 4 below;

(2) Knowing their approved biweekly work requirement and mandatory scheduled hours (if any) and for submitting written requests for supervisory approval to deviate from their biweekly work requirement or mandatory scheduled hours. Such requests must be submitted and approved in advance whenever possible;

(3) Monitoring amount and type of time they have worked during the service year to ensure the amounts is consistent with the Memorandum of Service Level Expectations;

(4) Complying with all policies and procedures associated with adjustable work hours; and

(5) Fulfilling their entire biweekly work requirement and being present during mandatory scheduled hours unless absent on approved leave or where a deviation is properly authorized by their supervisor, and for adhering to all other locally established time and attendance procedures.

**4. MEMORANDUM OF SERVICE LEVEL EXPECTATIONS, VA Form 0880a**

a. **General.** Part-time physicians placed on adjustable work hours must sign a Memorandum of Service Level Expectations (including part-time physicians on adjustable work hours on the effective date of this change). Under the Memorandum, VA and the part-time physician reach an annual service level expectation based on anticipated VA patient care or other work requirements and physician availability. Each part-time physician on adjustable work hours is to be paid the same amount each biweekly pay period, computed as provided in paragraph 8 below. VA officials establish biweekly work requirements and schedules for their employees based on recurring or known patient care and other VA needs. The biweekly work requirement and/or schedule may be changed with the supervisor's written approval (which may be in electronic format, e.g., e-mail, etc.). However, if VA duty is not required, the biweekly work requirement of physicians on adjustable work schedules are to be so annotated.

b. **Terms of the Memorandum.** VA Form 0880a does not constitute an employment contract. It does not obligate VA to provide a physician with the level of employment outlined in the Memorandum, nor does it obligate a physician to provide the expected level of service. However, whenever possible, either VA or the employee should give the other advance notice whenever any VA Form 0880a is to be terminated and terminations should coincide with the end of a pay period (see subparagraph 4g below).

c. **Content of VA Form 0880a.** VA Form 0880a contains an expected level of commitment and estimates the amount of time a physician is expected to dedicate to patient care, administrative, research, and educational activities. These activities are defined in paragraph 2g of chapter 3 of this part. A worksheet to assist in allocating such time is also provided in Appendix K to this part.

d. **Effective Dates of VA Form 0880a.** VA Form 0880a is to be 1 year in length. The agreed level of service shall be commenced on the first day of a pay period.

e. **Approval of VA Form 0880a.** VA Form 0880a is to be prepared and approved by the facility Director, or designee. Copies of the approved memorandum are to be provided to the part-time physician, the physician's supervisor, and a copy should be filed in the employee's payroll folder. The original signed form is to be filed on the left hand side of the employee's Merged Records Personnel Folder.

f. **Limitations.** The amount of service may not exceed 1820 hours in a service year (seven eights of full-time employment).

g. **Adjustment of VA Form 0880a.** The total expected service on VA Form 0880a may not be modified, but if an adjustment is required, the existing Memorandum of Service Level Expectations must be terminated and reconciled as outlined in paragraph 9a below. Accordingly, a new VA Form 0880a must be established.

h. **Termination of VA Form 0880a**

(1) Termination by VA or Physician. Whenever possible, either party should give the other advance notice that a VA Form 0880a is going to be terminated, and the termination of VA Form 0880a should coincide with the end of a pay period. VA or the physician may terminate VA Form 0880a at any time. Such terminations shall be in writing and filed on the left hand side of the employee's Merged Records Personnel Folder. VA officials shall promptly terminate VA Form 0880a whenever it no longer forms the appropriate basis for compensating the physician. When VA terminates a VA Form 0880a prior to the expiration period, the employee's services should be reviewed to determine whether a fixed work schedule, another type of VA appointment, or termination from employment is appropriate.

(2) **Automatic Termination.** VA Form 0880a automatically terminates on its expiration date. It also terminates if a physician leaves VA employment for any reason, transfers to another VA facility, moves to an excluded position (e.g., movement to a part-time position with a fixed schedule or conversion to full-time, intermittent, fee basis or without compensation employment), or signs a new VA Form 0880a.

(3) **Reconciliation.** When VA Form 0880a is terminated as outlined under paragraphs g or h(1) or (2) above, it must be reconciled in accordance with paragraph 9a below.

## 5. SCHEDULING AND TIMEKEEPING

a. **Establish Work Schedules Based on Known Work Requirements.** Supervisors must ensure adequate patient care coverage and that VA work requirements are met. These requirements are to be reviewed and employees' work schedules are to be adjusted to reflect those requirements. Whenever possible, such adjustments will be made in advance of the administrative workweek.

b. **Procedures for Substitutes.** When VA and the employee sign VA Form 0880a, they are to agree upon procedures for ensuring the continuation of patient care activities when the employee is absent. If a substitute is provided, that substitute is to be appropriately credentialed and privileged and informed about relevant patient care issues.

c. **Time and Attendance Reports.** All part-time physicians placed on adjustable work hours will record their time and attendance using the automated procedures in paragraph (1) below.

(1) **Documenting Time and Attendance through the Veterans Health Information Systems and Technology Architecture (VistA) through the use of the Electronic Subsidiary Record (ESR)**

(a) **Establishment of the Biweekly Work Requirement.** Supervisors will establish a biweekly work requirement for employees on adjustable work hours and this requirement will be documented in writing. All or a portion of the biweekly requirement may be set as a tour of duty (specific hours that the employee must be on duty). However, all of the hours in the biweekly work requirement can be variable if such an arrangement meets VA's needs. Periodically, supervisors are to assess the need for employees' services and make appropriate adjustments in the biweekly work requirement as necessary. If there is a need to adjust an

employee's biweekly work requirement, the approved change will be documented in writing by the supervisor. Whenever possible, adjustments to an employee's biweekly work requirement should be approved in advance. However, in emergent situations, the supervisor can approve such changes on a retroactive basis. In all cases, the supervisor's approval of a change in the biweekly work requirement will be documented in writing.

(b) **Timekeeper.** Prior to the beginning of each pay period, an ESR for each week of the pay period will be prepared for each part-time physician on adjustable work hours based on the biweekly work requirement.

(c) **Employee.** Employees are to record their time and attendance on a daily basis in the ESR.

(d) **Supervisor.** Supervisors are to verify and document that the biweekly work requirement has been met or accounted for by an appropriate leave charge, or that there has been an approved change to the biweekly work requirement. After verification, the supervisor will approve the ESR.

## 6. OTHER REQUIRED METHODS FOR DOCUMENTING TIME AND ATTENDANCE

a. **Obligation to Document.** Facility management and supervisory officials are responsible for ensuring time and attendance of part-time physicians is properly documented. The method(s) used must be incorporated into facility policy and are to be sufficiently comprehensive to assure outside reviewers that required VA duty has been performed. Suggested methods for doing this are outlined in paragraph b below.

b. **Suggested Methods for Documenting Time and Attendance**

(1) Have employees physically report to a specifically identified employee or alternate;

(2) Periodically visiting the clinic/procedure areas where part-time staff are assigned and observe whether the part-time physicians scheduled for duty are in fact present;

(3) Review charts or other records of scheduled patients seen by the part-time physician involved. This includes reviewing charts to ensure they are signed (thereby documenting proper supervision of residents);

(4) Review other records such as operating room logs, postoperative notes, minutes of meetings, operations reports, and other material that document the presence of employees; and

(5) Verify that the physician involved signed on to a VA computer system from an authorized location.

## 7. LEAVE

a. **General.** There is no change in leave accrual rates for part-time physicians on adjustable work hours. Accrual rates are based on actual service (1 hour of annual leave for each 10 hours in a pay status

and 1 hour of sick leave for each 20 hours in a pay status). The minimum leave charge is one-quarter hour, and the maximum annual leave carryover is 240 hours. Part-time employees on adjustable work hours are also entitled to all other types of leave (e.g., court leave, military leave, and leave without pay).

b. **Requirement to Request Leave for all Scheduled Duty.** Employees on adjustable work hours must request the appropriate type of leave whenever they are absent from scheduled duty or when they will not meet their established biweekly work requirement. Approval of leave is based on VA patient care or other work requirements. Such leave is to be requested in advance except in emergencies, and, if leave is not properly approved, the employee shall be considered to be absent without leave.

## 8. PAY COMPUTATION

a. **Basic Pay.** Employees on adjustable work hours are entitled to biweekly pay computed by dividing annual rate of pay by 2080, and multiplying the result by the hours allocated to the pay period (annual work requirement computed under paragraph 4a above divided by 26).

b. **Pay Adjustments.** Compensation received under VA Form 0880a shall be adjusted to reflect all changes in pay. This includes adjustments to reflect annual pay increases, tenure increases, and all other changes in the rate of total pay.

c. **Examples**

(1) **Example 1:** Over the next service year, a part-time physician commits to spend time at VA as follows: 832 hours of clinical activities, 104 hours in administrative activities, 26 hours in educational activities, and 156 hours performing approved research. The employee's total expected commitment would be 1118 hours per annum, or 43 hours a pay period (1118/26). Dividing the annual rate of pay by 2080 and multiplying each result by 43 determines the amount of pay the employee is to receive each pay period.

(2) **Example 2:** Over the next service year, a part-time physician commits to spending 1248 hours in clinical activities, 156 hours in administrative activities, 26 hours related to educational activities, and 260 hours performing approved research. The employee's total expected commitment would be 1690 hours per annum, or 65 hours a pay period (1690/26). Dividing the employee's annual rate of pay by 2080 and multiplying that hourly rate by 65 determines the amount of pay the employee receives each pay period.

d. **Substitutes.** Only hours of work performed by an employee may be deducted from the annual service commitment. Any substitute provided on behalf of an employee is subject to the conditions of the substitute's appointment.

## 9. ADMINISTRATION OF MEMORANDA OF SERVICE LEVEL EXPECTATIONS

a. **Reconciliation of Memoranda.** When a memorandum expires or is terminated, the salary and benefits paid are to be reconciled against the amount of work performed during the term of VA Form 0880a. The human resources office shall determine the number of hours the employee should have worked between the beginning and expiration or termination of VA Form 0880a (i.e., the number of hours allocated to each pay period under paragraph 8a above multiplied by the number of full pay periods between the beginning and ending date of VA Form 0880a) and then determine the number of hours the employee worked during this period, compute any applicable overpayment or underpayment. Based on information received from the human resource office, the payroll office will take the necessary steps for underpayment or overpayment. In the case of an overpayment, a SF 1114, Bill of Collection, will be issued to the employee.

b. **Reconciliation of Leave Balances.** In addition to the determination of whether an underpayment or overpayment occurred, the human resources office must also determine whether an adjustment to the part-time physician's leave balances must also be made. For example, if a memorandum of service level expectations set an employee's expected service at 1040 hours, and the reconciliation showed that the employee actually worked 1060 hours, the employee's leave account should be credited with 2 hours of annual leave and one hour of sick leave. On the other hand, if the same employee worked only 1020 hours, 2 hours of annual leave and one hour of sick leave should be deducted from the employee's leave balance. The payroll office is to be informed to take necessary actions to adjust leave balances when needed.

c. **Deceased Employees.** If an employee dies while employed by VA, a notice should be mailed to the person claiming the employee's unpaid compensation at the time of death. If no compensation was due to the employee at the time of their death, then the notification should be mailed to the legally entitled beneficiary designated on the SF 1152, Designation of Beneficiary, Unpaid Compensation of Deceased Civilian Employee, or the person(s) designated by the order of precedence outlined in 5 U.S.C. 5582, if they can be located. If there is no record of any beneficiary, then the notification should be mailed in the employee's name to the last address of record. If the employee worked hours for which the employee was not compensated, all salary and fringe benefits due are to be paid on behalf of the employee. The legally entitled beneficiary of their unpaid compensation may file claims for such employees. Claims by these beneficiaries should be processed in the same manner as for any other claimant except that payments will be handled using procedures for payment of beneficiaries of deceased employees. See VA Manual MP-4, Part II, chapter 4.

d. **Waiver of Overpayment.** If an SF-1114 is issued under paragraph 9a above, the overpayment liability may not be waived.

## 10. UTILIZATION OF PART-TIME EMPLOYEES

a. **Reviewing Utilization of Employees.** Using the criteria in VA Handbook 5005, Part II, chapter 3, paragraph 2, and paragraph 10b below, facility Directors, or their designees, are to review the appointments of employees covered by this appendix. Appointments shall be reviewed on an annual basis and more

frequently if there are indications that the type of appointment may not be facilitating the accomplishment of VA patient care or other work requirements.

b. **Employment Authorities**

(1) **Part-Time Appointments.** Physicians may be appointed on a part-time basis under Section 7405(a)(1)(a) of Title 38, United States Code. Part-time appointments normally imply regularly scheduled tours of duty that do not significantly change from one pay period to another. However, part-time physicians should be placed on adjustable work schedules if they have VA or non-VA patient care, research or educational responsibilities that make adherence to regularly scheduled tours of duty impractical. It is important to note that part-time appointments are only appropriate in situations where the physician's duties and responsibilities [will normally] be performed at the VA facility, regardless of whether the tour is fixed or adjustable. In [certain] situations [ ], other types of appointments or a mix of appointments may be more appropriate.

(2) **Other Work Schedules or Appointments**

(a) **Intermittent Work Schedules.** Employees may be employed on an intermittent basis when demand for their services varies over time. The advantage is that periods of employment may be tailored to varying needs for services. The drawback is that intermittent employees are not entitled to employee benefits. Intermittent employment also presumes services are provided at the VA facility. Employees utilized on an intermittent basis are only compensated when they provide services, they are placed on the applicable grade and rate of pay on the Physician and Dentist Base and Longevity Pay Schedule, and pay for such positions is limited to the rate of basic pay for Level V of the Executive Schedule.

(b) **Fee Basis Appointments.** [Individuals] may be appointed on a fee basis [appointment when health services are not otherwise readily available, when it is cost effective, or when the utilization is focused on the service or task to be performed rather than on a specific tour of duty.] For example, [a surgeon] may be appointed on a fee basis to [perform certain surgeries that occasionally may be required, and which cannot be performed by on-board employees]. Care must [ ] be exercised with these appointments, as facilities are [ ] responsible for ensuring employees provide the services for which they are compensated and that procedures are not generated solely for the purpose of generating fees. Fee basis appointments are also based on the employee providing specific services. This may be a problem in that fee basis employees would not generally be available to perform administrative tasks otherwise be performed by part-time employees (e.g., peer review, attendance at meetings).

(c) **Dual Appointments.** Individuals may be given more that one of the above appointments if that is the best way to secure the employee's services. However, the expectations concerning time and attendance need to be clear and, if fee basis is involved, the facility needs to ensure the services are actually being provided or that procedures are not generated solely for the purpose of generating fees. The rate of basic pay and fees payable to such individuals is limited to the rate of basic pay for Level V of the Executive Schedule. Additional information about dual employment may be found in VA Handbook 5005, Part II, Section A, Chapter 3, paragraph 3b.

**11. NOTIFYING PART-TIME PHYSICIANS.** All part-time physicians placed on adjustable work hours after the effective date of this change are to be advised of VA time and attendance procedures and certify in writing that they understand such procedures. This certification is to be filed on the left hand side of the employee's Merged Records Personnel Folder. The part-time physician is to certify that:

a. They will promptly advise VA if their service level expectations outlined in their VA Form 0880a no longer accurately reflect their level of commitment to VA;

b. They have been advised they may only post hours of duty performed at or on behalf of VA on the ESR;

c. If they are scheduled for VA duty, they must perform work or otherwise account for such time through the use of approved leave;

d. Work performed must be posted *daily* on the ESR;

e. They must obtain written authorization from their supervisor for any variation from the approved biweekly work requirement;

f. If they are not present or on approved leave when a random audit of time and attendance, they will be considered to be absent without leave; and

g. Falsification of time and attendance records or pre-posting work on the ESR will result in appropriate disciplinary action.

# APPENDIX J. MEMORANDUM OF SERVICE LEVEL EXPECTATIONS FOR PART-TIME PHYSICIAN ON ADJUSTABLE WORK HOURS

Department of Veterans Affairs

## MEMORANDUM OF SERVICE LEVEL EXPECTATIONS FOR PART-TIME PHYSICIAN ON ADJUSTABLE WORK HOURS

PRIVACY ACT STATEMENT: The Department of Veterans Affairs (VA) is asking you to provide the information on this form under the authority of Section 7405(a)(1)(a) of Title 38, United States Code in order for VA to determine the expected level of commitment and estimate the amount of time a part-time physician is expected to dedicate to patient care, administrative, research, and educational activities. The information you provide will become part of the "General Personnel Records (Title 38)-VA" (76VA05) Privacy Act system of records. VA may disclose the information that you put on the form as permitted by law. VA may make a "routine use" disclosure of the information for: civil or criminal law enforcement; litigation in which the United States is a party or has an interest; Federal or State licensing boards; and personnel administration. Providing this information to VA is voluntary. However, if you do not provide the information, VA will be unable to employ you as part-time physicians placed on adjustable work hours must complete and sign a Memorandum of Service Level Expectations.

| NAME OF VA FACILITY | FACILITY ADDRESS | FACILITY STATION NO. |
|---|---|---|
| VA Medical Center | 968 ABC Street, WayCross, MD | XXX |

**EMPLOYEE AGREEMENT/CERTIFICATION**

1. Under regulations issued by the Secretary of Veterans Affairs, hereinafter referred to as the Secretary, I understand that I am to provide to the Veterans Health Administration (VHA) of the Department of Veterans Affairs (VA) 1560 hours of service during the period beginning February 5, 2007 ; and ending February 4, 2008 . Generally, these hours are to be divided as follows: .50 % (patient care), .17 % (administration), .17 % (research), and .17 % (education). I understand I may terminate this memorandum at any time; that my pay and benefits will be determined in accordance with regulations issued by the Secretary, and that this memorandum does not alter the applicability of VHA regulations or procedures concerning the terms, conditions, or duration of my employment. It is further understood that this memorandum does not constitute an employment contract.

2. This memorandum shall be effective upon approval by the Secretary (or designee) of the amount payable, provided I am otherwise eligible, shall commence on the date prescribed in accordance with regulations.

3. If this memorandum expires or is terminated, the hours of service I have provided and salary and benefits I have received during the term of this memorandum will be compared. If I have provided service for which I have not been compensated, VHA will compensate me for such service in accordance with regulations issued by the Secretary or designee. If I have been compensated for hours of service I have not provided, I understand I am to refund such excess compensation to VHA in accordance with regulations issued by the Secretary or designee. It is further understood that any amount due on my behalf will be considered to be a debt due to the United States that I am to pay in full as directed by VA.

4. I understand that this Memorandum of Service Level Expectations terminates when any of the following occur:

   a. Separation from VHA employment for any reason.
   b. Transfer to another VHA facility.
   c. Acceptance of a position that does not qualify for adjustable work hours.
   d. Completion of agreed period of service, or enactment of superseding law.
   e. Execution of a superseding Memorandum of Service Level Expectations.

5. I acknowledge that VA Directive 5011 and VA Handbook 5011, part II, issued by the unit secretary (or designee) to implement adjustable work hours, are incorporated into and made a part of this memorandum and I have read a copy.

6. I acknowledge that the unit secretary (or designee) may, pursuant to regulations, adjust the amount of the pay to which I am entitled to reflect appropriately any change in my basic pay, special pay (if applicable), or position status (e.g., proportion of part-time employment or change in level of responsibility).

| SIGNATURE OF APPLYING PHYSICIAN | | DATE SIGNED | |
|---|---|---|---|
| Dr. Zena | | 1/08/2007 | |
| APPROVAL SIGNATURE, UNIT SECRETARY OR DESIGNEE | DATE SIGNED | APPROVAL SIGNATURE, FACILITY DIRECTOR OR DESIGNEE | DATE SIGNED |
| Sr. Arstra | 1/9/2007 | Rosetta McAthee | 1/10/2007 |

VA Form DEC 2006 **0880a** Adobe Forms Designer 7.1

## INSTRUCTIONS FOR COMPLETING AND MONITORING MEMORANDA OF SERVICE LEVEL EXPECTATIONS

1. Estimate the number of hours the part-time physician is expected to serve during the term of the Memorandum of Service Level Expectations, VA Form 0880a. The estimate, which is to be based on VA patient care and other work requirements, is then to be broken down by the amount the employee is generally expected to spend in patient care, administration, research, and education. Use VA Form 0880b, Worksheet for Determining Percentages on Memorandum of Service Level Expectations. This worksheet is to be used with the definitions of VA duty found in paragraph 2g of chapter 3, of part II of this handbook. Once completed, the worksheet is to be filed on the left hand side of the employee's Merged Records Personnel Folder.

2. Once an understanding with the part-time physician is reached, VA Form 0880a is to be signed and dated by the applicant or employee. The facility Director or designee is also to sign the document and enter the effective date of VA Form 0880a.

***Note**: Memoranda of Service Level Expectations are to be 1 year in length. Memoranda of Service Level Expectations are to be effected on the first day of the pay period.*

3. VA officials responsible for monitoring the Memorandum of Service Level Expectations will retain a copy; a copy will be provided to the employee; and a copy will be filed in the employee's Merged Records Personnel Folder.

4. Officials responsible for monitoring Memorandum of Service Level Expectations are to fulfill their responsibilities as outlined in paragraph 3 of Appendix II-I of this handbook.

# APPENDIX K. WORKSHEET FOR DETERMINING PERCENTAGES ON MEMORANDUM OF SERVICE LEVEL EXPECTATIONS

Department of Veterans Affairs

## WORKSHEET FOR DETERMINING PERCENTAGES ON MEMORANDUM SERVICE LEVEL EXPECTATIONS (VA Form 0088a)

*NOTE: See VA Handbook 5011, Part II, Chapter 3, for guidance on adjustable work hours for part-time physicians.*

**PRIVACY ACT STATEMENT:** The Department of Veterans Affairs (VA) is asking you to provide the information on this form under the authority of Section 7405(a)(1)(a) of Title 38, United States Code in order for VA to determine the expected level of commitment and estimate the amount of time a part-time physician is expected to dedicate to patient care, administrative, research, and educational activities. The information you provide will become part of the "General Personnel Records (Title 38)-VA" (76VA05) Privacy Act system of records. VA may disclose the information that you put on the form as permitted by law. VA may make a "routine use" disclosure of the information for: civil or criminal law enforcement; litigation in which the United States is a party or has an interest; Federal or State licensing boards; and personnel administration. Providing this information to VA is voluntary. However, if you do not provide the information, VA will be unable to employ you as part-time physicians placed on adjustable work hours must complete and sign a Memorandum of Service Level Expectations.

| NAME OF PHYSICIAN | DATE *(Month/Day/Year)* |
|---|---|
| Dr. X | 01/08/2007 |
| **NAME OF VA FACILITY** | **SERVICE AND SECTION WITHIN VA FACILITY** |
| VA Medical Center | Extended Care, Geriatrics |

| ESTIMATED EFFORT LEVEL | | NAME OF SUPERVISOR | NAME OF TIMEKEEPER |
|---|---|---|---|
| HOURS PER WEEK | HOURS PER YEAR | | |
| 30 | 1560 | B.H. | R. S. |

**EFFORT DISTRIBUTION**

| ACTIVITY | HOURS PER WEEK *(Give range for intermitent activities)* | OVERALL PERCENT OF EFFORT |
|---|---|---|
| 1. Clinic | | |
| 2. Inpatient ward attending | 15 | .50% |
| 3. Inpatient consult attending | | |
| 4. Operating room | | |
| 5. Special procedures | | |
| 6. Administration | 5 | .17% |
| 7. Teaching | 5 | .17% |
| 8. Research | 5 | .17% |
| 9. Total | 30 | 100% |

**SERVICE ASSIGNMENTS**

**CLINIC**

| NAME OF CLINIC | DAY/TIME | FREQUENCY |
|---|---|---|
| | | |
| | | |
| | | |
| | | |
| | | |

VA Form DEC 2006 **0880b** Adobe Forms Designer 7.1

| INPATIENT WARD ATTENDING | |
|---|---|
| SERVICE | WEEKS |
| Transitional Care Unit | 52 |
| GEM Unit | 12 |

| INPATIENT CONSULT ATTENDING | |
|---|---|
| SERVICE | WEEKS |
| Geriactrics | 12 |
| | |

| OPERATING ROOM | | |
|---|---|---|
| SERVICE | DAY | FREQUENCY |
| | | |
| | | |
| | | |

| SPECIAL PROCEDURES | | |
|---|---|---|
| SERVICE | DAY | FREQUENCY |
| | | |
| | | |
| | | |

| ADMINISTRATION | |
|---|---|
| POSITION | COMMENT |
| Director | Meet with providers on a regular basis |
| | |
| | |

| COMMITTEES *(Include joint VA/affiliate committees)* | |
|---|---|
| COMMITTEE | POSITION |
| VISN Education Sub | Member |
| ECL Ops, QA, Provider | Member |
| P&T | Member |
| | |

| DIDACTIC TEACHING ACTIVITIES *(Include preparation time, curriculum development)* | |
|---|---|
| ACTIVITY | COMMENT |
| UT, Baylor Student | |
| Residents, Fellows | |
| | |

VA FORM 0880b, DEC 2006, PAGE 2 Adobe Forms Designer 7.1

**RESEARCH** *(List or append approved projects, indicating location of research and sponsorship (if any). Continue on the blank page 3 provided (if needed))*

**EXPECTATIONS RELATED TO VA APPOINTMENT**

1. The service chief/manager or other appropriate supervisory official must approve changes in clinical assignments, and all clinical assignments must be covered.
2. You must be engaged in approved VA work during your scheduled work hours.
3. All leave (annual leave, authorized absence, etc.) must be recorded. Leave must be requested and reported in advance.
4. Whenever possible, you are to submit requests for adjustments to your biweekly work requirements in advance.

| SIGNATURE OF PHYSICIAN | DATE *(Month/Day/Year)* |
|---|---|
| Dr. Jena | 1/08/2007 |
| SIGNATURE OF DESIGNATED VA OFFICIAL | DATE *(Month/Day/Year)* |
| Dr. Arstra | 1/09/2007 |

CONTINUATION SHEET

Research Activities:

Role of Drug X on brain functions: Funded by XYZ Pharmacy

VA FORM 0880b, DEC 2006, PAGE 3 Adobe Forms Designer 7.1

]

# HOURS OF DUTY AND LEAVE

## PART III. LEAVE

## CONTENTS


PARAGRAPH PAGE

**CHAPTER 1. GENERAL**

1. AUTHORITY I-1
2. RESPONSIBILITIES III-1

**CHAPTER 2. TITLE 5 LEAVE AND ABSENCE**

1. SCOPE I-5
2. LEAVE ACCRUALS AND LEAVE CHARGES III-5
3. ANNUAL LEAVE III-7c
4. SICK LEAVE III-9
5. ABSENCE FOR MATERNITY OR PATERNITY REASONS III-14
6. LEAVE IN CONNECTION WITH RETIREMENT III-16
7. LEAVE FOR FIELD FACILITY HEADS III-16
8. LEAVE IN CONNECTION WITH TRAVEL III-17
9. MILITARY LEAVE III-17
10. COURT LEAVE III-18
11. LEAVE FOR OFFICE OF WORKERS' COMPENSATION PROGRAM III-21
12. [ADMINISTRATIVE LEAVE] III-21
13. LEAVE WITHOUT PAY (LWOP) III-32
14. LEAVE WITHOUT PAY FOR FAMILY SUPPORT PURPOSES III-33
15. ABSENCE WITHOUT LEAVE (AWOL) III-33a
16. ABSENCE OF DISABLED VETERANS III-34
17. HOME LEAVE III-34
18. FAMILY AND MEDICAL LEAVE III-35
19. BONE MARROW AND ORGAN DONOR LEAVE III-35
20. VOLUNTARY LEAVE TRANSFER PROGRAM III-35
21. DISABLED VETERAN LEAVE III-46a

**CHAPTER 3. TITLE 38 LEAVE PROGRAM**

1. COVERAGE I-47
2. POLICY III-47

## CONTENTS

**PARAGRAPH** **PAGE**

**CHAPTER 3. TITLE 38 LEAVE PROGRAM - Continued**


3. GENERAL III-47
4. ANNUAL LEAVE III-48
5. SICK LEAVE I-51
6. ACCRUALS OF ANNUAL AND SICK LEAVE II-56
7. OTHER LEAVE III-60
8. RELIGIOUS, STATE AND LOCAL HOLIDAYS III-61
9. [ ADMINISTRATIVE LEAVE] III-61
10. LEAVE WITHOUT PAY (LWOP) III-65
11. LEAVE WITHOUT PAY FOR FAMILY SUPPORT PURPOSES III-67
12. UNAUTHORIZED ABSENCE III-68
13. DISPOSITION OF LEAVE ON TRANSFER, SEPARATION, OR RETIREMENT III-68
14. DUTY AND LEAVE FOR RESIDENTS III-71


**APPENDICES**


III-A. SAMPLE SICK LEAVE QUESTIONS AND ANSWERS I-A-1
III-B. SAMPLE MEMORANDUM TO ALL EMPLOYEES—VOLUNTARY LEAVE TRANSFER PROGRAM III-B-1
III-C. SAMPLE APPLICATION MEMORANDUM—VOLUNTARY LEAVE TRANSFER PROGRAM III-C-1
III-D. SAMPLE MEMORANDUM TO APPROVED LEAVE RECIPIENT--VOLUNTARY LEAVE TRANSFER PROGRAM III-D-1
III-E. SAMPLE MEMORANDUM OF DISAPPROVAL AS LEAVE RECIPIENT--VOLUNTARY LEAVE TRANSFER PROGRAM III-E-1
III-F. SAMPLE MEMORANDUM FOR RESTORATION OF LEAVE--VOLUNTARY LEAVE TRANSFER PROGRAM III-F-1
III-G. SAMPLE ANNUAL LEAVE ACCRUAL RATE TABLE WITH EXAMPLES III-G-1
III-H. SAMPLE VA FORM 0869 FOR VERIFICATION OF CREDITABLE SERVICE FOR PRIOR WORK EXPERIENCE OR ACTIVE DUTY UNIFORMED MILITARY SERVICE III-H-1
[III-I. ADMINISTRATIVE LEAVE – ALL OTHER PURPOSES III-I-1
III-J. ADMINISTRATIVE LEAVE BY LAW, REGULATION, OR PRESIDENTIAL DIRECTIVE III-J-1
III-K. INVESTIGATIVE LEAVE AND NOTICE LEAVE – REQUIRED DETERMINATIONS III-K-1]

# PART III. LEAVE

## CHAPTER 1. GENERAL

### 1. AUTHORITY

a. **Title 5 Leave and Absence**

(1) The Office of Personnel Management has the over-all responsibility for administration of 5 U.S.C. Chapter 63.

(2) Administration Heads, Assistant Secretaries, Other Key Officials and Deputy Assistant Secretaries and field facility heads are authorized to administer the provisions of this part of the handbook and 5 U.S.C. Chapter 63 and 5 CFR part 630 for employees under their respective jurisdictions.

(3) Except as otherwise specifically set out in this part, this authority may be redelegated to subordinate officials with whatever limitations deemed necessary to ensure the proper exercise of authority.

b. **Title 38 Leave and Absence**

(1) 38 U.S.C., Section 7421, authorizes the Secretary to prescribe, by regulation, leaves of absence of employees covered by 38 U.S.C., chapters 73 and 74. [This part of the handbook is a regulation pursuant to 38 U.S.C., Section 7421.]

(2) The Under Secretary for Health is responsible for the overall direction and administration of the leave policies and instructions for VHA.

(3) Facility Directors are responsible for administering the leave policies and instructions at facilities as provided herein.

(4) The Under Secretary for Health and facility directors are authorized to approve or disapprove leave for employees within their jurisdiction subject to the provision of part III, chapter 3 of this handbook. These officials may designate employees to exercise their authority for them, except where the specific provisions of part III, chapter 3 limit such authority to them only. Persons authorized to approve leave are also responsible for advising employees properly on leave matters and to guard against abuses of leave privileges.

### 2. RESPONSIBILITIES

a. **Human Resources Management (HRM) Office.** The Office of Human Resources Management [and Labor Relations] and field HRM offices are responsible for the general administration of the leave program. This includes:

(1) Interpreting leave policies and regulations for operating officials.

(2) Providing for employee orientation on leave provisions and supervisory training in leave administration.

b. **Supervisor.** The supervisor is responsible, as authorized, for administering the leave and excused absence policies and regulations for employees under his or her supervision. This includes:

(1) Insuring that all subordinate supervisors receive appropriate training in administering leave policies and regulations; that employees are trained in proper use of leave, kept informed on leave matters and of the name or title of the leave-approving supervisor.

(2) Planning, scheduling, and rescheduling the more substantial periods of annual leave on a calendar year basis to avoid forfeiture cases.

(3) Acting promptly on requests for leave and determining the necessity for or acceptability of sick leave medical certificates.

(4) Maintaining control over attendance, leave and excused absence of employees under his or her control. Determining whether an employee's absence from regular duties constitutes official duty, approved leave, excused absence without charge to leave, or absence without leave, ensuring that the unit timekeeper is promptly notified.

(5) Assuring certification of time and attendance ETA posting is correct in all respects.

(6) Determining the proper leave charge when an employee requests sick leave and reports being engaged in outside employment; justifying and documenting any approval of sick leave while the employee is so engaged.

(7) Assuring an employee who has been on sick leave because of a contagious disease or other medical requirement imposed by management receives medical clearance for return to duty.

(8) Consulting with the Human Resources Management office for advice concerning, and interpretation of, leave regulations.

c. **Employee.** The employee is responsible for observing leave and excused absence policies and regulations which affect him or her, including:

(1) Being at the post of duty during official duty hours unless on approved leave or excused absence without charge to leave.

(2) Observing the time and attendance policies and procedures and using leave for the purpose for which it is intended.

(3) Requesting advance approval of annual leave and sick leave for medical, dental, or optical examination or treatment.

(4) Making timely reports of absences not previously approved.

(5) Reporting any outside employment during a time for which sick leave is requested.

(6) Submitting accurate statements about absences, applications for and use of sick leave; transferred leave; family and medical leave; and furnishing medical certificates when required.

(7) Scheduling and, if necessary, rescheduling annual leave to avoid forfeiture.

# PART III. LEAVE

## CHAPTER 2. TITLE 5 LEAVE AND ABSENCE
## (To Be Used With 5 U.S.C. Chapter 63 and 5 CFR, Part 630)

**1. SCOPE.** This chapter provides the policies and guidelines to be used in administering the provisions of 5 U.S.C., chapter 63 and 5 CFR, part 630 for employees covered by this leave system. Hybrid title 38 employees appointed under 38 U.S.C. 7401(3) or 7405(a)(1)(B) are covered by the provisions of this chapter. There is a separate leave system for physicians and dentists, including medical and dental residents, podiatrists, [chiropractors,] optometrists, nurses, nurse anesthetists, physician assistants, and expanded-function dental auxiliaries employed under the authority of 38 U.S.C., chapters 73 and 74 (see part III, chapter 3).

### 2. LEAVE ACCRUALS AND LEAVE CHARGES

a. **General.** For information concerning rates of accrual, leave charges, maximum accumulations, and disposition of leave accounts, see 5 U.S.C. 6303. 6304, 6307 and 5 CFR 630. A leave year begins on the first day of the first full biweekly pay period in a calendar year and ends the day before the first full biweekly pay period in the following calendar year. **NOTE:** *Part-time employees earn leave only when there has been established in advance a regular tour of duty on one or more days during each administrative workweek.*

b. **Crediting Leave.** Annual and sick leave which will be earned during the pay period shall be credited to an employee's leave account at the beginning of the pay period and may be used during such period.

c. **Leave Charges.** The minimum charge for any type of leave[, other than military leave,] shall be a quarter hour (15 minutes). When employees are absent for less than 15 minutes and request leave, they cannot be required to work the remaining portion of the 15 minutes for which the leave is charged. Separate periods of absence in the same tour of duty, however may be totaled together and charged in 15 minute increments. Refer to paragraph 12f of this chapter for guidance concerning tardiness. [Refer to paragraph 9d of this chapter for guidance on military leave charges.]

d. **Accruals and Charges for Employees in Stand-by Tours of Duty.** Employees occupying positions involving regular tours of duty in excess of 40 hours a week and for whom premium compensation is paid on an annual basis shall accrue and be charged leave in accordance with the provisions of 5 CFR 630.210 on uncommon tours of duty. Employees performing standby duty in addition to their regular tour of duty do not have a special leave accrual rate. However, these employees are charged leave on holidays in accordance with 56 Comp Gen. 551.

e. **Absence and Leave For Firefighters with Uncommon Tours of Duty**

(1) **Uncommon Tours Of Duty.** Firefighters covered by chapter 2, this part, will be placed on uncommon tours of duty for purposes of earning and charging leave.

(2) **Annual Leave Accrual.** Firefighters covered by chapter 2, this part, will accrue annual leave based on the number of hours in the firefighter's regular tour of duty, as shown below. Depending on the number of years of service for leave accrual purposes, leave accrual rates may vary for the last full pay period (PP) of the calendar year (CY):

**ANNUAL LEAVE ACCRUALS**

| **Weekly Regular Tour of Duty** | | | | | | |
|---|---|---|---|---|---|---|
| **Years of Service** | **56 Hours (Average)** | | **60 Hours (Average)** | | **72 Hours (Average)** | |
| | Leave accrual per pay period, *except last PP* | Leave accrual, last full PP of CY | Leave accrual per pay period, *except last PP* | Leave accrual, last full PP of CY | Leave accrual per pay period, *except last PP* | Leave accrual, last full PP of CY |
| Less than 3 | 5 hours | 21 hours | 6 hours | 6 hours | 7 hours | 12 hours |
| 3 – 15 | 8 hours | 24 hours | 9 hours | 15 hours | 11 hours | 13 hours |
| 15 or more | 11 hours | 16 hours | 12 hours | 12 hours | 14 hours | 24 hours |

(3) **Sick Leave Accrual.** Firefighters covered by chapter 2, this part, will accrue sick leave based on the number of hours in the firefighter's regular tour of duty, as shown in the following:

**SICK LEAVE ACCRUALS**

| **Weekly Regular Tour of Duty** | | | | | |
|---|---|---|---|---|---|
| **56 Hours (Average)** | | **60 Hours (Average)** | | **72 Hours (Average)** | |
| Leave accrual per pay period, *except last PP* | Leave accrual, last full PP of CY | Leave accrual per pay period, *except last PP* | Leave accrual, last full PP of CY | Leave accrual per pay period, *except last PP* | Leave accrual, last full PP of CY |
| 5 hours | 21 hours | 6 hours | 6 hours | 7 hours | 12 hours |

(4) **Charges to Leave or Other Absences.** Annual leave, sick leave, and leave without pay will be charged on the basis of ¼ hour for each ¼ hour of absence in an employee's scheduled tour. All scheduled hours of duty are considered to fall on regular workdays; employees are required to work all scheduled hours of duty or be charged for the absence. Employees will be charged for absences during overtime hours within their regularly scheduled tours of duty. Employees are expected to work on all Federal holidays falling within their regular tours of duty, or they will be charged for the absence.

(5) **Accumulated Leave.** Firefighters with accumulated leave balances who convert to a different regular work schedule (e.g., from a 40-hour schedule to a 60-hour schedule, from a 72-hour schedule to

a 60-hour schedule, etc.) should have their leave balances converted through use of the following conversion formulas:

a. (number of hours in leave balance) x 72 ÷ 40 (when change is from 40-hour workweek to 72-hour workweek);

b. (number of hours in leave balance) x 40 ÷ 72 (when change is from 72-hour workweek to regular 40-hour work week);

c. (number of hours in leave balance) x 72 ÷ 60 (when change is from 60-hour workweek to 72-hour workweek);

d. (number of hours in leave balance) x 60 ÷ 72 (when change is from 72-hour workweek to 60-hour workweek).

f. **Creditable Service for Annual Leave Accrual for Newly Appointed Employees with Prior Non-Federal Work Experience or Active Duty Uniformed Military Service**

(1) **General.** Under Chapter 63 of title 5, United States Code, the Department of Veterans Affairs may grant service credit [to] newly appointed or reappointed employees for prior [ ] work experience or experience in a uniformed service that otherwise would not be creditable for the purpose of determining [ ] annual leave accrual rate. This authority should be used when it is determined that[:

(a)] the skills and experience the employee possesses are [ ] essential to the new position and were acquired through performance in a [prior] position or in the uniformed services[:

(b) the duties and responsibilities] are directly relate to the duties of the position to which he or she is being appointed; and [ ]

[(c)] the use of this authority is necessary to [recruit an individual with the skills and experience necessary] achieve an important agency mission or performance goal. This authority is intended as a recruitment tool for attracting highly qualified individuals with exceptional skills and experiences. The offer of creditable service for annual leave accrual is not an entitlement.

(2) **Eligibility.** This provision applies only to:

(a) [Employees with previous work experience who are receiving their first appointment (regardless of tenure) as civilian employees of the Federal Government, employees] who are reappointed following a break in service of at least 90 calendar days from the date of their last period of Federal civilian employment, [or] retired military employees who performed active duty uniformed service for which they did not receive service credit towards annual leave accrual.

(b) The skills and experience the employee possesses, which were acquired through performance in a [prior position] or in the uniformed service, are essential to the new position having duties that are directly related to the position to which he or she is being appointed; and the use of this authority is necessary to achieve an important agency mission or performance goal.

(3) **Procedures for Granting Service Credit.** An employee must submit written documentation of his/her prior [work experience] or uniformed service [experience,] in order to receive credit under this authority.

(a) The following statement must be included in the Vacancy Announcement [if its use would enhance efforts to attract highly qualified individuals whose experience would enable VA to achieve its mission or performance goals]: "Selected applicants may qualify for credit toward annual leave accrual, based on prior [work experience] or military service experience."

(b) Upon selection of the candidate from the list of best qualified applicants, if applicable, the selecting official will determine the amount of creditable service for annual leave accrual. The amount of service credited may not exceed the actual amount of service during which the employee performed the duties that are directly related to the position in which the employee is being appointed. This amount of creditable service must be specified in years and months on VA Form 0869 (See sample form in Appendix H). The [*A*]*nnual Leave Accrual Rate Table with Examples* found in Appendix G illustrates how years of experience will determine the employee's annual leave accrual category.

(c) An employee must submit written documentation of his/her prior [work experience] or uniformed service [experience] in order to receive credit under this authority. Examples of acceptable documentation are:

[(1)] a resume listing the beginning and ending dates of positions held and a description of the duties and responsibilities;

[(2)] a completed and signed Optional Form 612, *Application for Federal Employment*; or

[(3)] the document containing the required information. Retired military employees, who performed active duty uniformed service for which they were not awarded creditable service, must submit written documentation such as a Form DD 214 to receive credit for honorable active duty uniformed military service.

(d) In order to receive credit for annual leave accrual, applicants who have been determined to possess specialized work experience will be required to certify by signing the completed VA Form 0869 along with written documentation of the employee's qualifying civilian [work experience] or military service [experience], prior to the employee's entrance on duty (EOD) date.

(e) Credit for [prior work experience] or active duty uniformed service [experience] must be approved before the appointee's EOD date.

(f) Credit for [prior work experience] or active duty uniformed service [experience] is granted to the employee upon the effective date of his or her initial appointment or reappointment to Federal service.

(g) Once the selecting official has completed the determination of creditable service, VA Form 0869 will be submitted to the Approving Official for action (see section (4) Approval Authority).

(h) After approval, the Human Resources Manager is responsible for reviewing all documentation submitted, including information provided on VA Form 0869, to ensure compliance with all requirements prior to granting the service credit.

(i) After all signatures on VA Form 0869 have been obtained, the form is permanently filed in the employee's Official Personnel Folder (OPF).

(4) **Approval Authority**

(a) In accordance with the Inspector General Act of 1978, the Inspector General has independent authority to approve/disapprove requests within the Office of Inspector General.

(b) Under Secretaries, Assistant Secretaries, Other Key Official or their designees are responsible for approving/disapproving requests in VA Central Office.

(c) Facility Directors are responsible for approving/disapproving requests for employees under their jurisdiction.

(d) The Deputy Assistant Secretary for Human Resources Management and Labor Relations will advise management and operating officials on the policies and procedures in this chapter.

(e) Selecting officials are responsible for determining the amount of creditable service for annual leave accrual.

(5) **Restrictions** [ ]

[(a)] An employee may not receive dual credit for service. Once an employee is permanently credited with a period of [prior work experience] or active duty uniformed service (after completion of one full continuous year of service with the appointing agency), that period of service may not be considered for further credit if the employee has a future break in service.

[(b) There are no exceptions to the prohibition on crediting prior work experience to reappointed employees who held civil service positions within the previous 90 days before their reappointment.

(c) Creditable service for annual leave accrual is not intended to be applied across the board to all newly appointed employees.]

(6) **Retention of Creditable Service.** Once an employee completes one full year of continuous service with the Department of Veterans Affairs (VA), the period for which he/she was previously granted service credit becomes permanent and is creditable for the purpose of determining the employee's annual leave accrual rate.

(7) **Withdrawal of Service Credit**

(a) If an employee separates from Federal service prior to completing one full year of continuous service with the VA, the employee is not entitled to retain service credit for prior [work experience] or active duty uniformed service. However, any annual leave accrued or accumulated by an employee remains to the credit of the employee, even if he or she fails to complete one full year of continuous service with the Department of Veterans Affairs. In the case of a separation from Federal service, the employee is entitled to a lump-sum payment for any unused portion of annual leave accrued.

(b) If the employee transfers to another agency before completing one full year of service, the employee loses his/her entitlement to service credit, and the losing agency, is required to deduct the additional service credit from the employee's total creditable service prior to the transfer. A new service computation date (SCD) for leave must be established before the employee transfers. VA must transfer the annual leave balance to the new employing agency under 5 CFR 630.501, if the employee is transferring to a position to which annual leave may be transferred. Any annual leave accrued or accumulated by an employee remains to the credit of the employee.

[(c) For employees who are placed in a leave without pay status, the one year of continuous service requirement to permanently retain creditable service must be extended by the amount of time they were in a leave without pay status, unless an employee separates or is placed on leave without pay to perform military service, or because of an on-the-job injury for which he or she is receiving compensation.]

g. **Unscheduled Leave.** An employee who finds it necessary to be absent without having received prior approval shall request leave as early as practicable. To the extent possible, this should be done at the beginning of the tour of duty, but not later than 2 hours thereafter. For the same period of absence, daily reports will not be required. However, employees who are absent for more than 1 day on unscheduled leave may be requested to estimate the probable date of return to duty. Also, employees who are shift workers may be required to call their supervisor before returning to duty to facilitate the scheduling of all affected employees.

## 3. ANNUAL LEAVE

a. **Annual Leave Requests.** All requests for annual leave should be made in advance. Short periods of annual leave (3 days or less) may be approved verbally. Longer periods must be requested and approved on the Enhanced Time and Attendance (ETA) or other electronic system. Verbally approved leave requests must be documented by the employee promptly upon return from leave either using ETA or other electronic system, OPM Form 71, Request for Leave or Approve Absence; or other acceptable written documentation. There is no authority to approve annual leave from which the employee will not be returning to duty, unless such approval meets the needs of the service (34 Comp. Gen. 61). Requests for annual leave and leave without pay (LWOP) will be considered in the light of current and anticipated workloads. Employees should be encouraged to take annual leave for at least 2 consecutive weeks each year for purposes of rest and relaxation; and afforded the opportunity to use their annual leave to avoid leave forfeitures.

[b. **Employee Leave Requests for Incarceration.** It is not appropriate to approve leave of any kind for the period of absence required to serve a jail or prison sentence. Court ordered treatment as part of a sentence may not be considered incarceration. Supervisors must consult with their employee relations specialist before approving leave.

(1) Employees who are involuntarily detained or incarcerated following an arrest by a law enforcement authority, prior to a conviction, will have requests for annual leave or LWOP considered based on the current and anticipated workload, the need for the employee's service, and the likelihood the employee will return to work.

(2) Employees incarcerated following a conviction, including a criminal or civil contempt proceeding, will be considered absent without leave (AWOL), which is an unauthorized absence from duty. Leave requested as a result of an incarceration following a conviction will be denied.

(3) Employees will be informed that the charge to AWOL has been included in the time and attendance report. Employees will only be charged AWOL for the actual period of unauthorized absence due to incarceration.

(4) If the AWOL is later excused because the circumstances surrounding the absence for incarceration are such that leave would have been approved, the charge should be changed to annual leave, sick leave, or LWOP, as appropriate.

(5) If an employee does not inform management that a leave request is due to incarceration, but it is later learned the leave was due to incarceration, management must adjust any prior leave approval, as appropriate.

(6) Noncompliance with VA policy, including misrepresentation of the circumstances regarding a request for leave, constitutes grounds for disciplinary action, up to and including removal from Federal service. Supervisors must consult with their HR office to determine if disciplinary action, or a charge of AWOL, is appropriate for the misrepresentation of such leave requests.]

[c.] **Leave for Alien Employees.** Under the discretionary provisions of 5 U.S.C. 6310, and by virtue of VA administrative action, alien employees who occupy positions outside the United States may be granted a leave of absence with pay, not in excess of the amount of annual and sick leave allowable to citizen employees.

[d.] **Advanced Annual Leave.** Annual leave may be advanced only in an amount that can be earned by the end of the leave year in which it is granted. When an employee is serving under an appointment which will expire before the end of the leave year, annual leave may be advanced up to the amount the employee would otherwise earn during the term of the appointment. Employees should be offered advanced annual leave for foster care placement in their home or bonding with a healthy newborn or newly adopted child.

[e.] **Annual Leave in Proximity to Overtime.** Any request for annual leave in proximity to overtime by the same employee will be scrutinized to assure that the granting of annual leave is in the interest of good administrative practice.

[f.] **Administrative Authority To Cancel Previously Approved Annual Leave.** The taking of annual leave is an absolute right of the employee subject to the right of the head of the department or establishment concerned to fix the time at which leave may be taken (30 Comp. Gen. 611, citing 16 Comp. Gen. 481). In an unusual or emergency situation, previously approved annual leave may be canceled and the employee directed to return to duty. Generally, the authority to cancel leave will not be exercised unless there is an urgent unforeseen circumstance and it is feasible for the employee to return to duty. If an employee refuses to return to work when leave is canceled, the absence may be charged to absence without leave (AWOL). (5 U.S.C. 6302(d); 39 Comp. Gen. 611, citing 16 Comp. Gen. 481.)

[g.] **Administrative Approval for Restoration of Annual Leave.** Administration Heads, Assistant Secretaries, Other Key Officials, and Deputy Assistant Secretaries and facility heads are authorized to approve the restoration of annual leave as warranted by regulations and VA policy. [In VHA Central Office, Deputy Under Secretaries for Health and Chief Officers are authorized to approve restoration of annual leave for employees under their jurisdiction.] The scheduling and, as necessary, rescheduling of the annual leave must be in writing. The ETA or other electronic system may be used. Documentation, which must be retained in accordance with regulations, must contain:

(1) The calendar dates the leave was requested and approved by the leave approving official;

(2) The date(s) and the amount (days/hours) on which the leave was scheduled for actual use.

(3) The calendar date(s)/hours the canceled leave was rescheduled for use.

(4) The reason(s) for the subsequent canceling of approved leave (e.g., if because of an exigency of the public business). Documentation must include the beginning and ending dates of the exigency and a copy of the approval action.

(5) The date(s) during which the leave was rescheduled for use and the amount of leave (days/hours) that was rescheduled for use, including the amount of hours unused in excess of 240 hours.

[h.] **Separate Leave Account for Restored Annual Leave.** Restored annual leave must be credited to a separate leave account (5 U.S.C. 6304(d)(2)). The amount of restored leave does not in any way increase or change an employee's normal maximum permissible carry-over into the new leave year. The normal annual leave ceiling remains in effect for all employees. The separate leave account will include:

(1) The date the leave was restored for use;

(2) The amount credited;

(3) The deadline by which the restored leave must be used; and

(4) The amount of usage and balance.

[i.] **Time Limit for Use of Restored Annual Leave.** Annual leave restored under the provisions of 5 U.S.C. 6304(d)(1)(B) and 5 CFR 630.309 must be used not later than the last day of the second leave year following the year containing the date that:

(1) Annual leave was restored in correcting an administrative error (5CFR 630.306(a)(1)); or

(2) Exigency terminated that resulted in forfeiture (5CFR 630.306(a)(2)); or

(3) The employee is determined to have recovered from an illness and is able to return to duty (5 CFR 630.306(a)(3)).

**NOTE:** *Restored annual leave that is unused prior to the expiration of the time limit is forfeited, unless the employee separates before that time. In such a case, the lump-sum payment will include the amount of unused restored annual leave that has been credited to a separate account.*

[j.] **Restoration of Annual Leave.** The normal rule that requires annual leave in excess of the maximum permissible carry-over (usually 30 days) be automatically forfeited at the end of the leave year may be suspended under the following conditions:

(1) **Administrative Error.** Annual leave lost due to an administrative error may be restored so long as it was accruable after June 30, 1960 (5 U.S.C. 6304(d)(1)(a)(A)). In addition to permitting a retroactive change, there is continuing authority to permit the future restoration of all annual leave to which an employee is entitled in correcting an administrative error. If official records are not available to substantiate the amount of annual leave to be restored, an estimate of the employee's leave account is acceptable when accompanied by official statements clearly reflecting the factors which form the basis for the estimate.

(2) **Exigencies of Public Business.** Even with the best planning and scheduling of annual leave usage throughout the year, operational demands may not permit usage to avoid forfeiture of leave by some employees. The exigency, whether anticipated or unanticipated, must be of such importance to preclude the use of scheduled annual leave. The exigency should occur in such case where there is no reasonable alternative to the cancellation of the scheduled leave. There is a requirement that this annual leave be scheduled in advance for use, and in writing before the start of the third biweekly pay period prior to the end of the leave year. Normally, the decision to cancel scheduled annual leave because of exigencies should be made in advance unless a bonafide emergency precludes an advance decision.

(3) **Sickness.** When employees have scheduled annual leave in advance but are prevented from using it because of illness, they may substitute sick leave (or non-paid leave) for annual leave. However, when separation is known in advance, the granting of annual leave is limited to cases where exigencies of service require such action (34 Comp. Gen. 61). Sickness is not in itself a basis for permitting annual leave to be forfeited and subsequently restored for later use. The supervisor still has the responsibility to schedule or reschedule the use of annual leave to avoid forfeiture, even though an absence because of illness occurred during the year (5 U.S.C. 6304 (d)(1)(C)).

**NOTE:** *For guidance on involuntary absence, see paragraph 4g of this chapter.*

## 4. SICK LEAVE

a. **Granting Sick Leave.** Sick leave shall be granted to an employee for any the following reasons (See examples in appendix A, this part):

(1) **Sick Leave for Personal Needs**

(a) When the employee is incapacitated for the performance of duties by physical or mental illness; pregnancy or childbirth;

(b) When the employee receives medical, dental, or optical examination or treatment (including adjustment of prosthetic devices); or

(c) When through exposure to a contagious disease, the presence of the employee at the place of duty would jeopardize the health of others.

**NOTE:** *Sick leave granted because of a contagious disease shall be limited to the period prescribed by regulations of local health authorities or certified by a physician where health regulations do not specify the period of isolation, quarantine or restricted movement.*

(2) **Sick Leave for General Family Care or Bereavement Purposes**

(a) An employee may use sick leave to provide care for, or otherwise attend to a family member having an illness, injury, or other condition which, if an employee had such a condition, would justify the use of sick leave by the employee as set forth in paragraphs 4a(1)(a)[,] (b)[and (c)].

(b) An employee may use sick leave to make arrangements necessitated by the death of a family member or attend the funeral of a family member. This includes use of sick leave to make arrangements for and attend a funeral or memorial service; necessary travel, pre-funeral and after-funeral/burial gatherings or ceremonies, memorial services; and reading of the will.

(c) A full-time employee may use 104 hours (13 workdays) of sick leave each leave year for family care or bereavement purposes. Part-time employees and employees with uncommon tours of duty may take up to the amount of sick leave they would accrue in a leave year. The sick leave is pro-rated in proportion to the average number of hours of work in the employee's scheduled tour of duty.

(d) If an employee has already used the maximum amount of sick leave permitted to care for a family member with a serious health condition as described below, he or she cannot use additional hours in the same leave year for general family care or bereavement purposes.

(3) **Sick Leave to Care for a Family Member with a Serious Health Condition.** An employee may use up to 480 hours (12 administrative workweeks) of sick leave each leave year to care for a family member with a serious health condition subject to the following limitations:

(a) If an employee previously has used any portion of the 104 hours (13 workdays) of sick leave for general family care or bereavement purposes in a leave year, that amount must be subtracted from the 480 hours (12 administrative workweeks) entitlement.

(b) If an employee has already used 480 hours (12 administrative workweeks) of sick leave to care for a family member with a serious health condition, he or she cannot use an additional 104 hours (13 workdays) in the same leave year for general family care or bereavement purposes.

(c) Part-time employees and employees on uncommon tours of duty may take up to the amount of sick leave equal to 12 times the average number of hours in their scheduled tour of duty each week during the leave year, subject to the following limitations:

[1.] If an employee has previously used any portion of sick leave for general family care or bereavement purposes, that amount must be subtracted from the total available hours.

[2.] If the employee has used the maximum amount of sick leave permitted to care for a family member with a serious health condition, he or she cannot use additional hours in the same leave year for general family care or bereavement purposes.

[3.] If the number of hours in the employee's tour of duty is changed during the leave year, his or her entitlement to use sick leave for the purposes described above in paragraphs 4a(2) and (3) must be recalculated based on the new tour of duty.]

(4) **Sick Leave for Adoption.** An employee may use sick leave for purposes related to the adoption of a child. This may include: appointments with adoption agencies, social workers, and attorneys; court proceedings; required travel; any periods of time the adoptive parents are ordered or required by the adoption agency or by the court to take time off from work to care for the adopted child; and any other activities necessary to allow the adoption to proceed. Sick leave may not be used by adoptive parents who voluntarily choose to be absent from work to bond with an adopted child.

b. **Sick Leave Requests**

(1) It is the responsibility of employees who are incapacitated for duty to report, or have some responsible person report, their illness as early as practicable. Generally this will be at the beginning of the tour of duty but not later than 2 hours thereafter, or at the time specified in the leave policy of the installation or by prior written direction in their particular case according to the circumstances of employment. Subsequent reports, if any, will be made to the immediate superior as required locally. Employees who expect to be absent more than 1 day should inform their supervisors of the approximate date that they expect to return to duty. Supervisors may ask their employees at the time to report periodically on their progress, but daily reports will not be required. It would be reasonable for a supervisor to require that an employee who has been absent a long time to call or notify the supervisor a day or so before expecting to return to duty. This is necessary to make appropriate staffing and work adjustments, particularly in cases of shift workers.

(2) An employee on sick leave for more than 3 workdays must enter a leave request into the ETA or other electronic system upon return to duty, and furnish satisfactory evidence of the need for sick leave during the period of absence. If the medical certificate is not considered a reasonable basis for approval of sick leave, the employee may be required to furnish additional evidence. Usually the employee health physician will make any contact with the employee's physician concerning medical diagnoses. When it would be unreasonable to require a medical certificate because of shortage of health care providers, remoteness of locality, or the nature of illness which did not require a physician's services, the employee's signed statement of reasons why other supporting evidence is not furnished may be accepted in lieu of a required medical certification. An employee who has been absent because of illness and who is unable to furnish a medical certificate may be referred to the employee health physician for a medical recommendation.

(3) Generally the ETA or other electronic request for approved leave and medical certificates, or their equivalent, should not be required for periods of sick leave of 3 days or less. Where there is reason to believe that an employee is abusing the use of sick leave, a medical certificate may be required for any period of absence. The employee should be informed in advance, and in writing, that such a requirement has been established in his or her case. Medical certificates or other evidence of illness will be

submitted within 15 calendar days after the employee returns to work. Failure to furnish a medical certificate may be cause for disapproval of sick leave. Such failure will not of itself be the cause for disciplinary action.

(4) When an employee has been given notice that any sick leave request must be supported by a medical certificate, leave approving officials will review the case in not later than 6 months to determine whether the requirement for furnishing a medical certificate for approved sick leave may be eliminated. If it is determined that a medical certificate is no longer required for sick leave of 3 days or less, the employee shall be so notified in writing.

(5) An employee will not routinely be required to reveal the nature of illness as a condition of approval of leave. However, food handlers must disclose certain kinds of diseases upon return to duty in order that they may be examined to protect patients and others from certain types of communicable diseases. (See VA Handbook 5019, Occupational Health Services.)

(6) When illness occurs during a period of annual leave or LWOP, sick leave may be substituted for annual leave or LWOP, provided the illness is reported promptly to the employee's supervisor and the request is supported by medical certification or other acceptable evidence. Sick leave may be granted during annual leave or to become eligible for donated leave in accordance with 5 CFR 630.40[6].

c. **Time Limitation for Medical Documentation.** All supporting documentation for use of sick leave must be submitted by the employee no later than 15 calendar days after the employee returns to work. If, due to circumstances beyond the control of the employee, he or she is unable to provide the documentation within 15 calendar days, the employee must provide the evidence or medical certification no later than 30 calendar days after returning to work. An employee who does not provide the required evidence within 30 calendar days is not entitled to sick leave.

d. **Prolonged Illness.** Employees who are not expected to return to duty because of prolonged incapacitation will, where possible, be granted all available sick leave and such annual leave that cannot be included in lump-sum payment. (Refer to the rules on the appropriate use and termination of annual leave balances for employees who are participants in the Voluntary Leave Transfer Program (5 CFR 630.909-910; and 5 CFR 630-1205) on the use of paid leave by employees while invoking their Family and Medical Leave entitlements.) Employees who can reasonably be expected to return to duty after a prolonged period of incapacitation may be advanced sick and annual leave or granted LWOP.

**e. Advanced Sick Leave**

(1) [ ] [Advanced sick leave not in excess of 13 days (104 hours) may be granted to a full-time employee who is not on a time-limited or term appointment at the discretion of the agency, and subject to sick leave limitations:]

(a) For medical, dental or optical examination or treatment;

(b) To provide care for a family member who is incapacitated by a medical or mental condition or to attend to a family member receiving medical, dental, or optical examination or treatment;

(c) To provide care for a family member who has been exposed to a communicable disease when the family member's presence in the community would jeopardize the health of others according to the health authorities having jurisdiction or by a health care provider; or

(d) To make arrangements necessitated by the death of a family member or to attend the funeral of a family member.

(2) [ ] [Advanced sick leave not in excess of 6 weeks (240 hours) may be granted to full-time employee who is not on a time-limited or term appointment at the discretion of the agency, and subject to sick leave limitations:]

(a) When incapacitated for the performance of his or her duties due to physical or mental illness, injury, pregnancy, or childbirth;

(b) For a serious health condition of the employee or a family member;

(c) When the employee has been exposed to a communicable disease and the employee's presence in the community would jeopardize the health of others according to the health authorities having jurisdiction or by a health care provider;

(d) For purposes relating to the adoption of a child; or

(e) For the care of a covered servicemember with a serious injury or illness when the employee is exercising his or her Family and Medical Leave Act entitlement under 5 U.S.C. 6382(a)(3).

(3) For part-time employees and employees on uncommon tours of duty, the maximum amount of sick leave advanced shall be prorated according to the number of hours in the employee's regularly scheduled workweek.

(4) An employee serving under a time limited or term appointment may be granted sick leave up to the total leave that would otherwise be earned during the term of the appointment.

(5) There may not be more than 30 days (240 hours) of advanced sick leave on an employee's record at any one time (5 CFR 630.402(b)).

(6) The amount of annual leave to an employee's credit generally will have no bearing on grants of advanced sick leave.

(7) It is not appropriate to approve advance sick leave to an employee when it is known, or reasonably expected, that the employee will not return to duty, e.g., when the employee has applied for disability retirement.

(8) Medical certification requirements as set forth in VA Handbook 5011, Part III, Chapter 2, paragraphs 4b and c are applicable when requesting advance sick leave.

[f.] **Liquidation of Advanced Sick Leave**

(1) As current leave is accrued it must be applied against any advanced leave.

(2) At the employee's request, advanced sick leave may be liquidated by a charge against an equivalent amount of annual leave provided[:]

(a) The annual leave is substituted prior to the time it would be forfeited, and

(b) The approving official would have been willing to grant the annual leave had the employee requested it.

[g.] **Prohibition Against Substitution of Annual Leave for Sick Leave.** Annual leave cannot be retroactively substituted for regular sick leave.

[h.] **Sick Leave and Outside Employment**

(1) An employee who engages in outside employment (whether self-employed or working for others) during any part of the time for which he or she requests sick leave, shall notify the supervisor of the outside employment.

(2) Normally, employees may not be granted sick leave due to personal illness or injury for any period during which it is known that they perform outside employment. Any exceptions to this rule must be justified and documented. An exception to the rule might be where employees confined at home because of pregnancy or recuperation from illness or injury, engage in sedentary work such as telephone solicitation work, writing, or other similar activities. In some cases of injury, such as those involving broken limbs, while the nature of the injury might prevent employees from carrying out [their] official duties, it might not prevent them from engaging in some form of simple sedentary work.

[i.] **Involuntary Annual and Sick Leave**

(1) An employee shall not be placed on involuntary annual leave as a disciplinary measure, or during an advance notice period of proposed separation, removal, or suspension for more than 30 calendar days. (See 5 CFR 752.404 and VA Handbook 5021 - Enforced annual leave during a notice period is a suspension).

(2) Other than as provided in subparagraph (1) above, an employee may be placed on involuntary annual or sick leave when the needs of the service dictate. In field facilities, such action must be approved by the facility head, and in Central Office by Administration Heads, Assistant Secretaries, Other Key Officials, and Deputy Assistant Secretaries. Such leave shall be terminated when the employee reports for duty and is determined able to perform his or her duties.

(3) Employees, who, because of illness (mental or physical) are unable to perform their duties, may be placed on involuntary sick leave. Administration Heads, Assistant Secretaries, Other Key Officials, Deputy Assistant Secretaries and field facility heads must approve such actions. Such sick leave will be

terminated when the employee reports for duty and competent medical authority determines that the individual is able to perform [their] assigned duties.

(4) When an employee, because of vicious or intemperate conduct or illness (mental or physical) reasonably may not be regarded as ready, willing and able to perform assigned duties for the time being and such conduct or physical or mental condition creates an emergency situation constituting an immediate threat to Government property or to the well-being of the employee, other workers, or the general public, the employee may be placed on sick or annual leave, or in a LWOP status (38 Comp. Gen. 203) as leave account balances or circumstances may require. When the immediate emergency has been relieved and there has been an opportunity to evaluate the circumstances of the incident with the result that initiation of disciplinary measures (suspension without pay or removal) are decided upon, the procedural steps for suspension may follow in due course. If, in the meantime, the employee appears for duty and is determined to be ready and able to perform assigned duties, continuation of the enforced leave would be unauthorized. Refer to the information on excused absence in paragraph 12j for instructions about enforced absence in a pay status without charge to leave when the employee is ready and able to perform assigned duties, but it is determined not to be in the public interest to restore the employee to active duty after involuntary leave; or it is in the interest of the Government to have the employee off the job during investigation preliminary to a determination whether to impose a suspension.

[j.] **Leave Accumulation for Overseas Employees.** Refer to 5 U.S.C. 6304(b) and 5 CFR 630, subpart F for information about leave for employees recruited for service outside the United States and District of Columbia.

## 5. ABSENCE FOR MATERNITY OR PATERNITY REASONS

### a. General

(1) Leave related to maternity reasons may consist of sick leave, annual leave, LWOP, or Family and Medical Leave. Statutory and regulatory procedures for implementing Family and Medical Leave entitlements are found in 5 U.S.C. 6381-6387 and 5 CFR 630.1201-1211. Pregnancy will not jeopardize an employee's job.

(2) The granting of leave for maternity reasons will take into consideration the need for protecting the mother and the infant, to avoid occupational hazards to other employees, and for maintaining work requirements. Leave for maternity reasons is not to be construed as sanctioning the use of sick leave for infant care or the conditions of pregnancy without regard to whether the employee is incapacitated for duty or undergoing medical treatment.

### b. Notice and Starting Date of Leave

(1) An employee shall be encouraged to report a pregnancy to her supervisor as soon as it is an established fact so that any necessary steps may be taken (a) to protect the employee's health or modify work or working conditions and (b) to plan for any necessary staffing during her prospective absence.

(2) The date on which an employee becomes incapacitated for duty by pregnancy and confinement will be determined according to the circumstances of each individual case. Under no circumstances will a department-wide, facility-wide, or office-wide practice be adopted of establishing such a date uniformly for all persons.

c. **Review of Working Conditions**

(1) When an employee reports her pregnancy, administrative officials shall immediately determine (with advice from the employee health physician and the employee's personal physician, where necessary), whether her duties and work surroundings involve exposure to health hazards peculiar to her condition. Where possible, such hazards should be reduced or eliminated.

(2) Pregnant employees shall not be permitted to perform heavy lifting, continuous standing or moving about or be exposed to toxic substances or contagious diseases (as used here, the term contagious disease means any illness that can be transmitted directly or indirectly from one person to another). Where such conditions exist in an employee's regularly assigned duties, reasonable efforts shall be made to detail or temporarily reassign her to other available work that she is qualified to perform, and to provide her with gainful employment as long as she is not incapacitated for duty.

(3) When there is any question as to the physical ability of the employee to perform her job without hazard to her health, the employee health physician shall consult the employee's personal physician concerning her health before making a determination as to her fitness for continuing in a duty status.

d. **Granting Leave.** Employees who are incapacitated for duty or who require medical examination or treatment because of pregnancy or confinement will be granted leave as indicated below, provided a medical certificate or other acceptable evidence of such is submitted:

(1) When an employee is not expected to return to duty following pregnancy and confinement, she will be granted accumulated and accrued sick leave, consistent with medical needs. Where resignation or separation occurs, the action will be taken at the expiration of leave, except that action will be taken at an earlier date where required for the purpose of terminating time-limited employment or reduction in force.

(2) Where the employee expects to return to duty following pregnancy and confinement, she may be granted such accumulated and accrued annual leave as required. Advanced sick leave in cases of serious disability, annual leave, LWOP and Family and Medical Leave, may be granted under conditions meeting the criteria for such leave.

e. **Absence for Paternity Reasons.** A male employee may request annual and sick leave, LWOP, and Family and Medical Leave for purposes of assisting or caring for his minor children or the mother of his newborn child while she is incapacitated for maternity reasons (see CFR, part 630, subparts C, D, I, and L for appropriate guidance and application).

## 6. LEAVE IN CONNECTION WITH RETIREMENT

a. **General**

(1) The general rule that an employee is to be paid a lump sum for the annual leave to his or her credit at the time of separation, applies also in retirement cases.

(2) Employees who make it known that they are contemplating optional retirement, will generally not be authorized annual leave from which they will not return to duty, unless it meets the needs of the service.

(3) If incapacitated for work, an employee retiring for any reason may be granted sick leave up to and including the date of retirement.

b. **Disability Retirement**

(1) An employee who is incapacitated for work and who has an application pending for disability retirement may be granted all available sick leave requested. However, it would be inappropriate to grant advanced sick leave pending a decision from OPM on the claim. There is no authority requiring an employee to refund the amount paid for leave advanced prior to separation when the employee is retired for disability or is unable to work because of illness (29 Comp. Gen. 234).

(2) The employee with a pending claim for disability retirement may also be granted annual leave pending final action by OPM. When disability retirement has been approved, additional annual leave should not be granted (34 Comp. Gen. 61). Upon request of the employee, LWOP may be granted even though the employee has a sick or annual leave balance.

(3) Upon receipt of approval of disability retirement, any sick leave remaining to the credit of the employee shall be granted as recommended in Section 60A6.1-2B-D in Chapter 60, The OPM CSRS and FERS Handbook for Personnel and Payroll Offices.

(4) This policy will apply except when not administratively practicable because of an overriding requirement for separation as of a specific date. (See reduction-in-force procedures in part IV of VA Handbook 5005 for VA policy about retaining employees on the rolls on approved earned sick leave even though other employees in the same competitive level with higher retention standing are adversely affected in a reduction in force.)

## 7. LEAVE FOR FIELD FACILITY HEADS

a. **Approval.** Heads of field facilities may avail themselves of annual, sick, military or court leave without higher level approval. They must, however, obtain the approval of advanced sick or annual leave in excess of 5 days. Periods of extended sick leave (as in the case of utilization of all accrued sick leave prior to or after application for optional retirement) also must be approved by Central Office. The heads of field facilities may also avail themselves of LWOP not to exceed any period of 10 workdays and authorized absence not to exceed any period of 5 workdays, without approval of their appropriate organization heads. The 5 days of authorized absence shall be exclusive of any travel properly associated with the absence. All other leave and absences of field facility heads must be approved by appropriate Administration Heads, Assistant Secretaries, Other Key Officials and Deputy Assistant Secretaries.

b. **Notice to Central Office.** For any period of absence in excess of 5 workdays, the heads of field facilities or persons acting on behalf of the facility Director will notify the organization head specifying the inclusive dates and nature of absence. Field facility heads will keep their facility informed of where they can be reached in the event of an emergency.

## 8. LEAVE IN CONNECTION WITH TRAVEL

a. Employees traveling at Government expense are in a duty status for the period required to perform the travel authorized unless the total elapsed travel time is excessive. If travel is interrupted or delayed for the convenience of the employee, leave shall be charged for the period of interruption or delay. When employees have been authorized to travel by privately owned conveyance for their convenience, leave shall be charged for travel time during the employees' regularly scheduled basic workweek in excess of that which would have been required had travel been performed by the carrier used to determine per diem allowance, as provided in [ VA Financial Policies and Procedures Travel Per Diem Volume XIV, chapter 2.]

b. When use of privately owned conveyance is authorized or approved as being advantageous to the Government, and employees use excessive travel time to enable them to be absent from assigned duties for such purposes as the taking of leave or the performance of circuitous travel, leave shall be charged for the excessive time. The period to be charged to leave will be based on the facts in each case.

## 9. MILITARY LEAVE

a. **Kinds of Military Leave.** There are four kinds of military leave for VA employees who are members of the Reserve components of the Armed Forces or National Guard, as follows:

(1) Not to exceed 15 calendar days in a fiscal year authorized by 5 U.S.C. 6323(a) for active duty and active and inactive duty training. An employee can carry over a maximum of 15 days into a new fiscal year. Therefore, potentially they may have a total of 30 days to use in any one fiscal year. [ ]. (Inactivity Duty Training is authorized training performed by members of a Reserve component not on active duty and performed in connection with the prescribed activities of the Reserve component. It consists of regularly scheduled unit training periods, additional training periods, and equivalent training VA will follow regulations provided in Department of Defense Instruction Number 1215.19, March 14, 1997; Uniform Reserve, Training and Retirement Category Administration; Enclosure 4, Definitions; E4.1.15). **NOTE:** *See paragraph 12z of this chapter for VA policy regarding excused absence upon return from certain active duty.*

(2) Not to exceed 22 workdays per calendar year for emergency duty as ordered by the President or a State governor authorized by 5 U.S.C. 6323(b). This can be for law enforcement or the protection of life and property.

(3) Unlimited military leave to members of the National Guard of the District of Columbia for certain types of duty (ordered or authorized under title 10 of the District of Columbia Code) is authorized by 5 U.S.C. 6323(c).

(4) Reserve and National Guard Technicians (only) are entitled to 44 workdays of military leave for duties overseas under certain conditions as authorized by 5 U.S.C. 6323(d).

b. **Effect of Military Leave on Civilian Pay.** An employee's civilian pay remains the same for periods of military leave under 5 U.S.C. 6323(a) and (c), including any premium pay an employee would have received if not on military leave. For military leave under 5 U.S.C. 6323(b), the employee's civilian pay is reduced by the amount of military pay for the days of military leave. However, an employee may choose not to take military leave and instead take annual leave in order to retain both civilian and military pay.

c. **Eligibility.** Regular full-time and part-time employees (permanent, temporary indefinite, temporary pending the establishment of a register, or term appointment for more than 1 year), who are members of the National Guard or a Reserve component of the Armed Forces are eligible for military leave when ordered to perform military duty. Intermittent, or temporary (time limited to 1 year or less) employees are not eligible for military leave (5 U.S.C. 6323(a)(1) 2 and (b) (See 18 Comp. Gen. 538.)

d. **Granting and Charging Military Leave.** To the extent authorized by law, military leave shall be granted for active and inactive duty training, or engaging in field or coast defense training when appropriate documentation pertaining to these activities is presented to the leave-approving official. Military leave is credited to full-time and part-time employees on the basis of an 8-hour workday. The minimum charge to leave is 1 hour. An employee may be charged military leave only for hours that the employee would otherwise have worked and received pay. Employees who request military leave for inactive duty training (which generally is 2, 4, or 6 hours in length) will now be charged only the amount of military leave necessary to cover the period of training and necessary travel. Non-workdays (weekends and holidays) that occur within the period of military service will not be charged to military leave. **NOTE:** *Military leave is charged if an employee is schedule to work on a holiday.*

e. **Final Approval.** Final approval of military leave shall be contingent upon the employee furnishing certification from the military authorities confirming that military duty was performed for the period that military leave was granted.

f. **Advance Notice.** All eligible employees will be encouraged to notify approving officials as far in advance as possible of their need for military leave so that arrangements can be made to prepare for their absences while on leave.

## 10. COURT LEAVE

a. **General.** The legal citations and decisions and interpretations of the Comptroller General and VA policy will be followed in:

(1) Granting court leave;

(2) Advising employees when jury and witness fees must be collected and turned over to the agent cashier or payroll office; when it is permissible to retain fees; when no jury or witness fee should be collected;

(3) Continuing an employee on official duty for the time required to testify in his or her official capacity whether on behalf of the Federal Government, that of the District of Columbia, State or local government, or a private party;

(4) Continuing an employee on official duty for the time required to testify in an unofficial capacity on behalf of the Federal Government or that of the District of Columbia; and

(5) Determining entitlement to compensation when performing jury or witness service.

b. **Department Policy on Jury Service.** VA considers jury duty a civic responsibility. Requests for release of employees from jury duty shall be made only in exceptional situations, such as (1) to provide critically necessary patient care, or (2) when the services of the employees are absolutely necessary to meet important deadlines. In such cases, the head of the field facility concerned or the Administration Head, Assistant Secretaries, Other Key Officials, and Deputy Assistant Secretaries for Central Office employees under their jurisdiction, may direct a letter to the court which has requested the services, explaining the facts and requesting that the employees be released from duty.

c. **Return to Duty after Court Leave.** Employees who are granted court leave and are excused or released by the court for any day or substantial portion of a day are expected to return to their regular VA duties, except when:

(1) Only a small portion of the workday would be involved and thus no appreciable amount of VA service would be rendered; or

(2) The distance from the court to the place of duty is such that this would be an unreasonable requirement; or

(3) The regular tour of duty occurs at night (see Comp. Gen. 26413 (1946)).

d. **Witnesses.** The following VA interpretations are given as guides in answering certain questions on testimony of employees in courts of law. Federal employees who are summoned as witnesses are authorized court leave under 5 U.S.C. 6322.

(1) **Testimony for the Government in an Official or Unofficial Capacity**

(a) When a VA employee's testimony is required in an official or unofficial capacity, or when producing official records in litigation in which the Federal Government or District of Columbia is a party, the employee is to be considered in an official duty and pay status while so engaged. The employee in such

circumstances will not be carried on court leave. (5 U.S.C. 6322(b); 38 Comp. Gen. 142(1958); and 5 Civilian Personnel Law Manual (CPLM) 2-21 (1990).)

(b) When a VA employee's testimony is required in an official capacity on behalf of a State or local government, the employee is to be considered in an official duty and pay status. If testimony is in an unofficial capacity on behalf of a State or local government, the employee will be carried on court leave (Comp. Gen. 83, 84 (1947)).

(c) For a discussion of fees when testifying for the Federal Government, District of Columbia, State or local governments, see [VA Financial Policies and Procedures Travel Administration Volume XIV, chapter 1, and VA Financial Policies and Procedures Travel Per Diem Volume XIV, chapter 2] for instructions about authorizing travel and per diem at Government expense.

(2) **Testimony in Private Litigation in an Official and Unofficial Capacity (5 U.S.C. 5515, 5537, 6322)**

(a) When the value of the witness' testimony in private litigation arises from the employee's official capacity and the employee is subpoenaed to testify in that capacity, or to produce official records, the employee will be carried in an official duty and pay status during the period of necessary absence in responding to such subpoena. No charge will be made to court leave (15 Comp. Gen. 196; 27 Comp. Gen. 86). In those circumstances where the employee testifies in a State Court, the employee should be instructed to collect authorized witness fees and allowances for expenses of travel and subsistence. All amounts authorized over and above the amount of actual expenses will be accounted for and deposited as miscellaneous receipts (15 Comp. Gen. 196).

(b) In any case where the value of the witness's testimony arose while serving in an official capacity as an officer or employee of another Government agency or the District of Columbia Government, the employee may be regarded as having been in an official duty status while testifying in court and may be paid the regular compensation for the period involved (Comp. Gen. B-160343). The employee will be instructed to collect authorized witness fees and allowances for expenses of travel and subsistence. All amounts authorized over and above the amount of the actual expenses will be paid into miscellaneous receipts.

(c) Court leave will be granted to employees who appear as witnesses in an unofficial capacity on behalf of a private party in connection with any judicial proceeding to which the United States, the District of Columbia, or a State or local government is a *party*. In these cases, the employee is not entitled to retain fees received as an unofficial witness. In a judicial proceeding involving only private parties, the employee is required to take annual leave or leave without pay to appear in such a proceeding and is entitled to retain any fees paid for the witness service.

(d) Precedent Comptroller General decisions, including those cited above, may be found on the OPM website under Leave Administration, Index of Laws, Regulations, and other references related to leave administration.

## 11. LEAVE FOR OFFICE OF WORKERS' COMPENSATION PROGRAM.

a. **Retention on Rolls.** An employee who has a claim pending with the Office of Workers' Compensation Programs (OWCP) and who is incapacitated for work shall be granted any leave or LWOP necessary to retain the employee in an employment status until such time as the claim is acted upon, except in case of an overriding requirement for separation, such as reduction-in-force or removal for cause. If the OWCP determines that an employee is permanently and totally disabled, the employee should be separated. (An employee's election between retirement and employees' compensation is discussed in the OPM Civil Service Retirement System and Federal Employees Retirement System Handbook Handbook.)

b. **Substitution of Annual or Sick Leave for LWOP**. Employee who request LWOP pending adjudication of their claims may, if their claims are disallowed, and they are still employed, be retroactivelygranted annual or sick leave.

c. **Substitution** of LWOP for Annual or Sick Leave.

(1) An employee who has used sick leave or annual leave pending adjudication of an OWCP claim, which is later approved, should be informed by the human resources office about procedures for "buying back" the leave. This can be accomplished by the employee's election to be placed in a non-pay status forthe period and by the employee's authorization for the OWCP to reimburse the agency for leave used based on compensation entitlement (with the employee receiving or paying the difference).

(2) The substitution should be made promptly, and the OWCP will be notified of the employee's last day in pay status. For leave record purposes, the request for substitution should be made within 1 year of approval of the OWCP claim, unless it is administratively determined that the employee was prevented from exercising this option because of the disability which gave rise to the claim. In such case, the employee may make the election within 1 year of the time it is determined that the employee has sufficiently recovered from the disability to be able to make a reasoned decision. The employee's electionshould be in writing and is not subject to revocation.

d. **Extended LWOP.** In a case where an employee's condition requires extended absence because of duty-connected illness or injury, the length of LWOP granted will be determined on the basis of the nature of the disability and the LWOP criteria. If the OWCP accepts the employee's claim, but does not determine that the employee is permanently and totally disabled, the

granting of leave without pay should be in accordance with current leave procedures.

12. **[ADMINISTRATIVE LEAVE.**

a. Administrative leave, previously categorized as "authorized absence," is defined as paid leave, authorized at the discretion of an agency without loss of or reduction in pay, to cover periods within an employee's tour of duty when the employee is not engaged in activities that qualify as official hours of work. Use of administrative leave is categorized as follows:

(1) Administrative Leave

(2) Investigative Leave and Notice Leave

(3) Weather and Emergency Situations

(4) Administrative Leave in Laws, Regulations, or Presidential Directives

b. **Exclusions.** This policy applies to all VA employees who have an established full-time or part-time work schedule. This policy does not apply to employees who work on an intermittent basis or leave-exempt employees (e.g., Presidential appointees under 5 U.S.C. § 5508).

c. **Administrative Leave**

(1) **General Principles.** VA must adhere to the following general principles when determining whether to grant administrative leave:

(a) Administrative leave may be granted, subject to the requirements of this section, only when:

i. The absence is directly related to the agency's mission;

ii. The absence is officially sponsored or sanctioned by the agency;

iii. The absence will clearly enhance the professional development or skills of the employee in the employee's current position; or

iv. The absence is in the interest of the VA or of the Government as a whole. It is a legitimate Government interest to maintain a safe workspace and environment for employees, Veterans, their spouses, caregivers, and survivors, conducive to execution of VA's mission.

(b) Administrative leave is not an entitlement; it is an authority that should be used sparingly, consistent with section 1138(b)(2) of P.L. 114-328.

i. Management retains the discretion to grant or deny administrative leave based on supervisor/management judgment regarding VA mission needs. Approval authority is found in part III, chapter 1, paragraph 1, of this handbook.

ii. Employees do not have an entitlement to use administrative leave, nor do they have the right to refuse administrative leave when management requires its use.

iii. Generally, administrative leave should be granted on an ad hoc, event-specific, or time-limited basis. Even if management determines that it will generally grant administrative leave under a specific set of recurring circumstances (e.g., blood donations, voting-related activities), management still retains approval authority to limit use of administrative leave when approval would interfere with efficiently carrying out VA's mission.

(c) Administrative leave is intended to be used for brief or short periods of time; generally, not more than 1 workday. For periods greater than 1 workday, approval shall be made in accordance with part III, chapter 1, paragraph 1, of this handbook.

(d) Placing an employee on paid administrative leave may be an appropriate action when the department or office where the employee works is being eliminated or restructured, or where management weighs changes to the individual's role as part of a workforce realignment. See Appendix I for additional information on workforce restructuring.

(e) A determination that an absence satisfies one of the conditions in paragraph 12c(1)(a) (General Principles), must be:

i. Permitted under written agency policies; or

ii. If not authorized under existing written policy, reviewed and approved by a management official who is (or is acting) at a higher level than the official making the determination (see Consideration Factors in 2, below).

(2) **Consideration Factors for Approval of Administrative Leave Not Established in Policy.** When administrative leave is not already established in policy, management must consider the following factors to determine whether approval of administrative leave is appropriate:

(a) The policy in paragraph 12c, above;

(b) The effect on productivity and VA's ability to meet its mission needs;

(c) Current Administration policies that identify Governmentwide interests;

(d) The strength of the justification for using appropriated funds for the administrative leave in question;

(e) Equitable treatment of similarly situated employees; and

(f) The degree of delegation that is appropriate for various uses of administrative leave.

(3) **Prohibited Uses.** Management may not grant administrative leave to:

(a) Mark the memory of a deceased former Federal official (5 U.S.C. § 6105); or

(b) Recognize the performance or contributions of an employee or group of employees (i.e., in lieu of a cash award or a time off award). Information on awards may be found in VA Handbook 5017, Employee Recognition and Awards.

(c) Excuse an employee from duty for a reason for which sick leave could be used, unless such use in a particular scenario is specifically approved by Governmentwide policy. However, an employee who is eligible to use sick leave may be granted administrative leave on the same basis it is granted to an employee who is not eligible when the administrative leave is granted for some other purpose. See the Presidential Memorandum on Preventive Health Services at the Federal Workplace, which provides up to 4 hours each year for an employee's participation in preventative health screenings if the employee has less than 80 hours of accrued sick leave.

(4) **Use of Administrative Leave.** Administrative leave:

(a) Must be approved using the same minimum charge increments as used for annual and sick leave.

(b) May be granted only for hours within the tour of duty established for purposes of charging annual and sick leave when absent. Information on tours of duty is found in part II, chapters 2 and 3 of this handbook. Time in administrative leave status is creditable service for all purposes.

(c) May be used in situations in which no other paid leave or other paid time off is available under other statute or Presidential directive (5 U.S.C. § 6329a(a)(1)(B)), as long as the use is determined to be appropriate under applicable law, regulation, or agency policy. Administrative leave stands alone and cannot be used simultaneously with another type of available paid leave or paid time off.

(d) To accurately meet reporting requirements, administrative leave must be recorded in the VA timekeeping system, (currently VA Time and Attendance System; VATAS). Employees are responsible for submitting leave requests for administrative leave in accordance with this policy.

(e) Governmentwide and VA-sponsored administrative leave activities are in Appendix I.

(5) **Administrative Leave for the Purpose of Conducting an Investigation**

(a) Management may place an employee, including a senior leader, on administrative leave for the purpose of conducting an investigation for no more than 10 workdays during any calendar year. This leave is not the same as investigative leave authorized under paragraph 12e, Investigative Leave and Notice Leave.

i. "Place" means a management-initiated action to put an employee in an administrative leave status, with or without the employee's consent, for the purpose of conducting an investigation (see definition of "investigation" in 12e(7)(b), below.

ii. Management must provide the employee with written notice of the decision to place them on administrative leave for investigations. The notice must include, but is not limited to, the effective date of the administrative leave status, work restrictions, the requirement to return promptly as directed by management, and a point of contact for further questions. Sample notices are available on the Worklife, Leave Administration SharePoint.

iii. After an employee has been placed on administrative leave for the purpose of conducting an investigation for 10 workdays, management may place the employee on investigative leave, under the provisions of 12e, below, if necessary. The authority to grant administrative leave must be exhausted prior to placement on investigative leave.

iv. If the initial period of investigation begins at the end of 1 calendar year and continues into a second calendar year, those days will not count towards the 10-workday annual limit in the following year. Therefore, management would need to place an employee on administrative leave for 10 workdays in the new calendar year before proceeding to place the employee on investigative leave, if it determines investigative leave is appropriate.

*For example, if an employee was placed on administrative leave for investigative purposes on December 27-31, that time would not count towards the 10-workday annual limit for the following year if*

*administrative leave continued into January. In this example, the employee would be placed on administrative leave for 10 workdays in the new calendar year. If additional time is needed following the 10-workday limit, then investigative leave will be considered.*

(b) If an employee transfers to VA from another Federal agency (i.e., not another component of VA), the balance of administrative leave hours used resets to zero. The 10-workday annual limit applies separately to each Federal agency.

(c) The 10-workday limit is recorded in hours, as described in 5 C.F.R. § 630.1404. Conversion from days to hours will apply to both title 5 and title 38 employees under different work schedules. Specifically, for employees on a compressed work schedule, or uncommon tour of duty, 10 workdays equate to the normal duty hours in one pay period.

(d) To accurately meet reporting requirements, administrative leave must be recorded in the VA timekeeping system, (currently VATAS). Timekeepers are responsible for recording administrative leave for investigations at the direction of the appropriate management official.

d. **38 U.S.C. § 717, Limitation on administrative leave,** is a separate authority limiting the amount of administrative leave available to VA employees who meet the definition of "covered individual" under the statute – who are subject to an investigation for the purposes of determining whether such individual should be subject to any disciplinary action under title 38 or title 5; or against whom any disciplinary action is proposed or initiated under title 38 or title 5.

(1) Employees may not be placed on administrative leave, or any other type of paid non-duty status without charge to leave, for more than 14 workdays during any 365-day period.

(2) Use of this authority does not preclude management from using the authority to provide administrative, investigative, or notice leave under 5 U.S.C. § 6329a and b. However, if it's determined that an investigation will extend beyond the 10 workdays of administrative leave for investigations, the waiver process and reporting requirements under 38 U.S.C. § 717 must be followed.

(3) The Secretary of Veterans Affairs may waive the 14-day limitation and extend the administrative leave or other paid non-duty status without charge to leave, provided the Secretary submits to the Committees on Veterans' Affairs of the Senate and House of Representatives a detailed explanation in accordance with 38 U.S.C. § 717.

(a) Requesting a Waiver. Requests should be submitted to the Office of the Executive Secretary, at least 5 business days prior to the expiration of the 14-day administrative leave period to allow adequate time for review and a response. Additional guidance on the waiver process can be found on the Worklife, Leave Administration SharePoint.

(b) If the Secretary approves the waiver request, the Secretary's office will submit the letter of explanation to the Committees on Veterans' Affairs of the Senate and House of Representatives and provide an executed copy to the requesting facility.

(c) If the Secretary denies the waiver request, the Secretary's office will return the folder to the requesting organization and send an electronic notification informing of the denial prior to the end of the 14-day administrative leave period.

e. **Investigative Leave and Notice Leave.**

(1) **Exclusions:** This section of the policy does not apply to employees of the Office of the Inspector General, or intermittent employees.

(2) In most circumstances, an employee who is being investigated should remain in a duty status in their regular position during the investigation period. If the need arises to place an employee on leave, management may place the employee on investigative leave, following the required use of administrative leave for investigations for 10 workdays in a single calendar year, as described in 12c(5), above. See 12e(10), below, for more information on placing an employee on investigative leave.

*Note: VA is required to submit a notice to Congress if the Secretary approves a waiver from the 14-day limit on administrative leave for covered individuals. That limit will be passed during the initial 30-day period of investigative leave. See 12d, 38 U.S.C. § 717, limitation on administrative leave, for additional information.*

(3) Management may not place an employee on notice leave until after an employee has received written notice of a proposed adverse action. There is no requirement that the employee exhaust 10 workdays of administrative leave for investigations prior to placing the employee on notice leave. See 12e(11), below, for more information on placing an employee on notice leave.

(4) Investigative leave and notice leave will be charged in the same minimum charge increments as for annual and sick leave.

(5) Employees may be placed on investigative leave or notice leave only for hours within their established tour of duty. Information on basic workweek requirements can be found in part II, chapters 2 and 3 of this handbook.

(6) To accurately meet reporting requirements, administrative leave must be recorded in the VA timekeeping system, (currently VATAS). Timekeepers are responsible for recording investigative leave and notice leave at the direction of the appropriate management official.

(7) Definitions.

(a) **Investigation**:

i. An inquiry by an investigative entity regarding an employee involving such matters as:

(A) An employee's alleged misconduct and/or performance that could result in an adverse action as described in 5 C.F.R. Part 752, 5 U.S.C. Chapter 43, 38 U.S.C. Chapter 74, 38 U.S.C. §§ 713 and 714, or similar authorities or other matters that could lead to outcomes adverse to the employee; and/or

(B) an employee's compliance with or adherence to security requirements.

ii. An inquiry by an investigative entity regarding an employee involving security concerns, including:

(A) Whether the employee should retain eligibility to hold a position that is national security sensitive under Executive Order (EO) 13467, as amended, and standards issued by the Office of the Director of National Intelligence (ODNI) regarding eligibility for access to classified information under EO 12968, as amended, and standards issued by ODNI; or

(B) Eligibility for logical or physical access to agency facilities and systems under the standards established by Homeland Security Presidential Directive 12 and guidance issued pursuant to that directive; and

(C) The period of time during which an appeal of a security clearance suspension or revocation is pending.

iii. Preparation of an investigative report and recommendation(s) related to the subject of the investigation.

(b) **Investigative Entity:** May include, but is not limited to the following:

i. An internal investigative unit granting investigative leave, which may be composed of one or more persons, such as supervisors, managers, human resources practitioners, personnel security office staff, workplace violence prevention team members, or other agency representatives, such as the Office of Accountability and Whistleblower Protection (OAWP) (see VA Directive 0500) or an Administrative Investigation Board. See VA Handbook 0700 for additional information on covered investigations and investigative entities in VA.

ii. The Office of the Inspector General granting investigative leave;

iii. The Attorney General; or

iv. The Office of Special Counsel.

(c) **Investigative Leave**: A type of administrative leave an employee who is subject to an investigation is placed on, without loss of or reduction in pay, leave, or credit for time or service, as authorized under 5 U.S.C. 6329b (and not authorized under any other provision of law).

(d) **Notice Leave**: A type of administrative leave an employee who is in a notice period is placed on, without loss of or reduction in pay, leave, or credit for time or service, as authorized under 5 U.S.C. § 6329b (and not authorized under any other provision of law).

(e) **Notice Period**: A period beginning on the date when an employee is provided required notice of a proposed adverse action or major adverse action against the employee and ending on either:

i. The effective date of the adverse action; or

ii. The date on which management notifies the employee that no adverse action will be taken.

(f) **Participating in a telework program**: An employee is eligible to telework and has an established and approved arrangement. An employee who teleworks on a situational basis is considered to be continuously participating in a telework program even if there are extended periods during which the employee does not perform telework. For more details on VA's telework program, see part II, chapter 4 of this handbook.

(g) **Threat**: A broad variety of risks an employee could pose towards VA mission, personnel, information, facilities, and information systems if the

employee were permitted to continue to have access to the workplace and/or VA systems during the investigation or notice period.

(8) **Upon meeting the required determinations in 12e(9)(a), below, management may place an employee on:**

(a) Investigative leave if the employee is the subject of an investigation.

(b) Notice leave if the employee is in a notice period, or

(c) Notice leave, following a placement on investigative leave, not later than the day after the last day of the period of investigative leave, if:

i. Management proposes or initiates an adverse action against the employee; and

ii. Management determines that the employee continues to meet one or more of the criteria described in Appendix K.

(9) **Required Determinations – Placement on Leave and Return to Duty.**

(a) **Placement on Leave (Non-OAWP Investigation).** Management may place an employee on investigative leave (after placing an employee on administrative leave for investigative purposes for 10 workdays in a single calendar year) or on notice leave only after conducting a written analysis, utilizing the guidelines and baseline factors detailed in Appendix K. Reporting requirements under 38 U.S.C. 717 (see 12d, above) must be met if an employee will be on administrative leave for more than 14 workdays.

(b) **Placement on Leave (OAWP Investigation)**. When OAWP receives an allegation of senior leader misconduct, retaliation, or poor performance, or of any supervisory whistleblower retaliation, it reviews the allegation to determine whether OAWP will investigate. If OAWP investigates, it will inform the chain of command of the subject of the investigation of any information which OAWP reasonably believes may be necessary for management to assess whether the subject's continued presence in the workplace may: pose a threat to the employee or others; result in the destruction of evidence; result in the loss of or damage to Government property; or otherwise jeopardize legitimate Government interests. Legitimate government interests include creating and maintaining a culture of senior leader accountability.

i. Upon receiving such information from OAWP, the management official must fully consider all options, including administrative leave, to address the subject's continued presence in the workplace. When it is

determined that administrative leave is appropriate, management may place an employee on investigative or notice leave, after placing an employee on administrative leave for investigative purposes for 10 workdays in a single calendar year, and only after conducting a written analysis, utilizing the guidelines and baseline factors detailed in Appendix K. The supervisor will provide written notice to the senior leader.

ii. If OAWP learns information during its investigation which would likely impact management's consideration of the subject's presence in the workplace, it will promptly notify the same management official of the new information in writing. When appropriate, the supervisor is responsible for placing the senior leader on leave in accordance with 12e(9)(a) above, or notifying the senior leader to return to duty, as indicated in 12e(9)(c) below.

(c) **Return to Duty**: Management, at its discretion, may return an employee, including a senior leader, to duty at any time upon reassessment of its determination to place the employee on investigative leave or notice leave.

i. An employee on investigative leave or notice leave must be prepared to report promptly to work at a time during the employee's regularly scheduled tour of duty and to an approved duty location.

ii. An employee who anticipates being unavailable to report promptly must request scheduled leave or paid time off in advance.

iii. Failure to report as required may result in the employee being recorded as absence without leave (AWOL), which can be the basis for disciplinary action.

(10) **Use of Investigative Leave.**

(a) Investigative leave may not begin until the employee has reached the 10-workday calendar year limitation in 12c(5), above, and management has determined that further investigation of the employee is necessary.

*NOTE: VA is required to submit a notice to Congress if the Secretary approves a waiver from the 14-day limit on administrative leave for covered individuals. That limit will be passed during the initial 30-day period of investigative leave. See 12d, 38 U.S.C. § 717, limitation on administrative leave, for additional information.*

(b) Management may place an employee on investigative leave for an initial period of not more than 30 workdays per investigation. An employee may

be placed on investigative leave intermittently, which means the leave may be interrupted by:

i. On-duty service;

ii. Leave or paid time off in lieu of such service; or

iii. AWOL.

**NOTE**: If the period of investigative leave is interrupted, the employee is not on investigative leave during the interruption, and those days do not count against the 30-workday limit.

(c) **Written Explanation of Leave.** Prior to being placed on investigative leave, or an extension of investigative leave, the appropriate management official must provide the employee with a written explanation regarding why the employee is placed on investigative leave. The explanation must include:

i. A description of the limitations of the leave placement, including the anticipated duration of leave;

ii. Reporting requirements when employee is notified to return to duty, including what is meant by “report promptly;”

iii. Notice of the type of action management must take (see e below) at the conclusion of the period of investigative leave; and

iv. Notice that placement on investigative leave for 70 workdays or more is considered a “personnel action” for purposes of the Office of Special Counsel’s authority to act, in applying the prohibited personnel practices provisions at 5 U.S.C. § 2302(b)(8)-(9).

(d) **Telework Alternative for Investigative Leave.**

i. In lieu of placing an employee on investigative leave, management may require the employee to telework and perform duties similar to what the employee normally performs, if management determines that:

(A) Teleworking would not pose a direct threat;

(B) The employee is eligible to telework;

(C) The employee has been participating in a telework program during some portion of the 30-day period immediately preceding the start of investigative leave; and

(D) Teleworking would be appropriate.

ii. An employee is considered eligible to telework in accordance with part II, chapter 4 of this handbook. However, if the terms of telework during a period of investigation differ from the duties the employee would normally perform, then the telework agreement already established must be superseded, as necessary, to comply with management's requirement for the employee to telework under this paragraph.

iii. If an employee is eligible for telework, but has not been participating in the telework program, and is willing to voluntarily begin participation in the telework program to avoid being placed on investigative leave, management may opt to approve the employee's request for voluntary telework. Although not required by regulation, it is encouraged that management still make a written determination using the criteria in Appendix K.

iv. If an employee, who is required to telework, is absent from telework duty without approval, management may place the employee in an AWOL status, consistent with current policy.

v. If management requires an employee to telework in lieu of placing the employee on investigative leave, the employee must be provided with a written explanation regarding the required telework in lieu of placement on investigative leave, to include the following:

(A) Management's determination that telework is appropriate, based on the factors in 12e(10)(d)i above; and

(B) A description of the limitations of the required telework, including the anticipated duration of telework.

(e) **Agency action.** Not later than the day after the last day of an initial or extended period of investigative leave, management must:

i. Return the employee to regular duty status;

ii. Take one or more of the actions under Appendix K, paragraph 2b;

iii. Propose or initiate an adverse action against the employee as provided under law; or

iv. Extend the period of investigative leave if permitted under g and h, below.

(f) **Continued Investigation.** Investigations of an employee may continue after the expiration of the initial 30 workday period of investigative leave

regardless of whether the employee is returned to regular duty status and is no longer on investigative leave.

(g) **Extensions of Investigative Leave.**

i. If an investigation is not concluded at the expiration of the initial 30-workday period, management may extend the period of investigative leave using increments of up to 30 workdays for each extension when approved in accordance with 12e(10)(h)-(i) below.

ii. The total period of extended investigative leave (in addition to the initial 30-workday period) may not exceed 90 workdays (i.e., 3 increment extensions of 30 workdays). This 90-day limit applies to extensions of investigative leave associated with a single, initial period of investigative leave. Exceptions to this 90-day work limit may be granted in accordance with 12e(10)(i) below.

(h) **Further Extension of Investigative Leave.** An official authorized, under paragraph (i)(i-ii) below, to approve an incremental extension of investigative leave may further approve any incremental extensions of 30 workdays beyond the maximum 90 workdays provided for in 12e(10)(g)(ii) above.

i. Further extensions may only be approved if management makes a written determination reaffirming that the employee must be removed from the workplace as outlined in paragraph 12e(9), Required Determinations – Placement on Leave and Return to Duty.

ii. Within 5 business days after granting each further extension, management must submit to the Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Oversight and Accountability of the House of Representatives, along with any other committees of jurisdiction, a report containing:

(A) The title, position, office or agency subcomponent, job series, pay grade, and salary of the employee;

(B) A description of the duties of the employee;

(C) The reason the employee was placed on investigative leave;

(D) An explanation as to why the employee meets the criteria described in Appendix K, paragraph 2a (see also 5 C.F.R. § 630.1503(b)(1)(i) through (iv)), and why management determined not to temporarily reassign the duties of the employee or detail the employee to another position within the agency;

(E) If an employee was required to telework at any time during the period of investigation prior to the further extension of investigative leave, the reason(s) that management required the employee to telework and the duration of the teleworking requirement;

(F) The status of the investigation of the employee;

(G) Certification to VA by an investigative entity stating that additional time is needed to complete the investigation and providing an estimate of the amount of time necessary to complete the investigation of the employee; and

(H) In the event of a completed investigation, the results of the investigation and the reason that the employee remains on investigative leave.

(i) **Approval of Extensions.** An incremental extension is permitted only if management makes a written determination reaffirming that the employee must be removed from the workplace based on 12e(9)(c), above and that the options in Appendix K, paragraph 2b (see also 5 C.F.R. § 630.1503(b)(2)) are not appropriate.

i. An incremental extension is permitted only if approved by the Chief Human Capital Officer (CHCO), or the designee of the CHCO, after consulting with the investigator responsible for conducting the investigation of the employee.

ii. If delegating authority to a designated official to approve an incremental extension of investigative leave, the CHCO must consider guidance in 12e(10)(l), below.

(j) Management may not further extend a period of investigative leave on or after 30 calendar days after the completion of the investigation of the employee by an investigative entity.

(k) **Conversion of workdays to hours**. The limitations based on workdays and the 70-workday limit must be converted to hours based on the employee's work schedule. VA will follow conversion of workdays to hours found in 5 C.F.R. § 630.1504 j.

(l) **CHCO delegation.** In accordance with paragraph (i)i, above, the CHCO may delegate, in writing, the authority to approve extensions to investigative leave. The delegation must be to an individual at a sufficiently high level to make an impartial and independent determination regarding the extension.

i. An official delegated by the CHCO may also approve further extensions of investigative leave. The delegated official(s) may further redelegate this authority consistent with internal policies.

ii. Delegations must be made in writing in accordance with VA policy (see Directive 0000 or successor policy), and the following factors must be considered when determining the appropriate level of delegation:

(A) The frequency of use of administrative leave prior to the publication of the Administrative Leave Act regulations;

(B) The capability of the designated official to efficiently make risk assessments and consider alternatives;

(C) The accessibility of the delegated official to the investigating authority;

(D) The ability for the CHCO to effectively exercise oversight authority, particularly in a large department or agency; and

(E) Whether the appropriate official delegated this authority is sufficiently removed from the facts and circumstances of an investigation to avoid actual or apparent conflicts of interest.

(11) **Use of Notice Leave.**

(a) Notice leave may begin only after an employee has received written notice of a proposed adverse action. There is no requirement for the employee to exhaust the 10 workdays of administrative leave for investigations under 12c prior to being placed on notice leave.

(b) An employee may not be placed on notice leave for longer than the duration of the notice period.

(c) If management places the employee on notice leave, management must provide the employee with a written explanation why they are placing the employee on notice leave. The written explanation must include information on the employee's notice period and include a statement that the notice leave will be provided only during the notice period.**]**

f. **Weather and Emergency Situations.**

(1) **Definitions.**

(a) **Emergency situation[s]** may be caused by heavy snow, severe icing, flooding, earthquakes,hurricanes, massive power failures, fuel shortages, major fires, strikes, public transportation crises, riots, mass

demonstrations, etc. if an employee or group of employees is prevented from safely traveling to or safely performing work at an approvedlocation because of the emergency. The emergency must be general rather than personal in scope and impact. It should be severe enough to prevent an employee from safely traveling to, or performing work at an approved location, or may necessitate the closing of Federal facilities in whole or in part. Usually, an emergency of this type will be the subject of a public declaration of emergency by appropriate Governmental authority.

(b) **Weather and Safety Leave (WSL).** Authorized paid leave provided under the authority of 5 U.S.C. § 6329c. [WSL] may be granted at the leave approving official's discretion, but subject to statutory and regulatory requirements, agency policies, and lawful collective bargaining agreements, only when the agency determines that an employee or group of employees are prevented from safely traveling to, or performing work at, an approved work location due to:

i. An act of God;

ii. A terrorist attack; or

iii. Another condition that prevents an employee or group of employees from safely traveling to, or safely performing work at, an approved work location.

(c) **Approved Work Location(s).** The worksite(s) where the employee regularly performs his or her duties. For an employee participating in a telework program, this definition includes the employee's official duty station and approved alternative worksite(s), [and for an employee with a policy exception or Agency Head exemption which allows for remote work, this definition means the official duty station where they regularly perform the duties of their position (e.g., their residence)] as listed on their telework agreement (VA Form 0740).

(d) **Telework-Ready Employee.** An employee who is both eligible to telework and has an approved written telework agreement in place. A telework-ready employee may be on a regular telework agreement or a situational (ad hoc) agreement. All employees on a situational (ad hoc) telework agreement are considered to be continuously participating ina telework program, even if there are extended periods during which the employee does not perform telework. Unless a telework-ready employee is on approved leave, he or she is required to perform telework when the Federal Government is closed when the Federal Government is closed for weather and emergency situations as defined in this policy. [Remote work employees are expected to work in accordance with 12e(9), below.]

(2) **Employees Providing "Critical" Services.** There are certain critical VA operations which cannot be curtailed even though it may be generally necessary to excuse employees for all or part of a day. For the purposes of this subpart, employees providing critical services may also be referred to as "emergency employees." [WSL] will generally not apply to employees who provide critical services because of the need to ensure continuity of essential VA operations. However, in a rare instance, where certain employees who provide critical services make every reasonable effort to get to work and are unable to do so, the facility Director may approve [WSL] as provided in subparagraph 12e(10)(a) below.

(a) **VA Medical Centers, Domiciliaries, and Outpatient Clinics.** All employees of these facilities are deemed to be providing critical services. Incumbents of these positions are required to be at work regardless of emergency situations or any general dismissal authorization.

(b) **Other VA Facilities.** Heads of other types of VA facilities should identify positions that are also deemed to be providing a critical service. Except for office closings, incumbents of these critical positions are also required to be at work regardless of emergency situations or any general dismissal authorization. Employees so designated should be made aware, preferably in writing, of the special requirements placed on them for reporting to, or remaining at, their [worksites] in emergency situations.

(c) **Identification.** It may be necessary to provide employees of critical positions with some identification that would enable them to commute at times when only emergency travel is allowed on the highways.

(3) **Absences Due to Emergency Situations.** When it is determined that an employee in a non-critical position cannot safely travel to, or perform work at, an approved location due to severe weather or other emergency situations, [WSL] may be authorized. [WSL] is typically not applicable to employees who participate in [VA's] telework [or remote work] program.

(a) [At] the sole discretion of the leave approving official, [WSL] (not to exceed one workday) may be appropriately extended to a telework employee to cover the unusual situation where an employee is unprepared to telework because the event could not be reasonably anticipated (e.g., the regular worksite is rendered unsafe following a fire, flood, or earthquake) and the employee does not have equipment or materials to perform productive work at the alternate worksite, or when the employee is prevented from safely working at the approved telework site [d]ue to circumstances arising from one or more of the conditions related to the emergency (e.g. loss of power). [ ]

(b) [A remote worker whose home is considered the employee's official worksite is only granted WSL when they are unable to safely perform work at their official worksite (i.e., their home). This does not necessarily coincide with the parent site.

(c) [WSL] may be approved without time limitation; however, leave approval beyond one workday must be granted by the appropriate higher-level authority in accordance with subparagraph 9 below.

i. In the case of an emergency of indefinite duration, VA facilities should consider other more appropriate options, as specified in subparagraph 10 of this part.

ii. [WSL is not appropriate for clean-up/remediation or home repairs after the disaster. Once the employee can safely travel to/from and/or safely perform work at the normal/alternate worksite, WSL is no longer appropriate.]

(4) **Early Dismissals**

(a) When an early dismissal is authorized based on an employee's or a group of employees' inability to safely remain at an approved work location, [WSL] may be granted to employees who are in duty status.

(b) For this purpose, employees are considered to be in duty status if they are

i. Actually on duty at time of dismissal; or

ii. Excused from duty (or on approved leave) for a portion of the business day at the time of dismissal and were expected to return to duty before the close of the business day.

(c) Employees who are not in a duty status as described above when notification of dismissal occurs after opening hours will be charged appropriate leave for the entire period of absence.

(d) Non-critical employees who do not participate in a telework program should be granted [WSL] from the time of the early dismissal to the end of the scheduled tour of duty for that day.

(e) [WSL] authorized to non-critical employees who participate in a telework program will be limited to the amount of time required to commute to the approved alternate worksite (home). Once these employees arrive at the alternate worksite (home), they must complete any remaining portion of the workday by teleworking, taking unscheduled leave, or a combination of both. All employees should keep their supervisors apprised of changes in their work status in the event of an early departure and managers should

be mindful that employees' commuting times may vary due to adverse conditions affecting roadways, bridges, and mass transit systems.

(f) Employees who were already performing telework when an early dismissal is announced must continue to telework or take unscheduled leave or other paid time off, or a combination of both, for the remainder of their scheduled tour of duty.

(5) **Late Arrival**

(a) [WSL] may be granted when an employee's arrival at an approved work location is delayed because of an employee's or group of employees' inability to safely travel to or perform work due to severe weather or other emergency situations. Employees are granted [WSL] for the number of hours between the regularly scheduled reporting time and the final reporting time authorized in the late arrival notification, except that the amount of such leave is reduced if the employee arrives at work prior to the final reporting time.

i. In the event a delayed opening is authorized for a VA facility, requests for unscheduled leave or other paid time off will be charged to the appropriate type of leave or other paid time off for the employee's entire workday.

ii. Employees may not receive [WSL] for hours during which they are on preapproved leave or other paid time off, such as credit hours, compensatory time off, and time off award hours.

iii. Non-critical employees who participate in a telework program and elect to perform unscheduled telework when a delayed opening is authorized will not receive [WSL] for the delayed arrival period. However, if such an employee chooses to report to the regular worksite (i.e., official duty station), the employee should be granted [WSL] subject to the same criteria for granting leave to other non-critical employees mentioned in subparagraph 12e(5)(a) above.

iv. Under a delayed opening authorized by the Office of Personnel Management (OPM) or issued by the agency, all non-critical employees must notify their supervisor of their intent to use unscheduled leave, unscheduled telework (if telework-ready), or a combination of both within two hours of the employee's regularly scheduled reporting time.

(6) **Office Closure**

(a) In the event of an office closure, employees may be granted [WSL] for the number of hours in their scheduled tour of duty unless one of the following applies:

i. The employee is designated as providing critical services and is required to report for duty.

ii. The employee is participating in a telework program (telework-ready) and is able to safely perform work at an approved location.

iii. The employee is on pre-approved leave (paid or unpaid) or other time off, or the day of closure is a scheduled non-workday.

iv. The employee is on official travel outside of the duty station.

(b) Under a closure authorized by OPM or issued by the agency, all non-critical employees are required to notify their supervisor of their intent to telework, request unscheduled leave, or a combination of both, for the entire workday within two hours of their regularly scheduled reporting time.

(7) **Coordinated Group Actions.** Except for VA employees providing critical services, where there are two or more Federal installations in the community, there should be a coordinated effort in group dismissals or in excusing groups of employees from reporting. In this regard, facility Directors are advised to coordinate actions with other local VA installations, Federal Executive Boards and other Federal agencies. Where it appears that consistent action cannot be obtained locally, facilities should seek advice and coordination through appropriate Departmental channels.

(8) **Remote Employees.** An employee whose home is considered the employee's official dutystation (i.e., a [remote] employee) will generally not be granted [WSL] unless the employee is unable to safely perform work at their official duty station due to the conditions described in (u)(1)(a) (e.g., employee is unable to safely perform telework due loss of power as a result of a hurricane).

(9) **Authority for Excusing Employees from Duty for Weather and Safety Leave**

(a) **Field Facilities**

i. Leave approving officials are authorized to approve [WSL] forweather and emergency situations, not to exceed one workday.

ii. Field facility heads[, including Medical Center or Network Directors for

Veterans Health Administration (VHA) facilities,] are authorized to approve [WSL] for weather andemergency situations when the absence exceeds one workday, not to exceed seven consecutive workdays

iii. The appropriate Under Secretary, Assistant Secretary, Other Key Officials, or their designee must approve any [WSL] for field facility employees in excess of seven consecutive workdays.

(b) **VA Central Office (VACO)**

i. Leave approving officials are authorized to approve [WSL] forweather and emergency situations, not to exceed one workday.

ii. The appropriate Deputy Assistant Secretary (or equivalent), or their designee, [including first line SES or higher SES in VHA, VBA, and NCA Program/Staff Offices] is authorized to approve [WSL] for weather and emergency situations when the absence exceeds one workday, not to exceed seven consecutive workdays.

iii. The Under Secretary for each Administration, Assistant Secretaries of Staff Offices,and Other Key Officials for equivalent organizations such as the Office of General Counsel, Veterans Experience Office, etc.[, or their designee,] may approve [WSL] in excess of seven consecutive workdays[, unless further delegated].

(10) **Emergencies of Indefinite Duration.** Where it is necessary to close operations for some prolonged or regularly recurring period (such as during a fuel crisis), the use of [WSL] is inappropriate. Other options, which should be considered, are as follows:

(a) **Maximum Use of Details or Temporary Relocation.** Every effort should be made to keep employees at work at affected facilities. Therefore, employees could possibly be detailed or relocated for useful work to facilities where operations have not been curtailed.

(b) **Extended Work Day and Use of Compensatory Time.** Employees may be granted compensatory time off where overtime worked is either irregular or occasional in nature. Under these emergency circumstances discussed herein, employees could be offered the opportunity to work two additional hours on each of four days with the overtime to be taken as compensatory time off on the fifth day within the same workweek.

**NOTE:** VA policy on compensatory time for General Schedule (GS) and Federal WageSystem (FWS) employees can be found in part II, chapter 3, paragraph 5 of this handbook.

(c) **Use of Annual Leave.** [GS] employees who do not wish to work overtime hours for compensatory time and [FWS] employees may use any annual leave which is available to them. While the taking of annual leave can be at the request of any employee, agencies have the authority to place employees with sufficient annual leave to their credit (including any annual leave that will accrue to the employees during the year) on annual leave at times considered appropriate by management. In exercising the authority to place employees on annual leave, agencies must comply with the provisions in negotiated agreements.

(d) **Use of Leave Without Pay.** In the absence of earned leave that will accrue during the year, or if an employee prefers not to use accumulated leave, an employee can be placed on leave without pay, but only at the employee's request.

g. [**Administrative Leave in Laws, Regulations, or Presidential Directives.** Certain laws, regulations, and Presidential Directives grant use of paid time off for specific purposes. Although coded in the VA payroll system of record as administrative leave, the Administrative Leave Act does not encompass leave authorized by Presidential Directive or leave that is authorized under another provision of law. More information on laws, regulations, and Presidential Directives that grant paid time off can be found in Appendix J.]

13. **LEAVE WITHOUT PAY (LWOP).**

a. **General.**

(1) **Definition.** Leave Without Pay (LWOP) is a temporary nonpay status and absence from duty.

(2) **Approval of LWOP is a matter of administrative discretion.** Employees cannot demand LWOP as a matter of right, except in the case of disabled veterans who are entitled to LWOP if necessary for medical treatment under Executive Order 5396, and reservists and members of the National Guard who are entitled to LWOP if necessary to perform military training duties.

(3) **Involuntary Leave Without Pay.** Refer to instructions in paragraph 4g of this chapter regarding involuntary sick and annual leave, or LWOP status, when an employee is unable to perform duties because of intemperate conduct or illness, mental or physical.

b. **Criteria for Granting LWOP**

(1) Circumstances which justify approval of sick or annual leave will generally be sufficient basis for approving LWOP for a like period. Leave without pay may be granted even though the employee has a sick or annual leave balance.

(2) LWOP in excess of 30 calendar days should not be granted unless there is reasonable expectation that the employee will return to duty, except as provided for disability retirement and OWCP cases. Examples of purposes for which the approval of LWOP is proper include:

(a) **Educational Purposes.** When the course of study or research is in line with a type of work which is being performed by the agency and the employee might reasonably expect assignment to such work.

(b) **Temporary Service With Non-Federal Public or Private Enterprise.** Where the experience to be gained by the employee will serve VA interests.

(c) **Recovery From Illness or Disability Not of a Permanent Nature.** When continued employment would threaten impairment of the employee's health, or the health of other employees.

(d) **Protection of an Employee's Status During Any Period**

1. Pending final action by OPM on a claim for disability retirement, whether or not sick and annual leave has been exhausted, or

2. Pending action by OWCP, U.S. Department of Labor, on a claim resulting from employment-connected injury or disease, or pending determination by the OWCP that the injured employee is permanently and totally disabled, or

3. Pending return to duty from working in a program in which the Federal Government is participating or encouraging (e.g., Peace Corps volunteers), or

4. Pending return to duty from serving on a temporary basis as an officer or representative of an employee organization.

c. **Approval of LWOP**

(1) Administration Heads, Assistant Secretaries, Other Key Officials, and Deputy Assistant Secretaries or their designees for field facility employees may approve LWOP for any period of time.

(2) Field facility heads, or their designees, may approve LWOP for any period of 1 year or less for occupants of noncentralized positions. They may approve LWOP for 30 days or less for employees at their facilities who occupy centralized positions.

(3) The appropriate Central Office official must approve requests for LWOP or extensions of LWOP which exceed the above authority. However, exceptions which may be approved locally include OWCP and disability retirement claimants.

d. **Notice to Employee.** Employees granted LWOP for more than 30 calendar days must be notified that:

(1) They can usually expect to return to their former position. However, it may become necessary in the interest of the service to reassign them to other positions during their absence or upon their return;

(2) In the event of reduction in force during their absence, which affects their position, they will be given the same consideration as employees in a duty status;

(3) If they are reached for reduction in force reassignment to a position in another organizational element, their LWOP will be subject to termination if their active services are required by the organizational element; and

(4) They should communicate with their supervisor at least 2 calendar weeks before the expiration of their LWOP to arrange for their return to duty.

e. **Human Resources Management Office Records.** LWOP in excess of 30 consecutive calendar days will be documented on a Personnel Action Request, forwarded to the Human Resources Management office for appropriate action and filed in the employee's personnel folder.

**14.** [**LEAVE WITHOUT PAY (LWOP) FOR FAMILY SUPPORT PURPOSES.** This is sometimes referred to as Expanded FMLA but is not based on the authority of the Family and Medical Leave Act (FMLA) of 1993. Therefore, this LWOP is not counted towards the 12-week FMLA entitlement authorized in 5 U.S.C. 6382 and 5 CFR 630, subpart L. Employees are not required to complete at least 12 months of Federal service to be eligible for this LWOP. The granting of this LWOP shall be a matter of administrative discretion. Annual and sick leave cannot be substituted for this LWOP. Annual leave donated under the Voluntary Leave Transfer Program cannot be substituted for this LWOP.

a. LWOP for family support purposes may be used for any individual listed under “family member” in 5 CFR 630.201.

b. Up to 24 hours of leave without pay (LWOP) may be granted to employees for the following family support purposes:

(1) To participate in school activities directly related to the educational advancement of their child;

(2) To accompany their children to routine medical or dental appointments, such as annual checkups and vaccinations; and

(3) To accompany their elderly relatives to routine medical or dental appointments or other professional services related to the care of the elderly relative, such as making arrangements for housing, meals, telephones, banking services, and other similar activities.

c. Full-time employees may be granted up to 24 hours of LWOP for family support purposes each leave year. Part-time employees may be granted LWOP in direct proportion to their regularly scheduled number of hours to the 24-hour limitation each leave year.

d. Employees may be required to provide administratively acceptable documentation related directly to requests for LWOP for family support purposes, including medical certification, as appropriate].

## [**15.**] **ABSENCE WITHOUT LEAVE (AWOL)**

a. Absence without leave (AWOL) is an unauthorized absence from duty. The employee receives no pay for such absence. The leave-approving official should document the reason or reasons for charging an absence to AWOL at the time the decision is made. This may be done by a written statement on the reverse

of the time and attendance report, or by a memorandum filed with the time and attendance report. The leave approving official should sign the statement. The employee should be informed that the charge to AWOL has been included in the time and attendance report. The employee shall be charged only for the actual period of unauthorized absence.

If AWOL is later excused because the circumstances surrounding the absence are such that the absence would have been approved, the charge should be changed to authorized absence without charge to leave if appropriate, or to sick or annual leave, or LWOP as appropriate.

**16. ABSENCE OF DISABLED VETERANS**. In accordance with Executive Order 5396, dated July 17, 1930, a disabled Veteran must be granted sick or annual, or LWOP if necessary, for medical treatment when presenting an official statement from a duly constituted medical authority that medical treatment is required. The Veteran must give prior notice of the period during which absence for treatment will occur.

**17. HOME LEAVE**

a. Home leave means leave authorized by 5 U.S.C. 6305 and earned by service abroad for use in the United States, in the Commonwealth of Puerto Rico, or in the possessions of the United States. Employees in Alaska and Hawaii are excluded from home leave coverage.

b. Service abroad means service on and after September 6, 1960, by an employee at a post of duty outside the United States and outside the employee's place of residence if his or her place of residence is in the Commonwealth of Puerto Rico or a possession of the United States.

c. Home leave shall be earned according to 5 U.S.C. 6305 and 5 CFR, part 630, subpart F. It is the administrative policy of VA to grant the leave under the circumstances cited therein. Home leave may be used in combination with other types of leave. (See definitions below of "home leave" and "service abroad.").

**18. FAMILY AND MEDICAL LEAVE [ACT (FMLA)]**

a. Under Title II of the [FMLA] full-time and part-time employees who have completed at least 12 months (not required to be 12 recent or consecutive months) of service are entitled to receive up to 12 administrative workweeks of unpaid leave (LWOP) during any 12-month period for specific family and medical needs. [Employees serving on intermittent or temporary appointments of one year or less are not covered under Title II of FMLA or this paragraph, regardless of the amount of service completed. These employees are protected under Title I FMLA regulated by the Department of Labor (see 29 CFR 825.109) and may refer to 29 CFR part 825.]

***NOTE:*** *By tracking the number of hours on LWOP against the average number of hours in an employee's regularly scheduled administrative workweek, the facility can insure employee rights under this provision.*

b. The 12 weeks of FMLA leave is in addition to any annual leave, sick leave, or other LWOP or compensatory time off available to the employee. An employee may choose to take FMLA leave in combination with any other available leave.

c. In implementing the statutory requirements for administering family and medical leave entitlements, VA will follow regulations published in 5 CFR 630.1201-1213 by the Office of Personnel Management.

NOTE: *See also* The Paid Parental Leave Technical Corrections Act of 2020, Section 1103 of The Fiscal Year 2021 National Defense Authorization Act (NDAA) (Public Law 116-283). As of the date of publication, OPM regulations have not been revised though OPM published a memo explaining the statutory changes supersede 5 CFR 630.1201(b)(1)(ii). *See* January 15, 2021 *OCHCO* bulletin published on the Chief Human Capital Officer Website for more information.

d. An employee may substitute up to 26 administrative workweeks of accrued and accumulated sick leave when using FMLA under 5 U.S.C. 6382(a)(3) to provide care for a covered servicemember. Substituted sick leave will be prorated for part-time employees and employees on uncommon tours of duty (5 CFR 630.403).

e. [An employee may substitute up to 12 administrative workweeks of paid parental leave when using FMLA under 5 U.S.C. 6382(a)(1)(A)-(B) in connection with the birth, adoption, or foster care placement of a child occurring on or after October 1, 2020. Paid parental leave will be prorated for part-time employees and employees on uncommon tours of duty. When an employee changes work schedules (e.g. full-time to part-time, or vice versa) and has not used the full allotment of leave, the remaining balance of hours is recalculated based on the change in number of hours in the scheduled tour of duty. In implementing the statutory requirements for administering paid parental leave entitlements, VA will follow regulations published in 5 CFR 630.1701-1708.

(1) Paid parental leave is contingent on the employee's advance written agreement to return to work for not less than 12 weeks following the date paid parental leave ends.

(2) The 12-week work obligation must be completed in full, regardless of the number of paid parental leave hours used. If the work obligation is not fulfilled, the employee is responsible for reimbursing the agency for the government share of Federal Employees Health Benefits premiums paid by the agency on the employee's behalf during the period of paid parental leave use.

(3) The work obligation is satisfied by converting the 12 weeks into the equivalent time in hours (e.g. the 12-week equivalent for a full-time employee with a biweekly tour of duty of 80 hours is 480 hours). When the scheduled tour of duty changes prior to completing the work obligation, the balance of hours owed shall be recalculated based on the change in the number of hours in the scheduled tour of duty.

(4) Hours which qualify towards meeting the work obligation are hours that an employee is in a pay and duty status. Periods of leave, holidays, and other non-duty time do not count towards meeting the work obligation.

(5) An employee who is unable to return to work because of the continuation, recurrence, or onset of a serious health condition of the employee or child may have the reimbursement requirement in paragraph e(2) waived upon furnishing medical certification from a health care provider in support of such claim in a timely manner. An employee may also be eligible for an exception to the reimbursement requirement based on any other

circumstance beyond the employee's control, as provided in 5 CFR 1705(f)(2)(ii) and limited by 5 CFR 1705(h)]

## 19. BONE MARROW AND ORGAN DONOR LEAVE

a. In connection with serving as a bone marrow or organ donor, an employee, in any calendar year, is entitled to [Excused Absence] authorized absence [ ] without loss of or reduction in pay (5 U.S.C. 6327) as follows:

(1) Not to exceed 7 days of paid leave to serve as a bone marrow donor; and

(2) Not to exceed 30 days of paid leave to serve as an organ donor

b. Other types of approved leave may also be used in addition to organ donor leave.

## 20. VOLUNTARY LEAVE TRANSFER PROGRAM

a. **General.** Under this program, the unused accrued annual leave of a VA employee, or an employee of another Federal agency, may be transferred for use by a VA or other Federal employee who needs the leave because of a medical emergency.

b. **Definitions**

(1) **Agency.** An Executive agency, as defined in 5 U.S.C. 105.

(2) **Employee.** Has the meaning given that term in 5 U.S.C. 6301(2); and physicians, dentists, nurses, podiatrists, chiropractors, optometrists, nurse anesthetists, physician assistants, and expanded-function dental auxiliaries in the VHA as covered by Chapter 3, of this part.

(3) **Family Member.** Means the following relatives of the employee:

(a) Sons and daughters, and parents thereof;

(b) Children, including adopted children, and spouses thereof;

(c) Parents, and spouses thereof;

(d) Brothers and sisters, and spouses thereof;

(e) Grandparents and grandchildren, and spouses thereof;

(f) Domestic partner and parents thereof, including domestic partners of any individual in paragraphs (b) through (e) of this definition; an

(g) Any individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship.

(4) **Leave Donor.** An employee whose voluntary written request for transfer of annual leave to the annual leave account of a leave recipient is approved by the donor's employing facility.

(5) **Leave Recipient.** A current employee for whom the designated VA official, or in the case of a non-VA employee, his or her employing agency; has approved an application to receive annual leave from the annual leave accounts of one or more leave donors.

(6) **Medical Emergency.** A medical condition of an employee or a family member of such employee that is likely to require an employee's absence from duty for a prolonged period of time and result in a substantial loss of income to the employee because of the unavailability of paid leave.

(7) **Approving Official.** The official designated in subparagraph c below.

(8) **Uncommon Tour of Duty.** Any tour of duty in excess of 40 hours per week, for example, the tour of duty of firefighters.

c. **Responsibilities**

(1) **The Deputy Assistant Secretary for Human Resources Management** [**and Labor Relations**] is responsible for developing departmental policies and procedures related to the administration of the voluntary leave transfer program and for evaluating the effectiveness of this program.

(2) **The Deputy Assistant Secretary for Finance** is responsible for payroll policies and record keeping related to the voluntary leave transfer program.

(3) **Administration Heads, Assistant Secretaries, Other Key Officials and Deputy Assistant Secretaries** or their designees are responsible for approving or disapproving applications to become a leave recipient from employees under their jurisdiction in accordance with this policy.

(4) **Human Resources Management Officers (HRMOs)** are responsible for the following actions:

(a) Developing local policy and procedures in coordination with Fiscal Officers, to ensure that employees are promptly and properly informed of their rights and responsibilities under this program;

(b) Notifying employees about this program (see sample in appendix III-B);

(c) Reviewing applications from potential leave recipients to ensure that the application meets the criteria of this program and that all required information has been provided before forwarding such applications to the approving official for final decision;

(d) Preparing appropriate letters for the approving official to issue to applicants informing them of their approval as a participant, or their ineligibility for the program (see sample in appendix III-D and III-E);

(e) Monitoring, in conjunction with the employee's supervisor, the status of a leave recipient to ensure that a medical emergency continues to exist;

(f) Notifying the Payroll Office of the approval of an employee to be a leave recipient and termination of that leave recipient's medical emergency;

(g) Reviewing the written requests of potential leave donors to ensure compliance with subparagraph f below;

(h) Establishing and maintaining records on the administration of this program, in conjunction with the Payroll Office, as required under subparagraph [20]o of this chapter.

(5) **Payroll Offices** are responsible for:

(a) Developing local policy and procedures in coordination with HRMOs to ensure that employees are promptly and properly informed of their rights and responsibilities under this program;

(b) Reviewing the written requests of employees who wish to donate annual leave to a specified leave recipient to ensure that the potential leave donor's request is in compliance with subparagraph g below;

(c) Administering and monitoring the actual transfer of annual leave from leave donors to the specified leave recipients;

(d) Monitoring and controlling the accrual of leave by leave recipients while in a leave transfer status to ensure compliance with limitations in subparagraph k below;

(e) Effecting the transfer of leave between the VA facility and other VA facilities or Federal agencies, when appropriate;

(f) Notifying the leave recipient and leave donor(s) of the transfer of annual leave to the account of the leave recipient;

(g) Ensuring prompt cessation of the transfer of annual leave to a leave recipient upon termination of the recipient's medical emergency;

(h) Determining the amount and distribution of any annual leave to be restored to leave donors and effecting the restoration of such annual leave; and

(i) Establishing and maintaining necessary leave and other records for the administration of this program (see subparagraph o below).

(6) **Supervisors** are responsible for:

(a) Ensuring that employees under their supervision are aware of information published in connection with this program;

(b) Monitoring, in conjunction with the HRMO, the status of a leave recipient under their supervision to ensure that a medical emergency continues to exist; and,

(c) Promptly notifying the HRMO of the termination of a leave recipient's medical emergency.

d. **Application to Become a Leave Recipient**

(1) Employees affected by a medical emergency may make written application to the designated approving official through the HRMO to become leave recipients. If any such employees are not capable of making application on their own behalf, a personal representative of the potential leave recipient may make written application on their behalf.

(2) Each application shall contain the following information concerning the potential leave recipient;

(a) The name, position, title, and grade or pay level of the potential leave recipient;

(b) The reasons why transferred leave is needed, including a brief description of the nature, severity, and anticipated duration of the medical emergency, and if it is a recurring one, the approximate frequency of the medical emergency (see sample in appendix III-C);

(c) Certification from one physician, or other appropriate expert, with respect to the medical emergency; and,

(d) Any additional information that may be requested by the HRMO to support the application, including additional certifications from other physicians or appropriate experts with regard to the medical emergency.

(3) The HRMO will make requests for additional medical certifications with the advice of the Employee Health Physician and concurrence of the approving official. If a potential leave recipient is required to obtain certification from two or more sources, the employing facility shall ensure, either by direct payment to the expert involved or by reimbursement to the employee, that the potential leave recipient will not have to pay those expenses resulting from obtaining certification from more than one source. Actual payment/reimbursement will be charged to the appropriation from which the employee is paid.

(4) Concurrent with the submission of the application, the employee may also submit the applications of potential leave donors (leave donor applications will be completed in accordance with subparagraph f below). If the application to become a leave recipient is approved, this may expedite the actual transfer of leave.

e. **Approval of Application to Become a Leave Recipient**

(1) HRMOs shall expeditiously review all applications to determine that the potential leave recipient meets the criteria of a *"medical emergency,"* as defined in paragraph [20]b(6) of this chapter.

(2) Before forwarding the application to the approving official, the HRMO shall determine that the absence from duty without available paid leave (disregarding any advanced leave) because of the medical emergency has been (or is expected to be) at least 24 work hours (3 calendar days for certain title 38 employees and 14.5 hours for nurses on the Baylor Plan, or, in the case of a part-time employee or an employee with an uncommon tour of duty, the average number of hours in the employee's biweekly scheduled tour of duty). A leave recipient may use annual leave transferred to the recipient's annual leave account under this program only for the purpose of the medical emergency for which the leave recipient was approved.

(3) In making a determination as to whether a *"medical emergency"* is likely to result in a substantial loss of income, no factors will be considered other than whether the absence from duty without available paid leave has been, or is expected to be at least 24 work hours (3 calendar days for certain title 38 employees and 14.5 hours for nurses on the Baylor Plan, or, in the case of a part-time employee or an employee with an uncommon tour of duty, the average number of hours of work in the employee's biweekly scheduled tour of duty).

(4) If the application is approved, the leave recipient (or the personal representative who made application on behalf of the leave recipient) will be advised, in writing, within 10 days (excluding Saturday, Sundays, and legal public holidays) after the date the application was received that:

(a) The application has been approved (see appendix III-D);

(b) Other employees of the leave recipient's facility or other VA facilities may request the transfer of annual leave to the annual leave account of the leave recipient and requests to donate annual leave from employees of other Federal agencies will be considered; and

(c) The leave recipient (or the personal representative who made application on behalf of the leave recipient) is responsible for notifying those employees who may wish to be leave donors of the approval of the application.

(5) If the application is not approved, the applicant (or the personal representative who made application on behalf of the leave recipient), will be advised, in writing, within 10 days (excluding Saturdays, and Sundays, and legal public holidays) after the date the application was received that the application has not been approved and of the reasons for its disapproval (see sample in appendix III-E).

(6) For bargaining unit employees, prior to forwarding a denial letter to the approving official, the Human Resources Management Officer will discuss the case with the union and provide them with a 48-hour comment period. Approval letters for bargaining unit employees will be simultaneously sent to the union and the employee.

f. **Transfer of Annual Leave**

(1) An employee may submit a voluntary written request to transfer a specified number of hours (or days, as appropriate for certain title 38 employees) from his or her annual leave account to the annual leave account of a specified VA leave recipient. This request will be submitted on VA Form 0239, Leave Transfer Authorization, through the HRMO to the Payroll Office. If all or part of the leave may not be transferred in accordance with provisions in subparagraphs (2) through (5) below or in paragraph [20]g of this chapter, the employee will be so advised by either the HRMO or the Payroll Office. Otherwise, the Payroll Office, in writing will advise the employee that his/her annual leave account has been reduced and leave credited to the designated recipient. The Payroll Office will provide a copy of the written notice to the designated leave recipient.

(2) The minimum amount of annual leave that may be transferred from a title 5 employee, or title 38 employee who is charged leave in hours, is 4 hours. The minimum amount of annual leave that may be transferred from a title 38 employee who is charged leave in whole day increments is one day. Title 5 employees may transfer to title 38 employees and vice-versa, provided the transfer is in accordance with subparagraph 5 below. The Payroll Office is responsible for making the necessary conversions for transfers of annual leave between leave systems in accordance with the VHA Supplement to MP-4, part II.

(3) Transfers of annual leave from a VA employee of one facility to a leave recipient of another VA facility are subject to all the provisions of this policy and will be coordinated between the fiscal offices of the facilities involved. The leave donor's Payroll Office shall reduce the amount of annual leave credited to the leave donor's leave account, as appropriate, and the Payroll Office will notify the leave recipient's Payroll Office in writing of the amount of annual leave to be credited to the leave recipient's annual leave account.

(4) Except as provided in subparagraph h below, annual leave may be transferred only from a leave donor employed by VA. Annual leave of VA employees may be transferred to approved leave recipients employed at other Federal agencies in accordance with subparagraph i.

(5) Annual leave may not be transferred to an employee's immediate supervisor. The HRMO is responsible for verifying this information on Part II of VA Form 0239.

(6) Transferred annual leave may be substituted retroactively for periods of LWOP or used to liquidate an indebtedness for advanced annual or sick leave granted on or after a date established by the leave recipient's HRMO at the beginning of the period of medical emergency for which LWOP or advanced annual or sick leave was granted.

g. **Limitations on Donations of Annual Leave**

(1) In any one (1) leave year, no leave donor may donate an amount of annual leave that is more than a total of one-half of the amount of annual leave the donor would be entitled to accrue during the leave year in which the donation is made.

(2) A leave donor who is projected to have annual leave that otherwise would be subjected to forfeiture at the end of the leave year under 5 U.S.C. 6304(a) may donate no more than the lesser of:

(a) One-half of the amount of annual leave he or she would be entitled to accrue during the leave year in which the donation is made; or

(b) The number of hours or calendar days remaining in the leave year (as of the date of the transfer) for which the leave donor is scheduled to work and receive pay.

(3) The Payroll Office is responsible for verifying that the above criteria are met on Part III of VA Form 0239.

(4) The approving official may waive the limitations on donations of annual leave under paragraphs (1) and (2) above. The HRMO and Payroll Office may certify in writing that the available donations are insufficient to remedy the income loss of the employee experiencing a medical emergency, before consideration of a waiver may be made. Such waivers must be in writing. If a waiver is granted, the Payroll Office will so note in Part III of VA Form 0239 for each donor affected and attach a copy of the written authorization.

h. **Transfer of Annual Leave from Employees of Other Federal Agencies**

(1) The VA facility employing the leave recipient shall accept the transfer of annual leave from leave donors employed by one or more Federal agencies if:

(a) The leave donor is a family member of the leave recipient, as defined in paragraph [20]b(3)(a)-([g]) of this chapter; or

(b) The HRMO with the advice of the Payroll Office determines that the amount of annual leave donated to the leave recipient within the department may not be sufficient to meet the needs of the leave recipient; or

(c) The HRMO determines that the acceptance of leave transferred from another Federal agency would further the purpose of the voluntary leave transfer program.

(2) Before accepting the transfer of annual leave from a leave donor employed by another Federal agency, the VA HRMO shall verify that the potential leave donor's employing agency has approved the leave donor's request to transfer annual leave to the specified leave recipient. If approved, the Payroll Office of the VA facility will coordinate the transfer of annual leave with the Payroll Office of the other Federal agency.

i. **Transfer of Annual Leave to Employees of Other Federal Agencies**

(1) VA employees who wish to donate annual leave to a leave recipient in another Federal agency shall forward their request to their own HRM office on VA Form 0239. In addition to the name of the

leave recipient, the donating employee shall indicate the name and address of the Federal agency employing the leave recipient.

(2) The HRM office shall ascertain that the leave recipient's employing agency has made any determination that may be required under 5 CFR 630.906(f). (see subparagraph h above).

(3) If the recipient's employing agency will accept the leave donation, the Payroll Office shall verify the availability of annual leave in the leave donor's annual leave account and determine that the amount of annual leave to be donated does not exceed the limitations under subparagraph g above.

(4) Upon satisfying these requirements, the VA donor's Payroll Office shall reduce the amount of annual leave credited to the leave donor's leave account, as appropriate, and the Payroll Office will notify the leave recipient's employing agency in writing of the amount of annual leave to be credited to the leave recipient's annual leave account.

j. **Use of Transferred Annual Leave**

(1) A leave recipient may use annual leave transferred to the recipient's annual leave account under this program only for the purpose of a medical emergency for which the leave recipient was approved. Any annual leave or sick leave accrued or accumulated and available for use during the medical emergency, except as provided in paragraph [20]k below, must be exhausted before any transferred annual leave may be used.

(2) The approval and the use of transferred annual leave shall be subject to all of the conditions and requirements imposed by chapter 63 of title 5, United States Code and the provisions of this chapter, except that transferred annual leave may accumulate without regard to the limitation imposed by 5 U.S.C. 6304(a), or other provisions of this part.

(3) Annual leave transferred to a specified leave recipient may not be:

(a) Transferred to another leave recipient, except as provided in paragraph [20]m(5)(c) below.

(b) Included in a lump-sum payment under 5 U.S.C.5551 or 5552; or

(c) Made available for re-credit under 5 U.S.C. 6306 or the provisions of this part, as appropriate, upon reemployment by a Federal agency.

k. **Accrual of Leave While in a Transferred Leave Status**

(1) Except as otherwise provided in this paragraph, while an employee is in a transferred leave status, annual and sick leave shall accrue to the credit of the employee at the same rate as if the employee were in a paid leave status under subchapter I of chapter 63 of title 5 U.S.C. or chapter 3, this part for title 38 employees, as appropriate, except that:

(a) The maximum amount of annual leave that may be accrued by an employee while in a transferred leave status in connection with any particular medical emergency may not exceed 40 hours (or, in the case of a part-time employee or an employee with an uncommon tour of duty, the average number of hours of work in the employee's weekly scheduled tour of duty); and

(b) The maximum amount of sick leave that may be accrued by an employee while in a transferred leave status in connection with any particular medical emergency may not exceed 40 hours (or, in the case of a part-time employee or an employee with an uncommon tour of duty, the average number of hours of work in the employee's weekly scheduled tour of duty).

(2) Any annual or sick leave accrued by an employee under this paragraph:

(a) Shall be credited to an annual leave or sick leave account, as appropriate, separate from any leave account of the employee under subchapter I of chapter 63 or title 5, U.S.C. or chapter 3, this part, as appropriate; and

(b) Shall not become available for use by the employee, and may not otherwise be taken into account under subchapter I of chapter 63 of title 5, U.S.C. or part II, chapter 1 of this handbook, as appropriate, until, under subparagraph (3) below, it is transferred to the appropriate leave account of the employee under subchapter I of chapter 63 of title 5, U.S.C. or part II, chapter 1 of this handbook, as appropriate.

(3) Any annual or sick leave accrued by an employee under this chapter shall be transferred to the appropriate leave account of the employee under 5 U.S.C. Chapter 63, subchapter I, or chapter 3, this part, as appropriate when the employee exhausts all donated leave, or effective as of the beginning of the first pay period beginning after the date on which the employee's medical emergency terminates as described in paragraph [20]l below.

(4) If the employee's medical emergency terminates as described in paragraph [20]l(1)(a), no leave shall be credited to the employee under subparagraph (3) above.

l. **Termination of Medical Emergency**

(1) The medical emergency affecting a leave recipient terminates:

(a) When the leave recipient's Federal service is terminated;

(b) At the end of the biweekly pay period in which the leave recipient or a personal representative provides the HRM office with a written notice that the leave recipient is no longer affected by a medical emergency;

(c) At the end of the biweekly pay period determined by the HRMO, after written notice and opportunity for the leave recipient (or personal representative) to answer orally or in writing, that the leave recipient is no longer affected by a medical emergency; or

(d) At the end of the biweekly pay period in which the leave recipient's HRMO receives notice that OPM has approved the leave recipient's application for disability retirement under the Civil Service Retirement System or the Federal Employees Retirement System.

[(e) An agency may deem a medical emergency to continue for the purpose of providing leave recipient an adequate period of time within to receive donations of annual leave.]

(2) The HRMO, in coordination with the employee's supervisor, shall continuously monitor the status of the leave recipient's medical emergency to ensure that he or she is still affected by it.

(3) Upon termination of the leave recipient's medical emergency, the HRMO shall notify the Payroll Office immediately. No further requests for transfer of annual leave to the leave recipient may be granted, and any unused-transferred annual leave remaining to the credit of the leave recipient shall be restored to the leave donors, in accordance with subparagraph m below**.**

m. **Restoration of Transferred Annual Leave**

(1) Any transferred annual leave remaining to the credit of a leave recipient when the individual's medical emergency terminates shall be restored, as provided below and to the extent administratively feasible, by transfer to the annual leave accounts of the leave donors, who, on the date leave restoration is made, are employed by a Federal agency and subject to chapter 63 of title 5, U.S.C. or part II, chapter 1 of this handbook, as appropriate.

(2) The amount of unused transferred annual leave to be restored to each leave donor shall be determined by Payroll Office as follows:

(a) Divide the number of hours or, when applicable, for certain title 38 employees, the calendar days of unused transferred annual leave by the total number of hours of annual leave transferred to the leave recipient;

(b) Multiply the ratio obtained in (2)(a) above, by the number of hours of annual leave transferred by each leave donor eligible for restoration under subparagraph (1) above; and

(c) Apply the formula for proration (see VHA Supplement to MP-4, part II, paragraph 1D.05) for any cases in which donor and recipient were under different leave systems; and

(d) Round the result obtained in (2)(b) above to the nearest 15-minute increment of time established by the leave donor's leave system to account for annual leave.

(3) If the total number of eligible leave donors exceeds the total number of hours or, for certain title 38 employees, days of annual leave to be restored, no unused transferred annual leave shall be restored. In no case shall the amount of annual leave restored to a leave donor exceed the amount transferred to the leave recipient by the leave donor.

(4) If the leave donor retires from Federal service, dies, or is otherwise separated from Federal service before the date unused transferred annual leave can be restored, the employing facility of the leave recipient shall not restore the unused transferred annual leave.

(5) At the election of the leave donor, unused transferred annual leave restored to the leave donor under subparagraph (1) above may be restored by:

(a) Crediting the restored annual leave to the leave donor's annual leave account in the current leave year;

(b) Crediting the restored annual leave to the leave donor's annual leave account effective as of the first day of the first year beginning after the date of election; or

(c) Donating such leave in whole or part to another leave recipient.

(6) If a leave donor elects to donate only part of his or her restored leave to another leave recipient under paragraph 5(c) above, the donor may elect to have the remaining leave credited to the leave donor's annual leave account under subparagraphs 5(a) or (b), above.

(7) Transferred annual leave restored to the account of a leave donor under paragraph 5(a) or (b) above shall be subject to the limitation imposed by 5 U.S.C. 6304(a) for title 5 employees or by chapter 3 of this part, for title 38 employees under the title 38 leave system at the end of the leave year in which the restored leave is credited to the leave donor's annual leave account.

n. **Prohibition of Coercion**

(1) An employee, to include a supervisor, may not directly or indirectly intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce, any other employee for the purpose of interfering with any right such employee may have with respect to donating, receiving, or using annual leave.

(2) For the purpose of subparagraph (1) of this paragraph, the term "intimidate, threaten, or coerce" includes promising to confer or conferring any benefit (such as an appointment or promotion or compensation) or effecting or threatening to effect any reprisal (such as deprivation of appointment, promotion or compensation).

(3) Management and supervisory officials should not take any actions to solicit or to encourage or discourage employees under their supervision to donate leave under this program. This does not preclude these officials from making a personal decision to donate their leave in accordance with this chapter.

o. **Records and Reports**

(1) OPM requires agencies to maintain records and may require periodic reports concerning the administration of the voluntary leave transfer program for the purpose of evaluating the desirability, feasibility, and the cost of a voluntary leave transfer program.

(2) In order to comply with any requests from OPM, the HRMO and Payroll Office, as appropriate, will establish and maintain records relating to the local administration of the voluntary leave transfer program. The information maintained shall include:

(a) The number of applications approved for medical emergencies affecting the employee and the number of applications approved for medical emergencies affecting an employee's family member;

(b) The grade and pay level of each leave recipient and leave donor;

(c) The total amount of annual leave transferred to each leave recipient's annual leave account;

(d) The total amount of transferred annual leave used by each leave recipient;

(e) The estimated direct and indirect costs of processing leave transfer requests, transferring leave between the accounts of leave donors and leave recipients, monitoring the use of transferred leave, restoring unused leave to the accounts of leave donors, and other activities related to administering the voluntary leave transfer program; and

(f) Any additional information OPM or VA Central Office may require.

(3) When requested, each facility will provide specific information to Central Office regarding the program.

**[21. DISABLED VETERAN LEAVE.** Disabled Veteran leave is provided by the Wounded Warriors Federal Leave Act of 2015 (Public Law 114-75, November 5, 2015) (hereafter referred to as "the Act"). The Act added a new section 6329 in title 5, United States Code, which provides a one-time credit of "disabled Veteran leave" to any Federal employee ***hired on or after November 5, 2016***, who is a Veteran with a service-connected disability rated at 30 percent or more for purposes of undergoing medical treatment for such disability for which sick leave could regularly be used.

a. Coverage

(1) Title 5 employees, scientific and professional personnel and hybrid title 38 employees appointed under 38 U.S.C. 7401(2), 7401(3) or 7405(a)(1)(B) are covered by the provisions of this chapter.

(2) Disabled Veteran leave will be available only to an eligible employee hired on or after November 5, 2016**.** The term "hired" refers to employees who are—

(a) newly hired with no previous Federal civil service,

(b) reappointed with at least a 90-day break in service, and

(c) military reservists or members of the National Guard who return to duty in their civilian positions after a period of military service (during which the individual was in continuous civilian leave status).

(d) Disabled Veteran leave is only available to employees with a service-connected disability rated at 30 percent or more, as determined by the Veterans Benefits Administration.

b. Qualifying Service-Connected Disability

(1) For purposes of disabled Veteran leave, a "qualifying service-connected disability" means a service-connected disability rated at 30 percent or more, as determined by the Veterans Benefits Administration. This would include a combined degree of disability of 30 percent or more that reflects the combined effect of multiple individual disabilities. A disability is not qualifying unless the 30 percent rating is in effect, based on the effective date established by the Veterans Benefits Administration.

(2) For the purpose of determining whether an employee has a qualifying service-connected disability, a temporary disability rating issued by the Veterans Benefits Administration under 38 U.S.C. 1156 is considered a valid rating for as long as such rating is in effect.

(3) To establish eligibility for disabled Veteran leave, an employee must provide his or her employing agency with documentation from the Veterans Benefits Administration certifying that the employee has a qualifying service-connected disability.

c. Benefit Period

(1) This new leave category is a one-time benefit. Once an employee has been provided the leave benefit, he or she will not have any further entitlements to the benefit. Disabled Veteran leave is available during the continuous 12-month period following the "first day of employment", which is the "12-month eligibility period".

(2) The disabled Veteran leave may be used up to the expiration of the 12-month eligibility period, and any unused leave is forfeited at that time. Unused disabled Veteran leave may not be cashed out and paid as a lump sum.

(3) The 12-month eligibility period starts on the "first day of employment," which is the first day an employee is in a covered position occurring on the later of—

(a) The earliest date an employee is hired after the effective date of a qualifying disability; or,

(b) The effective date of a qualifying disability (i.e., the hiring event occurs before the effective date).

***Note:*** The effective date is generally either the day after the date of military discharge (if person filed disability claim within 1 year of discharge date) or the date the claim was filed.

d. Crediting Disabled Veteran Leave

(1) Upon receipt of the certifying documentation under 5 CFR 630.1304, 104 hours of disabled Veteran leave must be granted to a full-time employee;

(2) For an employee on a part-time work schedule, the 104 hours is prorated based on the number of hours in the part-time schedule (e.g., 52 hours for half-time schedule);

(3) For an employee on an uncommon tour of duty, 104 hours is proportionally increased based on the number of hours in the uncommon tour relative to the hours in a regular full-time tour (e.g., 187 hours for an employee with a 72-hour weekly uncommon tour of duty).

e. Offset of Disabled Veteran Leave

(1) Disabled Veteran leave must be offset for an employee who has a qualifying hire event, i.e., 90-day break in service or return to duty from military deployment.

(2) The amount of disabled Veteran leave initially credited (104 hours) must be offset by the number of hours of sick leave an employee has credited to his or her account as of the first day of reemployment. (e.g., if an employee is being reappointed and having sick leave recredited upon such reappointment, the amount of disabled Veteran leave must be reduced by the amount of such recredited sick leave. Similarly, if an employee is returning to civilian duty status after a period of leave for military service, that employee may have a balance of sick leave, which must be used to offset the disabled Veteran leave).

f. Usage of Leave for Medical Treatment

(1) Disabled Veteran leave may be used only for the purpose of medical treatment of a qualifying service-connected disability.

(2) The employee must self-certify that the disabled Veteran leave is being used (or was used) for the treatment of the qualifying service-connected disability.

(3) Management may require, at its discretion, additional medical certification from a health care provider that the treatment provided was for the qualifying service-connected disability.

(a) If management requires a signed written medical certification by a health care provider, management may specify that the written certification include:

1. A statement by the health care provider that the medical treatment is for one or more service-connected disabilities of the employee that resulted in 30 percent or more disability rating;

2. The date or dates of treatment or, if the treatment is extends over several days, the beginning and ending dates of the treatment;

3. If the leave was not requested in advance, a statement that the treatment required was of an urgent nature or there were ofther circumstances that made advanced scheduling not possible; or

4. Any additional information that is essential to verify the employee's eligibility.

(4) Qualifying medical treatment may be provided or prescribed by any health care provider who is covered by the definition of "health care provider" in OPM's Family and Medical Leave Act (FMLA) regulations in 5 CFR 630.1202.]

# CHAPTER 3. TITLE 38 LEAVE PROGRAM

## 1. COVERAGE

a. This chapter establishes the policies and procedures for leave administration for full-time and part-time physicians, dentists, podiatrists, [chiropractors,] optometrists, nurses, nurse anesthetists, physician assistants (PAs), and expanded-function dental auxiliaries (EFDAs), appointed under authority of 38 U.S.C., chapters 73 and 74.

b. This chapter also establishes the policies and procedures for leave administration for medical and dental residents appointed under authority of 38 U.S.C. 7406. (This chapter does not cover medical and dental residents paid through disbursement agreements.) The Under Secretary for Health, or designees, will establish the annual leave system for residents, not to exceed that amount provided full-time employees.

c. As used in this chapter, and unless otherwise indicated, any reference to "nurse(s)" includes nurse anesthetist(s) but does not include the Chief Consultant, Nursing Strategic Healthcare Group; and "employee(s)" includes those personnel indicated in subparagraph a (both full-time and part-time, unless otherwise specified). The leave provisions contained in this chapter for full-time physicians and dentists shall apply to the Chief Consultant, Nursing Strategic Healthcare Group;

d. Persons other than those indicated in subparagraphs a through c above employed under authority of 38 U.S.C., chapter 73 and 74, are subject to the provisions of 5 U.S.C., chapter 63. Graduate nurse technicians and allied health trainees who are appointed under authority of 38 U.S.C. 7405(a)(1)(D) are included in this category.

e. Persons employed on an intermittent basis, per annum fee basis, or lump-sum fee basis, under authority of 38 U.S.C. 7405 are paid for actual service rendered and are not entitled to leave benefits.

## 2. POLICY

a. The proper care and treatment of patients shall be the primary consideration in granting of leave.

b. The VA leave program for employees shall be administered fairly and uniformly within the meaning of the provisions of this chapter.

## 3. GENERAL

a. **Advanced Leave.** Neither annual nor sick leave shall be advanced to an employee when it is known that the employee will retire or be separated before the amount advanced can be earned, or when it is reasonable to expect that the employee will not return to duty.

b. **Leave Charges**

(1) The minimum charge for leave shall be [one hour] and multiples thereof for full-time physicians, dentists, podiatrists, chiropractors, and optometrists and a quarter hour (15 minutes) or multiples thereof for nurses, nurse anesthetists, PAs, EFDAs and part-time physicians, dentists, podiatrists, chiropractors, and optometrists. The minimum charge for leave for 7306 appointees shall be a quarter hour (15 minutes) and multiples thereof.

(2) Holidays and in-lieu days granted thereof will not be charged to leave.

**4. ANNUAL LEAVE**

a. **Annual Leave.** The granting of annual leave shall be a matter of administrative discretion as to when and in what amount it may be authorized. Requests for annual leave shall be acted upon in the light of essential medical services and with due regard to the welfare and preferences of individual employees. Employees should be encouraged to take annual leave for at least 2 consecutive weeks each year for purposes of rest and relaxation.

[b. **Employee Leave Requests for Incarceration.** It is not appropriate to approve leave of any kind for the period of absence required to serve a jail or prison sentence. Court ordered treatment as part of a sentence may not be considered incarceration. Supervisors shall consult with their employee relations specialist before approving leave.

(1) Employees who are involuntarily detained or incarcerated following an arrest by a law enforcement authority prior to a conviction will have requests for annual leave or LWOP considered based on the current and anticipated workload, the need for the employee's service, and the likelihood the employee will return to work.

(2) Employees incarcerated following a conviction, including a criminal or civil contempt proceeding, will be considered absent without leave (AWOL), which is an unauthorized absence from duty. Leave requested as a result of an incarceration following a conviction will be denied.

(3) Employees will be informed that the charge to AWOL has been included in the time and attendance report. Employees will only be charged AWOL for the actual period of unauthorized absence due to incarceration.

(4) If the AWOL is later excused because the circumstances surrounding the absence for incarceration are such that leave would have been approved, the charge should be changed to annual leave, sick leave or LWOP, as appropriate.

(5) If an employee does not inform management that a leave request is due to incarceration, but it is later learned the leave was due to incarceration, management should reconsider and adjust any prior leave approval as appropriate.

(6) Noncompliance with VA policy, including misrepresentation of the circumstances regarding a request for leave, constitutes grounds for disciplinary action, up to and including removal from Federal

service. Supervisors shall consult with their HR office to determine if disciplinary action, or a charge of AWOL, is appropriate for the misrepresentation of such leave requests.]

[c.] **Charging Annual Leave**

(1) **Full-Time Nurses, Nurse Anesthetists, PAs, EFDAs, 7306 Appointees in Title 5 or Hybrid Title 38 Occupations and Part-Time Employees.** The minimum charge of annual leave for these employees is one quarter hour (15 minutes) and multiples thereof [ ]. When leave is charged because of absence from duty or tardiness, the employee will not be required to work during the period covered by the leave.

(2) **Full-Time Nurses and Nurse Anesthetists on the Baylor Plan.** Such nurses and nurse anesthetists shall be charged [one hour] of annual leave for each hour of annual leave taken. [The minimum charge of annual leave for these employees is one quarter hour (15 minutes) and multiples thereof. When leave is charged because of absence from duty or tardiness, the employee will not be required to work during the period covered by the leave.] Leave shall be charged only for absences from the basic workweek. (For the definition of basic workweek for these employees, see paragraph 2d of chapter 3, part II).

(3) **Full-Time Nurses and Nurse Anesthetists on** [**72/80**] **Work Schedule**. Such nurses and nurse anesthetists shall be charged leave at a rate of ten hours of leave for every nine hours of absence (charged 1.111 for each hour). Leave shall be charged only for absences from the basis workweek.

(4) **Full-Time Physicians, Dentists, Podiatrists, Chiropractors, and Optometrists Appointed Under 38 U.S.C. 7401, 7405 or 7306**

(a) **Minimum Charge.** The charge of annual leave for these employees is one hour and multiples thereof. When leave is charged because of absence from duty or tardiness, the employee will not be required to work during the period covered by the leave.

(b) **Administrative Nonduty Days.** Although subject to duty 24/7, employees in this category may be granted scheduled days off during the administrative workweek. Employees are not charged annual leave on those administrative nonduty days.

[d.] **Supervisory Responsibility.** It will be the responsibility of supervisory personnel at all levels to ensure that each employee fully understands the manner of charging for authorized annual leave.

[e.] **Procedure for Requesting Annual Leave**

(1) Annual leave will be requested in advance by all employees except when unusual or unforeseen circumstances prevent the employee from making the request in advance. Under such circumstances, the employee will notify, as soon as possible, the person authorized to approve leave.

(2) Except as provided in subparagraph (3) below, requests for annual leave not in excess of 3 days may be made verbally. If the request is approved in advance of the dates of requested leave, the employee should enter the request into the Enhanced Time and Attendance (ETA) system. However, if the request cannot be entered into the ETA by the employee prior to the commencement of the leave period, the supervisor will report the amount of leave to be taken to the unit timeclerk who will make proper posting daily in the ETA system. Requests for leave of more than 3 days will be made into the ETA system unless not practicable.

(3) Full-time nurses and nurse anesthetists on the Baylor Plan may verbally request 2 workdays of annual leave and, if approved, enter the request into the ETA system when practicable. Requests for leave of more than 2 workdays shall be made in the ETA system.

**NOTE:** *Any requests, submitted by nurses, nurse anesthetists, PAs, and EFDAs for annual leave in proximity to overtime by the same employee will be reviewed to assure that the granting of annual leave is in the interest of good administrative practice.*

[f.] **Advanced Annual Leave [Limits]** (see paragraph 6f(3), this chapter)

(1) Annual leave may be advanced at any time during the calendar year.

(2) All credits of annual leave which become due while there is an indebtedness of annual leave will be applied to the reduction of the indebtedness.

[g.] **Leave in Connection With Travel**

(1) Employees traveling at Government expense are in a duty status for the period required to perform the travel authorized unless the total elapsed travel time is excessive. If travel is interrupted or delayed for the convenience of the employee, leave will be charged for the period of interruption or delay. Where an employee has been authorized to travel by privately owned conveyance for the individual's convenience, leave will be charged for travel time during the employee's regularly scheduled basic workweek in excess of that which would have been required had travel been performed by the carrier used to determine per diem allowance, as provided in [VA Financial Policies and Procedures Travel Per Diem Volume XIV, chapter 2]. When use of privately owned conveyance is authorized or approved as being advantageous to the Government, and the employee uses excessive travel time to enable the individual to be absent from assigned duties for such purposes as the taking of leave or the performance of circuitous travel, leave shall be charged for the excessive time. The period to be charged to leave will be based on the facts in

each case. Where absence for a part of a day is involved, paragraph 11b is appropriate as a guide in determining the charge to leave for excessive absence by an employee who travels by privately owned conveyance for the individual's convenience.

(2) Travel time used to transfer from one facility to another, when the transfer is arranged for reasons other than for the convenience of the Government, will be charged to annual leave or to leave without pay when annual leave is not available.

h. **Involuntary Leave.** Employees may be placed on involuntary annual leave when the needs of the service dictate. When an employee reasonably may not be regarded as ready, willing and able to work, the employee may be placed on involuntary annual leave or in a leave without pay status, as the employee's leave account and the circumstances may require.

i. **Voluntary Leave Transfer Program.** See paragraph 20 of chapter 2, of this part.

## 5. SICK LEAVE

a. **Sick Leave.** Sick leave shall be granted to employees when they are incapacitated for the performance of their duties because of personal illness, disease, injury, pregnancy and confinement, for necessary medical, dental or optical examination or treatment, or when a member of the immediate family of the employee is afflicted with a contagious disease and requires the care and attendance of the employee; or when through exposure to contagious disease the presence of the employee at the post of duty would jeopardize the health of others.

b. **Charging Sick Leave**

(1) The minimum sick leave charge for full-time physicians, dentists, podiatrists, chiropractors, and optometrists appointed under 38 U.S.C. 7401, 7405 or 7306 is [one hour and multiples thereof]. No charge to sick leave will be made for absence of these employees on administrative nonduty days.

(2) Except as provided in subparagraph (3), the minimum sick leave charge for full-time nurses, nurse anesthetists, including those on the Baylor Plan, PAs, EFDAs, 7306 appointees in Title 5 and Hybrid Title 38 occupations and part-time employees is one quarter hour (15 minutes) and multiples thereof. Sick leave for these employees will be charged as approved and used.

(3) Full-time nurses and nurse anesthetists on a 72/80 Work Schedule shall be charged 1.111 hours of sick leave for each hour of sick leave taken. Leave shall be charged only for absences from the basic workweek. The minimum charge of annual leave for these employees is one quarter (15 minutes) and multiples thereof.

(4) Medical and dental residents covered by disbursement agreements shall be granted sick leave in accordance with those agreements.

c. **Procedure for Requesting and Approving Sick Leave for All Employees**

(1) **Responsibility for Approving Sick Leave.** It is incumbent on every individual responsible for approving applications for sick leave to ascertain that the circumstances of absence justify approval, and that sick leave is available. If for any reason an employee's statement or the medical certificate furnished is not considered satisfactory, the person authorized to approve leave will take necessary steps to obtain additional evidence in support of the employee's request for sick leave.

(2) **Notification of Illness.** An employee who is absent from duty on account of sickness will notify the person authorized to approve leave or other appropriate persons as early as practicable as set forth in Part III, Chapter 2, paragraph 4(b)(1).

(3) **Submission of Application.** Sick leave not in excess of 3 days [ ] may be approved without a medical certificate. However, in cases that indicate excessive absence on account of illness or where there appears to be an abuse of the sick leave privilege, medical certificates may be required for any period of absence provided the employee has been informed in advance, in writing, that such a requirement has been established for that person. All requests for sick leave must be entered into the ETA system and will be entered within 2 days after the employee's return to duty unless the leave was requested in advance. Requests for sick leave in excess of 3 days will be supported by a medical certificate or other evidence administratively acceptable, e.g., where a doctor is not available or where the employee's illness does not require a doctor, proper certification, in writing, by the employee may be accepted instead. Medical certificates or other evidence of illness which may be required will be submitted within 15 days after the employee's' return to duty. If, due to circumstances beyond the control of the employee, he or she is unable to provide the documentation within 15 calendar days, the employee must provide the evidence or medical certification no later than 30 calendar days after returning to work. An employee who does not provide the required evidence within 30 calendar days is not entitled to sick leave.

(4) **Medical Examination for Employees Who Are VA Claimants or Beneficiaries.** Employees who are ordered by proper authority in VA to report for physical examination or observation as claimants or beneficiaries of VA will be granted sick leave. "Authorized absence" will not be granted for this purpose. (See par. 9j for type of leave granted for medical examinations of employees who are not VA claimants or beneficiaries.)

(5) **Medical Treatment for Disabled Veteran-Employees.** In accordance with Executive Order 5396, dated July 17, 1930, a disabled veteran must be granted sick or annual, or LWOP if necessary, for medical treatment when presenting an official statement from a duly-constituted medical authority that medical treatment is required. The veteran must give prior notice of the period during which absence for treatment will occur.

(6) **Sickness During Annual Leave.** When sickness occurs during a period of annual leave of any employee, the period of illness may be charged as sick leave and the charge against annual leave reduced accordingly. Application for such substitution of sick leave for annual leave will be made promptly and will be supported by a medical certificate or other evidence determined to be acceptable.

(7) **Sick Leave During LWOP.** When sickness occurs during an approved period of LWOP and lasts 3 or more consecutive days, the period of illness may be charged to sick leave, in accordance with provisions set forth below.

It is incumbent on the facility to inform the employee when approving LWOP of the provisions of these subparagraphs with particular emphasis on subparagraph (a) below.

(a) Employee immediately on becoming incapacitated notifies the individual's supervisor of illness; or, if unable to do so promptly because of the serious nature of the illness, notifies the supervisor as soon thereafter as possible. The supervisor will advise the employee of the receipt of the notice and that a copy of the notice, with the copy of communication from the supervisor, will be made a matter of record.

(b) Illness will be substantiated by a medical certificate or other acceptable evidence of illness following recovery. At the time the supervisor advises the employee of the receipt of the notification of illness, the employee will also be advised that the provision of this subparagraph will be met promptly.

(c) Sick leave may not be granted during LWOP, but on actual return to duty, substitution will be made for the period of illness providing the foregoing requirements are met. Under no circumstances will sick leave be advanced to cover illness which has occurred during a period of LWOP.

d. **Advanced Sick Leave [Limits]** (see paragraph 6f(3) this chapter)

[(1)] Advanced sick leave not in excess of established limits may be granted to a full-time employee who is not on a time-limited or term appointment at the discretion of the agency, and subject to sick leave limitations.]

[(2)] A request for advanced sick leave will be supported by a medical certificate.

[(3)] A full-time employee who is injured in the line of duty and who has exhausted accrued and accumulated sick leave, and who is not in receipt of workers' compensation benefits, may, at the discretion of the approving official, be advanced sick leave not in excess of the maximum outlined in this chapter.

[(4)] All accruals of sick leave which become due while an employee is indebted for sick leave will be applied to the indebtedness. Advanced sick leave may also be liquidated, at the employee's request, by a charge against an equivalent amount of annual leave provided:

(a) The annual leave is substituted prior to the time it would be forfeited.

(b) The approving official would have been willing to grant the annual leave had the employee requested it.

[(5)] Only the Under Secretary for Health and facility directors or their designees are authorized to grant advanced sick leave.

e. **Leave for Pregnancy and Confinement**

(1) The services of pregnant employees should be utilized to the extent their health will permit. However, such utilization may not extend beyond the period when an employee fails to meet the physical requirements of the assignment. Therefore, employees will be encouraged to report pregnancy as soon as it is an established fact. The earliest possible knowledge of such condition will provide the opportunity to protect the employee's health and permit such planning as may be necessary for proper staffing during the employee's prospective absence.

(2) Pregnancy and the physical condition incident thereto will ordinarily be established from medical evidence submitted by an employee's personal physician. However, in those cases when there is any question as to an employee's physical ability to perform her duties without hazard to her health, examination by the facility personnel physician or other appropriate staff physician will be conducted. The date during an employee's pregnancy on which the employee reaches the point of being incapacitated for duty will be determined medically according to the circumstances of the individual case.

(3) An employee will be granted accumulated and accrued sick leave consistent with the medical need therefore when it has been established that she is unable to perform her duties due to pregnancy. In addition, advanced sick leave, annual leave, advanced annual leave, and LWOP may be authorized consistent with the provisions of this chapter.

(4) An employee who expresses the intention to resign because of pregnancy will be informed of entitlement to accumulated and accrued sick leave, consistent with the medical need therefor.

f. **Contagious Disease**

(1) Sick leave will be granted:

(a) When a member of the immediate family of the employee is afflicted with a contagious disease and requires the care and attendance of the employee.

(b) When, through exposure to contagious disease, the presence of the employee at the post of duty would jeopardize the health of others.

[(c) To provide care for a family member who has been exposed to a contagious disease when the family member’s presence in the community would jeopardize the health of others according to the health authorities having jurisdiction or by a health care provider.]

(2) The use of sick leave for contagious disease is authorized in connection with quarantine, isolation, and restriction of movement by the patient or employee. The determination that the disease is contagious will be made by health authorities having jurisdiction, whether the employee or patient is at home or in some other area.

g. **Involuntary Sick Leave.** Employees who because of illness (mental or physical) are unable to perform their duties may be placed on involuntary sick leave. Such sick leave will be terminated when the employee presents himself or herself for duty and it is determined by competent medical authority that the individual is able to perform his/her duties.

h. **Prolonged Illness**

(1) Employees who are not expected to return to duty because of prolonged incapacitation will, where possible, be granted all available sick leave and such annual leave that cannot be included in a lump-sum payment.

(2) Employees who can reasonably be expected to return to duty after a prolonged period of incapacitation may be advanced sick leave and annual leave or granted LWOP.

i. **Sick Leave for General Family Care or Bereavement Purposes**

(1) **Definition.** For purposes of this subparagraph, "family member" means: spouse, and parents thereof; sons and daughters,] and spouses thereof; parents; and spouses thereof brothers and sisters, and spouses thereof; grandparents and grandchildren, and spouses thereof; domestic partner and parents thereof, including domestic partners of sons and daughters and spouses thereof; parents, and spouses thereof; brothers and sisters, and spouses thereof; and grandparents and grandchildren, and spouses thereof; and any individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship.

(2) **Leave for Family Care or Bereavement Purposes.** In addition to the reasons for granting sick leave in this paragraph, leave approving officials may grant or advance sick leave for:

(a) Care of a family member who is incapacitated as a result of physical or mental illness; injury; pregnancy, or childbirth;

(b) Care of a family member as a result of medical, dental or optical examination or treatment;

(c) Making arrangements necessitated by the death of a family member;

(d) Attending the funeral of a family member; or

(e) Adoption (this may include appointments with adoption agencies, social workers and attorneys; court proceedings; required travel; or any other activities necessary for the adoption to proceed).

(3) **Limitations on Sick Leave for Family Care or Bereavement Purposes.** Leave under paragraphs (2)(a) through (2)(d) is limited as follows:

(a) Full-time employees [ ] may take up to [104 hours] (13 days) of sick leave in a leave year.

(b) Full-time employees charged leave on an hourly basis may take up to 104 hours of sick leave in a leave year. Leave taken by employees on the [72/80] AWS is multiplied by 1.111 when determining these limitations.

(c) Part-time employees may take up to the amount of sick leave they would accrue in a leave year.

(4) **Sick Leave to Care for a Family Member with a Serious Health Condition.** An employee may use up to a total of 12 administrative workweeks of sick leave each leave year to care for a family member with a serious health condition subject to the following limitations:

(a) Full-time employees charged leave on a[n] [hourly] basis may take up to a total of 12 administrative workweeks [(480 hours)] of sick leave in a leave year to care for a family member with a serious health condition subject to the following limitations;

(1) If an employee previously has used any portion of the [104 hours] of sick leave for general family care or bereavement purposes in a leave year, that amount must be subtracted from the 12 workweeks [480 hours] entitlement.

(2) If an employee has already used 12 weeks (480 hours) of sick leave to care for a family member with a serious health condition, he or she cannot use an additional 13 days in the same leave year for general family care or bereavement purposes.

(a) Full-time employees charged leave on an hourly basis may take up to a total of [(480 hours)] 12 administrative workweeks [ ] of sick leave in a leave year to care for a family member with a serious health condition subject to the following limitations;

(1) If an employee previously has used any portion of the 104 hours of sick leave for general family care or bereavement purposes in a leave year, that amount must be subtracted from the [480 hours (12 workweeks)] entitlement.

(2) If an employee has already used 480 hours (12 workweeks) of sick leave to care for a family member with a serious health condition, he or she cannot use an additional 104 hours in the same leave year for general family care or bereavement purposes.

(a) Part-time employees and employees on uncommon tours of duty are also covered and may take up to the an amount of sick leave equal to 12 times the average number of hours in his or her scheduled tour of duty each week during a leave year, subject to the following limitations:

(1) If an employee previously has used any portion of sick leave for general family care or bereavement purposes in a leave year, that amount must be subtracted from the total number of available hours.

(2) If an employee has already used the maximum amount of sick leave permitted to care for a family member with a serious health condition, he or she cannot use additional hours in the same year general for family care or bereavement purposes.

(3) Medical and dental residents covered by disbursement agreements shall be granted sick leave in accordance with those agreements.

(4) **Relation to Family and Medical Leave Act.** Sick leave under paragraph i(2) above does not count towards an employee's entitlement under the Family and Medical Leave Act (5 U.S.C. 6381-6387) unless the employee notifies the leave approving official in advance of intent to substitute sick leave for leave without pay taken under the Family and Medical Leave Act.

(5) **Leave Approving Officials.** Leave approving officials may grant or advance sick leave to title 38 employees as described in paragraph (2); however, approvals or denials are to be consistent with the limitations in paragraph (3) as well as the criteria for approving or advancing sick leave.

(6) **Record Keeping.** Title 38 employees are not covered by the "Federal Employees Family Friendly Leave Act," Pub. L. 103-388. However, to monitor use of this type of leave and to ensure consistency between payroll practices for title 5 and title 38 employees, the record keeping procedures found at 5 CFR 630.408 will be used.

## 6. ACCRUALS OF ANNUAL AND SICK LEAVE

a. **Accruals for Full-Time Physicians, Dentists, Podiatrists, Chiropractors, or Optometrists Appointed Under 38 U.S.C. 7401, 7405 or 7306.** Annual and sick leave shall accrue to full-time physicians, dentists, podiatrists, chiropractors, or optometrists during full biweekly pay periods while in a leave with pay status or in a combination of pay and nonpay status. Annual and sick leave will accrue for fractional pay periods as authorized by the Under Secretary for Health [ ].

b. **Accruals for Full-Time Nurses, Nurse Anesthetists, PAs, EFDAs**, **7306 Appointees in Title 5 or Hybrid Title 38 Occupations, or Part-Time Employees.** Annual and sick leave shall accrue to full-time nurses, nurse anesthetists, PAs, EFDAs, 7306 appointees **in Title 5 or Hybrid Title 38 occupations,** or part-time employees during each full biweekly pay period while in a leave with pay status or in a combination of pay and leave without pay status. Such an employee who initially enters on duty on the first workday after the beginning of the pay period shall be deemed to have been appointed at the beginning of the pay period, thereby enabling completion of a full biweekly pay period for leave accrual purposes. For example, an employee who's first workday is after a Monday holiday which occurs the first week of the pay period shall be deemed to have been appointed at the beginning of the pay period for leave accrual purposes.

c. **Accruals During Periods of Suspension.** Annual and sick leave shall accrue to full- and part-time employees during a period of suspension provided the employee is restored to duty and it is determined that the suspension was not justified.

d. **Accrual Rate**

(1) **Full-time Physicians, Dentists, Podiatrists, Chiropractors, and Optometrists [Appointed Under 38 U.S.C. 7401, 7405 or 7306]**

(a) Annual leave shall accrue for full-time physicians, dentists, podiatrists, chiropractors, and optometrists at the rate of [8 hours for each full biweekly pay period].

(b) Sick leave shall accrue for full-time physicians, dentists, podiatrists, chiropractors, and optometrists at the rate of [4 hours for each full biweekly pay period].

(2) **Full-Time Nurses, Nurse Anesthetists, PAs and EFDAs**

(a) Annual leave shall accrue for full-time nurses, nurse anesthetists, PAs and EFDAs at the rate of 8 hours for each full biweekly pay period.

(b) Sick leave shall accrue for full-time nurses, nurse anesthetists, PAs and EFDAs at the rate of 4 hours for each full biweekly pay period.

(3) [**Full-Time 7306 Appointees in Title 5 and Hybrid Title 38 Occupations]**

(a) Annual leave shall accrue for [full-time 7306 appointees in non-Title 38 occupations] at the rate of 8 hours for each full biweekly pay period [ ].

(b) Sick leave shall accrue for [full-time 7306 appointees in non-Title 38 occupations] at the rate of 4 hours for each full biweekly pay period [ ].

(c) Upon conversion to an appointment, covered by a different leave system, the leave accrual rate for 7306 appointees will be determined based on the applicable regulations and policies for the new leave system].

(4) **Part-Time Employees**

(a) Annual leave shall accrue for part-time employees at rate of 1 hour for each 10 hours in a pay status.

(b) Sick leave shall accrue for part-time employees at the rate of 1 hour for each 20 hours in a pay status.

(c) Hours in a pay status which do not equal the number necessary for a minimum annual or sick leave credit of 1 hour for part-time employees will be carried forward and combined with subsequent pay status hours.

e. **Reduction of Leave Accruals**

(1) **Full-Time Physicians, Dentists, Podiatrists, Chiropractors, and Optometrists Appointed Under 38 U.S.C. 7401, 7405 or 7306**

(a) Annual leave accruals for full-time physicians, dentists, podiatrists, chiropractors, and optometrists shall be reduced when the individual has had 1 full pay period of absence without pay in a leave year. This reduction shall be at the rate of [8 hours] for each full pay period.

(b) Sick leave accruals for full-time physicians, dentists, podiatrists, chiropractors, and optometrists shall be reduced when the individual has had 2 pay periods or more of absence without pay in a leave year. This reduction shall be at the rate of [4 hours of sick leave for each 80 hours in a nonpay status].

(2) **Full-Time Nurses, Nurse Anesthetists, PAs**, **EFDAs, and 7306 Appointees in Title 5 and Hybrid Title 38 Occupations.** A full-time nurse, nurse anesthetist, PA, EFDA, or 7306 appointee **in a Title 5 or Hybrid Title 38 occupation** who is in a nonpay status for the entire leave year shall not earn leave for the year. Leave accruals shall be reduced for a nonpay status of 80 hours or more in a leave year. This reduction shall be at the rate of 8 hours of annual leave and 4 hours of sick leave for each 80 hours in a nonpay status. **NOTE:** *In making this computation each hour a full-time nurse or nurse anesthetist on the 72/80 alternate work schedule is in a nonpay status shall be considered to be 1.111 hours.* For this purpose, included shall be all hours in a nonpay status (other than nonpay status during a fractional pay period when no leave accrues) while the individual is on the rolls during the leave year in which the leave accrues; excluded shall be a period covered by refund for unearned advance leave. If a reduction in leave credits results in a debit to the annual leave account at the end of the leave year:

(a) The debit may be carried forward as a charge against annual leave to be earned in the next leave year; or

(b) The individual may be required to refund the amount paid to the employee for the period covering the excess leave that resulted in the debit.

(3) **Part-Time Employees.** Since annual and sick leave for part-time employees will be credited only on pay status hours, no necessity exists for reducing accruals without pay absences.

f. **Maximum Leave Accumulation**

(1) **Annual Leave**

(a) **Full-Time Physicians, Dentists, Podiatrists, Chiropractors, or Optometrists Appointed Under 38 U.S.C. 7401, 7405 or 7306.** A full-time physician, dentist, podiatrist or optometrist may carry forward not more than [685 hours] of accumulated annual leave at the end of any leave year.

(b) **Full-Time Nurses, PAs or EFDAs.** A full-time nurse, PA, or EFDA may carry forward not more than 685 hours of accumulated annual leave at the end of any leave year.

[(c) **Full-Time 7306 Appointees in Title 5 or Hybrid Title 38 Occupations.** A full-time 7306 appointee in a non-Title 38 occupation is entitled to carry forward not more than 720 hours of accumulated annual leave at the end of the leave year. Upon conversion to another type of appointment covered by a different leave system, any annual leave accumulated while serving as a 7306 (not-to-exceed 720 hours) appointee will remain to the employee's credit until it is reduced through usage to the maximum annual leave accrual limitation of the new position or leave system.

(d)] **Part-Time Employees.** A part-time employee may carry forward not more than 240 hours of accumulated annual leave at the end of any leave year except that an employee converted to part-time from full-time may carry forward more hours of unused annual leave as indicated in subparagraphs 1 and 2.

1. The maximum carryover will be the lesser of the number of hours converted to part-time or [the maximum carryover limitation of the employee's former leave system]. For physicians, dentists, podiatrists, chiropractors, and optometrists [appointed under 38 U.S.C. 7401 and 7405], [5 days of annual leave will equal 5 workdays of annual leave which will be converted to 40 hours].

2. When accumulated annual leave of more than 240 hours is reduced by usage so that the balance at the end of the leave year is less than the balance at the beginning of the leave year, such difference may not be restored from earnings in the ensuing year. The accumulated leave ceiling of 240 hours may be restored from subsequent earnings. Accrued annual leave not used during the leave year which would cause the maximum ceiling limitation of 240 hours of the balance to be exceeded at the beginning of the ensuing leave year will be forfeited.

(d) **Restoration of Annual Leave**

1. Annual leave which is lost at the end of a leave year by operation of an accumulated annual leave limit under this chapter because of (1) administrative error when the error causes a loss of annual leave otherwise accruable; (2) exigencies of the public business when the annual leave was scheduled in advance; (3) sickness of the employee when the annual leave was scheduled in advance; or (4) the employee being in a missing status as defined in 5 U.S.C. 5561(5); shall be restored to the employee.

2. The restoration, maintenance, and disposition of annual leave under subparagraph 1 will be accomplished in the same manner as for VA employees subject to the provisions of 5 U.S.C. chapter 63 under sections 6304(d)(2) and (e), 6302(f), and 5562. (See chapter 2, this part). This includes the same leave restoration approval criteria and requirements and, as applicable, maintenance of leave in separate accounts for the prescribed time limit or payment in lump sum for the value of the leave (including payment for claims by separated employees). This entitlement is provided pursuant to authority of 38 U.S.C. 7421.

(2) **Sick Leave.** There shall be no limitation on the amount of accumulated sick leave which an employee may carry forward at the end of a leave year.

(3) **Advanced Leave**

(a) **Full-Time Physicians, Dentists, Podiatrists, Chiropractors, and Optometrists** [**Appointed Under 38 U.S.C. 7401, 7405 or 7306**]

1. Annual leave not to exceed [208 hours] at any time may be advanced to full-time physicians, dentists, podiatrists, chiropractors, and optometrists appointed under authority of 38 U.S.C. 7401(1), 7405(a)(1)(A) or 7306, except that such leave for temporary full-time employees appointed under authority of section 7405(a)(1)(A) shall not be advanced in an amount inexcess of that amount which could accrue during the remainder of the current appointment.

2. Sick leave not to exceed [360 hours], may be advanced at any time to full-time physicians, dentists, podiatrists, chiropractors, and optometrists appointed under authority of 38 U.S.C. 7401(1), 7405(a)(1)(A) or 7306. However, sick leave shall not be advanced to employees on time-limited [or term] appointments in an amount in excess of that amount which could accrue during the remainder of the current appointment. Approval of advanced sick leave is at the discretion of the agency and subject to sick leave limitations.

(b) **Full-Time Nurses, Nurse Anesthetists, PAs, EFDAs and 7306 Appointees in Title 5 and Hybrid Title 38 Occupations**

1. Annual leave, not to exceed 208 hours, may be advanced to these employees at any time except that leave for employees on time limited appointments shall not be advanced in an amount in excess of that amount which could accrue during the remainder of the current appointment.

2. Sick leave, not to exceed 360 hours, may be advanced to these employees at any time. However, sick leave shall not be advanced to employees on time limited [or term] appointments in an amount in excess of that amount which could accrue during the remainder of the current appointment. Approval of advanced sick leave is at the discretion of the agency and subject to sick leave limitations.

(c) **Part-Time Physicians, Dentists, Podiatrists, Chiropractors, Optometrists, Nurses, Nurse Anesthetists, PAs, EFDAs and7306 Appointees in Title 5 or Hybrid Title 38 Occupations.** Part-time physicians, dentists, podiatrists, chiropractors, optometrists, nurses, nurse anesthetists, PAs and EFDAs may be advanced annual and sick leave based on the ratio which their employment bears to full-time employment and the amount of annual and sick leave that may be advanced to a full-time employee covered by subparagraph (3)(a) and (b). For example, a half-time employee who is not on a time limited appointment may be advanced up to 104 hours of annual leave and up to 180 hours of sick leave at any time during the leave year. Approval of advanced sick leave is at the discretion of the agency and subject to sick leave limitations.

(d) **Leave Advanced During Time-Limited Appointments.** Advance sick and annual leave may not exceed the amount an employee can accrue during the remainder of any time limited [or term] appointment.

**NOTE:** *Sick leave may be advanced to full- or part-time employees irrespective of whether or not there is annual leave to the employee's credit.*

(e) **Long Term Absences and Adoptions.** In cases of serious disability, ailments, or for adoption-related purposes, an employee with no time limit in his or her appointment may be advanced sick leave not in excess of 30 days (240 hours). An employee serving under a time limited or term appointment may be granted sick leave up to the total leave that would otherwise be earned during the term of the appointment. There may not be more than 30 days (240 hours) of advanced sick leave on an employee's record at any one time. The amount of annual leave to an employee's credit generally will have no bearing on grants of advanced sick leave.

## 7. OTHER LEAVE

a. **Military Leave**

(1) A full-time employee appointed under authority of 38 U.S.C. 7306, 7401(1), 7405 (a)(1)(A) or (D) or 7406 not limited to 1 year or less is eligible for and shall be granted military leave in the same manner as other Federal employees. The granting and charging of military leave contained in chapter 2 of this part for title 5 employees is also applicable to title 38 employees covered under this paragraph. Administrative non-duty days that occur within the period of military service will not be charged to military leave. However, those employees on 24/7 schedules will continue to be charged military leave on a[n] [hourly] basis for duty days.

(2) A part-time employee appointed under authority of 38 U.S.C. 7405(a)(1)(A) or (D) or 7406 not limited to 1 year or less is entitled to leave without loss in pay, time or performance or proficiency rating for active duty or engaging in field or coast defense training under sections 502-505 of title 32, United States Code, as a member of the Reserve of the armed forces or member of the National Guard. Leave accrues for these employees at the rate of 15 days per fiscal year (to be credited at the beginning of the fiscal year) and, to the extent that it is not used in a fiscal year, accumulated for the use in the succeeding fiscal years until it totals 15 days at the beginning of a fiscal year. Scheduled workdays and intervening days for which no work is scheduled falling within a period of absence for this duty are not charged to military leave. This entitlement is provided pursuant to authority of 38 U.S.C. 7421.

b. **Court Leave.** Employees appointed under authority of 38 U.S.C. 7306, 7401(1), 7405(a)(1)(A) or (D) or 7406 are eligible for and shall be granted court leave in the same manner as other eligible Federal employees.

c. **Home Leave.** Employees shall earn and be granted home leave on the same basis as employees subject to the provisions of 5 U.S.C. chapter 63.

d. **Family and Medical Leave Act [FMLA]**

(1) Office of Personnel Management regulations published in 5 CFR 630.1201-1213 will be used to implement the statutory requirements for administering [FMLA] entitlements for [individuals appointed to positions under Chapter 74 of Title 38 and described in 38 U.S.C. 7421(b) who are employed for compensation by the Department. This includes full and part-time employees (but does not include individuals employed without compensation or on a fee basis). FMLA benefits are provided in the same manner as FMLA is provided to title 5 employees under 5 U.S.C. chapter 63, subchapter V.] *See* 38 U.S.C. 7425(c) and Note to paragraph 18(c) in chapter 2 of this part.

(2) An employee may substitute up to 26 administrative workweeks of accrued and accumulated sick leave when using FMLA described in 5 U.S.C. 6382(a)(3) to provide care for a covered servicemember. Amounts are prorated for part-time employees and employees on uncommon tours of duty (5 CFR 630.403).

(3) An employee may substitute up to 12 administrative workweeks of paid parental leave when using FMLA as described in 5 U.S.C. 6382(a)(1)(A) - (B) in connection with the birth, adoption, or foster care placement of a child occurring on or after October 1, 2020. Paid parental leave will be prorated for part-time employees and employees on uncommon tours of duty. When an employee changes work schedules (e.g. full-time to part-time, or vice versa) and has not used the full allotment of leave, the remaining balance of hours is recalculated based on the change in number of hours in the scheduled tour of duty. In implementing the statutory requirements for administering paid parental leave entitlements, VA will follow regulations published in 5 CFR 630.1701-1708.

(4) Paid parental leave is contingent on the employee’s advance written agreement to return to work for not less than 12 weeks following the date paid parental leave ends.

(5) The 12-week work obligation must be completed in full, regardless of the number of paid parental leave hours used. If the work obligation is not fulfilled, the employee is responsible for reimbursing the agency for the cost of the government share of Federal Employees Health Benefits premiums paid by the agency on the employee’s behalf during the period of paid parental leave use.

(6) The work obligation is satisfied by converting the 12 weeks into the equivalent time in hours (e.g. the 12-week equivalent for a full-time employee with a biweekly tour of duty of 80 hours is 480 hours). For employees charged leave on a daily basis, the days equivalent of 12 workweeks is based on the average number of workdays in the established tour of duty over a biweekly pay period (e.g. the days

equivalent for an employee with 8 workdays each biweekly pay period is 48 days).

(7) Hours which qualify towards meeting the work obligation are hours that an employee is in a pay and duty status. Periods of leave, holidays, and other non-duty time do not count towards meeting the work obligation.

(8) An employee who is unable to return to work because of the continuation, recurrence, or onset of a serious health condition of the employee or child may have the reimbursement requirement (as described in paragraph e(2) of paragraph 18 of this part) waived upon furnishing medical certification from a health care provider in support of such claim in a timely manner. An employee may also be eligible for an exception to the reimbursement requirement based on any other circumstance beyond the employee's control, as provided in 5 CFR 1705(f)(2)(ii) and limited by 5 CFR 1705(h).]

e. **Disabled Veteran Leave for Healthcare Professionals in VHA.** Individuals appointed to positions listed in 38 U.S.C. § 7421(b) are considered covered employees for the purpose of disabled Veteran leave. The Office of Personnel Management regulations published in 5 CFR 630.1301-1307 will be used to implement the statutory requirements for administering disabled Veteran leave entitlements for [employees appointed under 38 U.S.C., chapter 73, and 38 U.S.C. § 7401(1).

(1) Upon receipt of the certifying documentation under 5 CFR 630.1304, full-time and part-time physicians, dentists, podiatrists, chiropractors, optometrists, nurses, nurse anesthetists, physician assistants (PAs), and expanded-function dental auxiliaries (EFDAs), appointed under authority of 38 U.S.C., [ ]and 38 U.S.C. § 7401(1) must be granted disabled Veteran leave.

[ ]

(2) Full-time nurses, nurse anesthetists, PAs, and EFDAs must be granted up to 104 hours of disabled Veteran leave.

(3) For part-time employees, the 104-hour disabled Veteran leave entitlement must be prorated based on the number of hours in the part-time schedule (e.g., 52 hours for half-time schedule).

## 8. RELIGIOUS, STATE AND LOCAL HOLIDAYS

a. **Religious Holidays.** While there is no official observance of religious holidays, except those which may also be national holidays, it is the policy of VA to permit, when practicable, absence from work for those employees who desire to observe religious holidays. Employees may, under provisions of Public Law 95-390, and

b. applicable regulations, elect to work compensatory overtime for the purpose of taking

time off without charge to leave when their personal religious beliefs require that they abstain from work during certain periods of the workday or workweek, thereby avoiding an annual leave or leave without paycharge.

b. **State and Local Holidays.** If a facility is closed on a State or local holiday because it is determined that Federal work may not be properly performed as provided in paragraph 5d of part II, chapter 2, absence on such day is not chargeable to leave for an employee of the facility. Such approved time off is considered authorized absence without charge to leave.

9. **[ADMINISTRATIVE LEAVE.** Administrative leave is paid leave authorized at the discretion of an agency to cover periods within an employee's tour of duty when the employee is not engaged in activities that qualify as official hours of work, which is provided without loss of or reduction in pay, leave to which an employee is otherwise entitled under law, or credit for time or service. In accordance with and in addition to part III, chapter 2, paragraph 12,] the following will be used as the *guide* in determining the types of absences from duty which may be authorized without charge to leave.

a. **Rest and Relaxation.** The Under Secretary for Health and facility directors or the professional person acting for them are authorized to approve absence not to exceed 24 consecutive hours for rest and relaxation for full-time physicians, dentists, podiatrists, chiropractors, and optometrists who have been required to serve long hours in the care and treatment of patients.

b. **Tardiness or Absence for Part of a Day.**

(1) An unavoidable or necessary absence from duty and tardiness of less than 1 hour may be excused for full-time physician, dentist, podiatrist, chiropractor, or optometrist. In other instances, absences or tardiness will be charged to annual leave or LWOP (with the employee's consent), or AWOL, as appropriate. When approving [administrative leave], approving officials will consider any potential adverse impact on patient care as well as the frequency of requests for [administrative leave] by the employee.

(2) It is incumbent upon supervisory officials to ensure that full-time nurses, nurse anesthetists, PAs, and EFDAs and part-time employees discharge their obligation to VA in terms of the number of hours for which payment is made and the number of hours actually worked in

accordance with the pre-established tour of duty. An unavoidable or necessary absence from duty and tardiness of less than 1 hour may be excused (administrative [leave]). In other instances, absences or tardiness will be charged to annual leave or LWOP (with the employee's consent), or [AWOL], as appropriate. The charges to leave will come as a result of appropriate reporting in the timekeeping system.

(3) Repeated instances of tardiness or unexcused absences during scheduled working hours will beconsidered a disciplinary matter under the provisions of VA Handbook 5021 or as a matter for appropriate action with regard to probationary employees and temporary full- and part-time employees under the applicable provisions of VA Handbook 5021.

c. **Hearings Before Federal Boards, VA Boards and Committees.** Absence of employees required to appear before Federal boards, before VHA boards, or before other VA boards or committees as witnesses or as participants in the matter under consideration will be approved without charge against leave.

d. **Injury in Line of Duty.** An employee who suffers a duty-connected injury or illness shall be excused without charge to leave [(administrative leave)] for the remainder of the day of injury for *initial* examination or outpatient treatment (including local travel time) by a United States medical officer or hospital, or any duly qualified physician or hospital of the employee's choice. Any absence from duty the first full workday (or shift) after the illness or injury, however, shall be charged to sick leave, LWOP or continuation of pay, as appropriate.

e. **Voluntary Participation in Civic Health Programs.** Absence of employees who participate in civic health programs such as mass chest X-rays and mass vaccinations or immunizations, uncompensated blood donor programs, etc., may be approved without charge to leave [(administrative leave)] for this purpose. Participants in an uncompensated blood donor program may be excused without charge to leave for any portion of the day blood is donated which may be desirable for rest and recuperation [during the employee's tour of duty; typically up to 4 hours].

f. **Administratively Required Vaccinations and Immunizations.** Time used for administratively required vaccinations or immunizations will not be charged against an employee's leave (Official Duty Status).

g. **Conventions, Conferences, and Professional and Scientific Meetings**

(1) Prior approval of the Secretary or Deputy Secretary, is required for attendance at national conventions of Veterans Service Organizations as a representative of VA. When approved, such absence will be without charge to leave (Official Duty Status).

(2) Facility directors, or their designees, are authorized to approve the absence of full- and part-time employees to attend international, national, sectional, State and local medical, dental, nursing, and scientific meetings and conferences held in the United States, U.S. Territories and Possessions, and Puerto Rico. The Under Secretary for Health, or a designee, may approve similar absences for VA Central Office (VACO) employees. Absences without charge to leave (Official Duty Status) may be authorized for the necessary time to attend such meetings and conferences, including the allowed travel time not to exceed the time required for air travel. Approvals as specified in VHA Handbook 1400.01 must be obtained before these absences (Official Duty Status, or administrative [leave] if not directly related to specific duties considered gainful knowledge to achieve VA mission) are authorized. Requests involving [administrative leave] to attend activities outside the United States must be approved in accordance with VHA Handbook 1400.06. Intermittent employees will not be granted [administrative leave] under this policy.

h. **Education and Training.** Facility directors, or their designees, are authorized to approve without charge to leave the absence of full-time employees to attend education and training activities (lectures, seminars, courses of instruction, etc.) in accordance with the provisions of VHA Handbook 1400.09. The Under Secretary for Health or chief consultants may authorize such absences for VACO employees.

**NOTE:** *Any approvals required by VHA Handbook 1400.01 will be secured before these absences can be authorized.* Part-time staff appointed under Section 7405(a)(1) (A) may be similarly granted [administrative leave] from scheduled duty for the purpose mentioned herein. Intermittent employees will not be granted [administrative leave] for this purpose.

i. **Teaching.**

(1) Full-time employees may accept *teaching* responsibilities in private and public colleges and universities, provided the teaching obligations do not conflict with the performance of their duties in VHA. Absences resulting from such teaching assignments if no remuneration is involved may be excused without charge leave (administrative [leave]).

(2) This policy permits part-time employees to fulfill teaching responsibilities in private and public colleges and universities when it serves the VA mission of Veteran patient care or the education of VA employees. Absences resulting from such teaching assignments if no remuneration is involved may be excused without charge to leave (administrative [leave]). (This does not preclude the granting of annual leave or leave without pay where remuneration is involved.)

j. **Medical Examinations.**

(1) No charge for absence will be made against the leave (Official Duty Status) of an employee who is designated by proper VA authority to report to a VA medical center or other VA facility with medical facilities for medical examination or observation to determine fitness to remain on duty or for the purpose of recommending retirement from Federal employment.

(2) No charge will be made for necessary absences of an employee who is required to report for annual physical examinations, chest X-rays, or other types of medical examinations required in connection with VA employment.

(3) Employees ordered to undergo physical examinations to determine their fitness for extended active duty in the Armed Forces, and who do not receive military pay and allowances from the Armed Forces for this period, will be excused without charge to leave (administrative [leave]) for a period not to exceed 1 workday. Absence in excess of 1 workday will be charged to annual leave, or LWOP, if annual leave is not available. Employees who receive military pay and allowances from the

(4) Armed Forces will be charged annual leave, or LWOP if annual leave is not available, for the entire period of absence for this purpose.

**NOTE:** *The discretion to excuse employees for medical examination or treatment, subparagraphs j and k, is limited to brief periods, usually 1 day or less. When an initial examination is not completed in 1 day, whether the employee is in or out of the hospital, the employee may be excused without charge to leave for a somewhat longer period than 1 day; however, the additional time to hospitalize an employee after an initial examination or to require additional and more extensive tests and examinations may not be regarded as [administrative leave] without charge to leave or loss of pay, even though periods of duty may intervene between the initial examination of an employee and the additional test, examinations or hospitalization that may be necessary as a result of the initial examinations.*

k. **Medical Treatment.** Employees may be excused (Official Duty Status) for visits to the Employee Health Unit or other emergency facility for treatment of a minor illness.

l. **Examinations.** [The time employees are excused from duty (Official Duty Status) will not exceed the time actually required for taking the examination and for travel to and from the place of examination. Any additional absence will be charged to annual leave, or LWOP if annual leave is not available. This includes:

(1) Absences of physicians, dentists and residents to undergo an American Specialty Board examination;

(2) Podiatrists, chiropractors, and optometrists to undergo examination by an approved specialty board;

(3) Nurses to undergo examination for certification by an appropriate national certifying body; [ ]

(4) Physician assistants to undergo the official Physician Assistant Certification Examination prepared by the National Board of Medical Examiners; and

(5) Graduate nurse technicians for registration.

m. **]Bone Marrow and Organ Donor Leave.** An employee is entitled to 7 days of paid time off in a leave year to serve as a bone marrow donor, and 30 days of paid time off in a leave year to serve as an organ donor. Employees may take this leave without charge ([administrative leave] excused absence) to other types of leave or reduction in pay. This leave is in addition to other types of leave and is creditable as regular duty for all purposes, such as leave accrual, retirement, and proficiency rating.

n. **VA Policy.** The [administrative leave] policy, contained in chapter 2 of this part, for title 5 employees is also applicable to employees under this chapter for the following types of absences:

(1) Administrative Leave:

(a) Administrative Leave for Investigations.

(b) Administrative Leave for All Other Purposes (see Appendix I).

(2) Investigative Leave and Notice Leave.

(3) Weather and Emergency Situations.

(4) Administrative Leave by Law, Regulation, or Presidential Directive (see Appendix J).

## 10. LEAVE WITHOUT PAY (LWOP)

a. **General**

(1) Leave without pay is a temporary nonpay status and absence from duty to be granted only on the employee's request. The authorization of LWOP is a matter of administrative discretion.

(2) An employee cannot demand that LWOP be granted as a matter of right except in the case of [FMLA leave and] disabled veterans who are entitled to LWOP if necessary for medical treatment under Executive Order 5396; and reservists and members of the National Guard who are entitled to LWOP if necessary to perform military training duties

(3) Employees who are disabled on the job and file claims with the OWCP may be granted LWOP for the entire period of absence from duty. LWOP may also be granted in cases of employees who have made application for disability retirement. LWOP in these circumstances may be granted until it is judged that the employee will not be able to return to duty and may be granted regardless of whether or not the employee has annual leave.

(a) **Substitution of Annual or Sick Leave for LWOP.** An employee who is on LWOP pending adjudication of a claim with OWCP may, if the claim is disallowed while still employed, be retroactively granted sick and annual leave.

(b) **Substitution of LWOP for Annual or Sick Leave.** An employee who has used sick leave or annual leave pending adjudication of an OWCP claim, which is later approved, should be informed by the human resources office about procedures for "buying back" the leave. This can be accomplished by the employee's election to be placed in a no pay status for the period and by the employee's authorization for the OWCP to reimburse the agency for leave used based on compensation entitlement (with the employee receiving or paying the difference). The substitution should be made promptly and the OWCP will be notified of proposed change in the employee's last day in pay status. For leave record purposes, the request for substitution must be made within 1 year of approval of the OWCP claim, unless it is administratively determined that the employee was prevented from exercising this option because of the disability which gave rise to the claim. In such case, the employee may exercise the option within 1 year of the time it is determined that the employee has sufficiently recovered from the disability to enable the employee to make a reasoned decision. The employee's election should be in writing and is not subject to revocation.

(c) **LWOP in Cases of Extended Absence.** In a case where an employee's condition requires extended absence because of duty-connected illness or injury, the length of LWOP granted will be determined on the basis of the nature of the disability and the LWOP criteria contained in this paragraph. If OWCP accepts an employee's claim, but does not determine that the employee is permanently and totally disabled, LWOP should be granted during this period, except in case of an overriding requirement for separation, such as staff adjustments or removal for cause. LWOP in yearly increments will be granted until it is judged that the employee will not be able to return to duty.

(4) Employees may be granted LWOP for pregnancy and confinement as provided in paragraph 7d.

(5) The minimum charge for LWOP for full-time physicians, dentists, podiatrists, chiropractors, and optometrists will be [one hour and multiples thereof]. [ ]

b. **Conditions Which Will Be Met for Approval of Leave Without Pay.** Except for the employees indicated in subparagraph a (2), (3) and (4), LWOP will not be approved unless the following conditions are met.

(1) There is expectation that the employee will return to duty in VA at the expiration of the LWOP period. At the discretion of the facility Director the employee may be required to signify such intentions by submitting a signed statement to that effect to be made a matter of record.

(2) The needs of the service with respect to patient care will not be unduly hampered by the employee's absence.

(3) The contribution or service of the employee is such to merit granting LWOP, as evidenced by supervisory evaluation.

(4) It is clearly indicated that one or more of the following advantages will accrue to the service.

(a) The value of the employee will be increased.

(b) Training of the employee in a specialty needed by VA.

(c) Retention of a capable employee in an area where recruitment of qualified personnel is difficult.

(d) Protection or improvement of employee's health.

c. **Notice to Employee.** Employees granted LWOP for more than 30 days will be notified in writing by the Chief of Service that:

(1) There is no assurance of their assignment to their former position or facility on the expiration of the approved period of LWOP, although it will be the policy to make every effort to return them to the facility which granted the LWOP, except under the circumstances enumerated below:

(a) When the employee requests reassignment to another facility and there is a suitable vacancy there and both facilities concur in the transfer. Such transfers will be handled by the facilities concerned, if the action normally does not require prior approval of VACO.

(b) When VACO may wish to offer the employee assignment elsewhere in the interests of the service. For example, the services of a nurse returning from educational LWOP might be required at another facility as an associate chief, nursing service for education.

(c) In the event a staff adjustment is necessary while an employee is on LWOP, the employee is subject to being declared surplus on the same basis as other on-duty employees.

(2) They should communicate with their supervisor at least 2 weeks before the expiration of their LWOP to arrange for their return to duty.

d. **Action by the Human Resources Office.** The Human Resources Management Office of the facility which granted the LWOP will maintain necessary controls to insure that a vacancy is available for the return of the employee to duty. In unusual circumstances where it is not possible to return the employee to the facility the employee left, VACO assistance in placing the employee may be requested.

e. **Human Resources Office Records.** LWOP for more than 30 calendar days will be documented on Standard Form 52, Request for Personnel Action, forwarded to the Human Resources Management Office for appropriate action and filed in the employee's personnel folder.

**11. LEAVE WITHOUT PAY (LWOP) FOR FAMILY SUPPORT PURPOSES.** This is sometimes referred to as Expanded FMLA but is not based on the authority of the Family and Medical Leave Act (FMLA) of 1993. Therefore, this LWOP is not counted towards the 12-week FMLA entitlement authorized in 5 U.S.C. 6382. Employees are not required to complete at least 12 months of Federal service to be eligible for this LWOP. The granting of this LWOP shall be a matter of administrative discretion. Annual and sick leave cannot be substituted for this LWOP. Annual leave donated under the Voluntary Leave Transfer Program cannot be substituted to this LWOP.

a. LWOP for family support purposes may be used for any of the following family members: spouse, and parents thereof; sons and daughters, and spouses thereof; parents, and spouses thereof; brothers and sisters, and spouses thereof; grandparents and grandchildren, and spouses thereof; domestic partner and parents thereof, including domestic partners of sons and daughters and spouses thereof; parents, and spouses thereof; brothers and sisters, and spouses thereof; and grandparents and grandchildren, and spouses thereof; and any individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship.

b. Up to 24 hours [ ] of leave without pay (LWOP) may be granted to employees for the following family support purposes:

(1) To participate in school activities directly related to the educational advancement of their child;

(2) To accompany their children to routine medical or dental appointments, such as annual checkups and vaccinations; and

(3) To accompany their elderly relatives to routine medical or dental appointments or other professional services related to the care of the elderly relative, such as making arrangements for housing, meals, telephones, banking services, and other similar activities.

c. Full-time employees who are charged leave on a daily basis may be granted up to 3 days of LWOP for family support purposes each leave year. Full-time employees who are charged leave on an hourly basis may be granted up to 24 hours of LWOP each leave year. Part-time employees may be granted LWOP in direct proportion to their regularly scheduled number of hours to the 24-hour limitation each leave year.

d. Employees may be required to provide administratively acceptable documentation related directly to requests for LWOP for family support purposes, including medical certification, as appropriate.]

## 12. UNAUTHORIZED ABSENCE

a. **General.** Unauthorized absence is any absence from duty which has not been approved. An employee who is absent without approval for any cause will explain to the person authorized to approve leave, at the earliest practicable time, the cause of this absence and the failure to ask for permission to be absent. If it is found that the employee was absent without sufficient cause, or that the failure to obtain permission to be absent is not satisfactorily accounted for, the time lost will be counted as unauthorized absence and pay will be forfeited in the applicable amount.

b. **Charging Unauthorized Absence.** The minimum charge for unauthorized absence for full-time physicians, dentists, [ ], podiatrists, chiropractors, and optometrists is 1 [hour and multiples thereof]. The minimum charge for unauthorized absence for full-time nurses, nurse anesthetists, PAs and EFDAs and part-time employees is 15 minutes and multiples thereof.

## 13. DISPOSITION OF LEAVE ON TRANSFER, SEPARATION, OR RETIREMENT

a. **Lump-Sum Leave Payments**

(1) The provisions of 5 U.S.C., chapter 55, subchapter VI, which provide for lump-sum payment of annual leave, are for application to employees appointed under 38 U.S.C., chapter 73 and 74. Lump-sum payments are based upon the amount of annual leave to the credit of an employee on the date of separation. There is no authority to grant annual leave immediately prior to separation when it is known in advance that the employee is to be separated except where exigencies of the service require such action (34 Comp. Gen. 61).

(2) Lump-sum payments for full-time nurses and nurse anesthetists on the Baylor Plan are also based on the amount of annual leave to the credit of a nurse or nurse anesthetist on the date of separation. However, the lump-sum payment to such nurse or nurse anesthetist shall be based on the applicable hourly rate of base pay in effect for a similar employee's service outside the Baylor Plan, i.e., the annual rate of basic pay divided by 2080.

(3) Special pay for physicians and dentists is considered basic pay for the purpose of lump-sum leave payments unless there is a refund liability. See 38 U.S.C. 7438.

b. **Recredit of Leave-Different Leave System.** OPM is authorized by 5 U.S.C. 6308 to regulate the transfer and recredit of leave when different leave systems are involved. (See VHA Sup., MP-4, pt. II, par. 1D.05, for conversion formula.)

c. **Disposition of Annual Leave Account**

(1) **Changes During Employment in VHA**

(a) When an employee is serving in an appointment which provides for leave accrual, and is subsequently converted or appointed without a break in service to another type of appointment which also

provides for leave accrual, accumulated and accrued leave will be credited to the employee's account irrespective of the differences in the accrued rates. For example, an employee serving in an appointment under section 7401(l) who is converted to an appointment under section 7406 as a resident will have the leave earned under the section 7401(l) appointment credited to the leave account under the latter appointment. **NOTE:** *This example assumes the individual would be entitled to payable leave as a resident. If the individual were transferring to a nonpayable leave system, he or she would receive a lump-sum payment for the accrued annual leave.*

(b) An employee converted to a position in which no payable leave is earned will be given a lump-sum payment as provided in subparagraph a above.

(c) Graduate nurse technicians employed in VHA are covered by 5 U.S.C., chapter 63. If the appointment of the graduate nurse technician is converted to a full-time nurse in VHA during the biweekly pay period, the individual will be considered in a graduate nurse technician status for leave purposes until the end of such pay period. Annual leave will be credited under the leave system for nurses from the beginning of the first complete biweekly pay period under the appointment as a registered nurse.

[(d) When an employee transfers without a break in service to a position exempted from the leave system, (e.g., to a Presidential appointment in the executive pay level or a comparable position), the employees' regular annual leave is held in abeyance until it is either (a) liquidated by lump sum payment upon the employee's separation or death, (b) liquidated in one or more partial payments, or a single full payment, during the employee's service in the exempted position, or (c) re-credited upon the employee's reemployment without a break in service to a position subject to the leave provisions in this Chapter or in 5 USC Chapter 63. Any annual leave restored to the employee's credit under paragraph 6.f.(1)(d) of this Chapter must be liquidated by a lump sum payment if the employee elects not to retain his or her leave benefits. A career Senior Executive Service member accepting a Presidential appointment may elect to retain his or her leave benefits and therefore continue to accumulate and use annual leave, including restored annual leave.]

(2) **Separation for Advocating Overthrow of the Government of the United States.** When separation of an employee is for advocating or being a member of an organization that advocates the overthrow of the Government of the United States by force or violence, no lump-sum payment will be made for annual leave remaining to the employee's credit (23 Comp. Gen. 677).

(3) **Death.** On the death of an employee, compensation for all accumulated and current accrued annual leave will be paid in an amount equal to the compensation the decedent would have received had the employee remained in the service until the expiration of the period of such annual leave.

d. **Credit and Recredit of Sick Leave**

(1) **Changes During Employment in VHA.** An employee serving in an appointment which provides for leave accrual who is subsequently converted or appointed without a break in service to another type of appointment which also provides for leave accrual will be credited with sick leave to the employee's account irrespective of any difference in accrual rates.

(2) **Recredit of Sick Leave.** Sick leave will be recredited to an employee upon reemployment after a break in service. Sick leave will also be recredited to an employee after being changed from a leave-earning to non-leave-earning status in the service and later being returned to a leave-earning status.

e. **Reemployment During Period Covered by Lump-Sum Payment.** An employee who previously served under the VHA leave system and is reemployed in VA under an appointment within the purview of the leave provisions of this chapter during the period covered by lump-sum payment will refund to VA an amount equal to the compensation covering the period between the date of reemployment and the end of the period covered by the lump-sum payment. It is the responsibility of the appointment officer to ascertain if new appointees are entering on duty prior to the expiration of leave represented by lump-sum

payment. Collection of required refunds will be made by the employing facility prior to employment. When a hardship would be imposed on a prospective employee by requiring refund of lump-sum payment in full prior to reemployment, the individual may be placed on the rolls and installment collections made by payroll deductions. Arrangements for such deductions will be approved by the Fiscal Officer. Installment deductions will be large enough to permit complete repayment at an early date, and in no event later than 6 months from date of reemployment. The amount of leave represented by the required lump-sum payment refund will not be credited to the employee until the entire indebtedness has been liquidated. The employee will be entitled to take leave earned subsequent to the date of reemployment.

f. **Disposition of Leave on Retirement**

(1) **Disability Retirement**

(a) The fact that an employee has executed SF 2801, Application for Retirement, is not to be interpreted as the employee's notice of intention not to return to duty.

(b) Pending decision of OPM on a claim for disability retirement, the employee may be granted currently credited leave before being placed in a nonpay status. However, advanced sick leave will not be granted pending such a claim.

(c) On receipt of approval of the disability retirement from OPM, leave as recommended in OPM Operating Manual 831-1, section S10-11, will be granted.

(2) **Optional Retirement**

(a) The general rule that an employee retiring on an optional basis may not be granted annual leave immediately prior to separation (sub par. a above) applies to optional retirement.

(b) Any unliquidated advanced leave will be adjusted to date of separation, except when the employee's separation is also due to disability, evidence of which will be supported by an acceptable medical certificate. In such cases, no adjustment for advanced leave will be required.

g. **Restoration of Veterans After Military Service.** The provisions of part III, chapter 6 of VA Handbook 5005 will apply to employees who are reemployed in positions which entitle them to the benefits of this chapter.

h. **Indebtedness for Advanced Leave on Separation From the Service.** An employee will make refund for any unliquidated advanced annual and sick leave on separation. This does not apply in cases of death, retirement for disability, disability supported by an acceptable medical certificate, or entering on active duty in the military service, when such entry is without a break in service from the civilian position. The Fiscal Office will be responsible for initiating action to effect recovery of the indebtedness.

[**14.**] **DUTY AND LEAVE FOR RESIDENTS.** Duty and leave provisions for full-time physicians and dentists, as contained in this chapter, are applicable to full-time residents appointed under authority of 38 U.S.C. 7406 except as otherwise indicated below. Residents appointed on an intermittent basis, including residents on disbursement agreements, are not entitled to any leave, except as specifically provided below. The term "resident" as used in this paragraph refers to medical and dental residents.

a. **Annual Leave**

(1) **General.** Facility directors are authorized to establish a local annual leave system, tailored to conform to the system existent at the index hospital, for all medical and dental residents subject to the limitations and procedures herein described. The index hospital used for this purpose will be the same index hospital approved by the Under Secretary for Health or designee, and used to establish resident stipends in accordance with VA Handbook 5007, appendix III-E. Sick leave, military leave, court leave, holidays and holiday in-lieu days, and authorized absence covered under the provisions of subparagraphs b, c, d, e, and f below, in the amounts provided, will not be included in the local annual leave system, whether or not available at the index hospital.

(2) **Procedures**

(a) Facility directors will survey their index hospital for a complete description of the operable annual leave system. The annual leave system at the index hospital includes all types of annual leave available for use by the house staff, such as vacation leave, personal leave, death-in-family leave, leave to attend education and training activities (under conditions not authorized by sub par. f below), day off for birthday, etc. For this purpose, each type of annual leave available at the index hospital and accorded to residents will then be classified into one of two categories as follows:

1. **Payable.** Resident payable leave is defined as leave which is a vested entitlement, payable by the index hospital if not used by the resident.

2. **Nonpayable.** Resident nonpayable leave is defined as leave which is available for use by the resident at the index hospital, normally subject to certain conditions or approvals, and is not payable by the index hospital if not used. Examples of leave at the index hospital which would be classified as nonpayable include death-in-family leave granted only if the event occurs, leave to attend a meeting or conference not otherwise covered by official VA leave or authorized absence, vacation leave which is lost if not used, personal leave, etc. All leave not fully meeting the definition of payable leave, above, will be classified as nonpayable leave.

(b) After the total leave system of the index hospital has been classified per the above definitions, directors will establish the VA annual leave plan to match these classifications, on a day-for-day basis. Prior to implementation, and whenever the plan changes in the future, the VA matching annual leave plan will be approved by the Deans Committee. In matching leave systems, 1 full week of leave at the index hospital translates to 7 calendar days of leave in the VA system. However, in VA, the total of payable and nonpayable annual leave for all purposes available to a resident under the VA matching leave system may not in any event exceed 30 calendar days in a leave year, but may consist of any combination of

payable and nonpayable annual leave up to a maximum of 30 calendar days total, in conformance with the plan at the index hospital. If the index hospital provides different annual leave plans among specialties or different annual leave plans depending on level of training, the VA system will match these plans.

(c) The annual leave plan established at the facility, including applicable regulations and local policy, will be published and distributed by the facility to all residents and other interested parties. Three copies of the annual leave plan will be forwarded for technical review to the Office of the Chief Academic Affiliations Officer (14), VACO. Additional copies will be forwarded whenever the plan changes.

(d) If both payable and nonpayable annual leave are included in the facility leave plan, then all VA residents with full-time appointments will earn both payable and nonpayable annual leave simultaneously, proportionate to service, in accordance with the plan established by the facility. Residents with intermittent appointments will not earn payable leave.

(e) In some situations, leave may be granted by the index hospital for any variety of personal reasons individually approved by the department chairman or chief of service. When constructing the VA matching leave plan, each and every circumstance and condition for granting annual leave *will be clearly defined*, and may not be dependent on a VA official's determination of the validity, urgency, necessity, or propriety of the leave request. The VA approving official's determination in granting or denying a leave request should be based only on consideration of patient care needs in sparing the services of the requester. The facility annual leave plan will specify the exact circumstances and number of days for each type of annual leave available. If difficulty is encountered in constructing the VA matching plan because of a lack of any systematized basis for granting certain types of leave at the index hospital, then directors will investigate the circumstances closely so as to extrapolate a workable system from the index hospital's practices. This can be accomplished by determining the average experience of the index hospital with respect to various types of leave or by taking their best estimate of the circumstances and number of days available for each type of leave. If further difficulty is encountered, the problem will be referred to the Deans Committee for resolution, and an advisory opinion may be requested of the Office of Human Resources Management [and Labor Relations] (05[8]), VACO.

(f) In prorating annual leave, a resident will earn, for each day in a pay status, the proportionate amount of payable leave plus the proportionate amount of non-payable leave in accordance with the plan established at the facility. The general principles regarding proration of leave credits, charges, and reductions contained in VHA Supplement to MP-4, part II, chapter 1, section B, will be followed, as applied to the amount of payable and nonpayable annual leave authorized at the facility. All annual leave will accrue and be earned proportionate to service. For example, in a nonpayable annual leave system which provides for 14 days of vacation leave and 2 days for death-in-family leave, annual leave would accrue at the rate of 16 days per year for the purposes specified. No pooling of leave is permitted on a full-time equivalent basis or through any other mechanism. All annual leave is earned by and vested in the name of an individual resident, and may not be transferred to the account of any other resident. With respect to nonpayable leave, the term "earn" is used as a matter of clarity and convenience to express the rate of accumulation of this type of leave which directors may grant or advance to an individual resident, and implies no entitlement under the lump-sum payment provisions of 5 U.S.C. 5551 and 5552.

(g) Notwithstanding any other provision in subparagraphs (a) through (f) above, facility directors may authorize either of two leave pool systems. Regardless of the type of pool system, the total amount of leave credited to the pool at the beginning of each academic year or leave year will be based on the proportionate amount of leave which will actually be earned by each resident according to the planned rotation schedule. All leave used will be charged to the pool and the amount of leave will be reduced accordingly. The leave pool will be carefully monitored and immediately adjusted to reflect changes in rotation schedules and staffing. Should leave usage exceed leave credited to the pool in any training year or leave year due to unforeseen circumstances, the negative balance may be carried forward into the following year and the pool will be adjusted accordingly. Similarly, if the matching leave plan provides payable leave or permits unused nonpayable leave to be carried forward into the next leave year, the positive leave pool balance may be carried forward into the following year and the pool will be adjusted accordingly. Facilities will ensure that the postgraduate levels of residents using leave fairly represent the postgraduate levels of all residents rotating through the facility. Intermittent appointments will not bar the use of leave pool arrangements; however, paid and WOC residents in exchange programs (see VA Handbook 5007, appendix III-E) may not be included unless a written exception is granted by the Chief Academic Affiliations Officer (14). Pool systems are not appropriate for sick leave or any other type of absence that cannot be included in a facility's matching leave plan.

1. Under the first leave pool system, which is the only leave pool system that may be authorized if any portion of the matching leave plan permits payable leave, VA allows a designated number of residents to use leave included in the annual leave pool without regard to the amount of annual leave actually earned by those particular residents. For example, if a facility is allocated 10 positions which are encumbered by 10 different residents each quarter and the matching leave plan calls for 21 days of payable or nonpayable annual leave at each postgraduate level, a 210-day leave pool could be available for use by any 10 of the 40 residents rotating through the facility. Other teaching facilities would assume leave responsibility for the remaining 30 residents. The 10 residents for whom VA accepts leave responsibility would be identified by name at the beginning of the academic year. VA would pay each of those residents for any leave used in accordance with the facility's matching leave plan. All such service at either the VA medical center or other teaching facility will be creditable for leave accrual purposes. A designated resident may be placed on the payroll at any time during the academic year for the purposes of utilizing VA paid annual leave. If payable leave is part of the matching leave plan, residents for whom VA accepts leave responsibility will have entitlement under the lump-sum payment provision of 5 U.S.C. 5551 and 5552 for unused payable leave. For such a resident leaving the program prematurely, lump-sum payment will be prorated to the total amount of paid training provided the individual by VA and affiliated hospitals. To the extent practicable, prorating will be consistent with index hospital policy.

2. Under the second leave pool system, which cannot be authorized if any portion of the matching leave plan permits payable leave, residents are permitted to use leave included in the annual leave plan on a "first-come-first-served" basis without regard to the amount of leave actually earned by those particular residents. For example, if a facility is allocated 10 positions, which are encumbered by 10 different residents each quarter and the matching leave plan calls for 21 days of nonpayable annual leave at each postgraduate level, a 210-day leave pool could be available for use by any of the 40 residents rotating through the facility until the leave pool is exhausted.

3. The Chief of Staff is directly responsible for establishing controls over leave pools and leave usage and will ensure that these controls are strictly adhered to the overall administration of the annual leave program.

(3) **Administration**

(a) Payable and nonpayable leave will be granted and charged to residents in 1-day increments, for each calendar day of leave, requested, approved, and charged in the normal fashion per provisions of paragraph 6a(4). In addition, annual leave may be granted by the authorized official only when it has been approved in advance by the House Staff Review Committee or when the authorizing official is acting under criteria established by the committee. Annual leave granted for purposes which were matched as payable leave at the index hospital will be chargeable to payable leave in VA, and leave granted for purposes which were matched as nonpayable leave at the index hospital will be chargeable to nonpayable leave in VA. Nonpayable leave will be granted only on such occasions and for such purposes as the index hospital grants similar leave; for example, 2 days of leave available at the index hospital to attend the funeral of a close family member will be included as 2 days of nonpayable leave in the VA annual leave system, but will be granted only if the event occurs.

(b) Facility directors may approve the advancement of annual leave, both payable and nonpayable, to residents proportionate to expected service, not to exceed the amount of their payable and nonpayable leave yearly earning rate. Also, the amount of advanced annual leave will not exceed that which can be earned during the remainder of their VA training period. Directors are cautioned regarding the advancement of annual leave in that any excess leave, both payable and nonpayable, which has been granted and which has not been earned by a resident at the time of separation from VA rolls will require an appropriate reduction for the value thereof in the final salary payment. Service chiefs responsible for a resident's training will notify Fiscal Service within 2 days of separation if any excess annual leave over that earned has been granted. If Fiscal Service is unable to withhold the appropriate amount from the final salary check for any reason, the value of the excess annual leave taken by a resident will become a debt owed by that person to the United States and will be processed for collection.

(c) If the facility matching annual leave system provides for any portion of payable leave, then the following will apply to all residents at that facility:

1. The leave year (both for payable and nonpayable leave) will be as indicated in paragraph 5d of this chapter.

2. Up to 120 days of unused payable leave to a resident's credit at the end of the leave year will be carried forward into the next leave year and the value thereof will be paid on separation in accordance with the lump-sum leave payment provisions of 5 U.S.C. 5551 and 5552.

3. Unused nonpayable leave to a resident's credit at the end of the leave year may be carried forward into the next leave *year if this is the practice at the index hospital*. Only the amounts and types of nonpayable leave which the index hospital carries forward at the end of each leave year will also be

carried forward in the VA system. Not more than a combined aggregate total of 120 days of payable leave and nonpayable leave may be carried forward into the next year. If it is not the practice at the index hospital to carry forward nonpayable leave balances from one leave year to the next, which is the more common situation, then the VA annual leave plan will also follow this policy. As an alternative, the facility Director may permit VA residents to carry forward their nonpayable annual leave balances into the next calendar year and subsequently forfeit all nonpayable annual leave balances at the end of the index hospital's leave year rather than at the end of the calendar leave year. This option may be elected only where the index hospital's leave year is different than the calendar leave year, where the index hospital does not allow the residents to carry over nonpayable annual leave, and where it is impossible to schedule the use of nonpayable annual leave so as to avoid forfeiture of such leave at the end of the calendar leave year. The use of and justification for using the delayed forfeiture date will be fully documented in the annual leave plan and all residents will be informed in advance of the forfeiture date. Issuance of a copy of the leave plan documented as indicated above to each resident will suffice for this purpose. In any event, accumulated balances of nonpayable leave are not an entitlement and will not be paid on separation.

(d) If the facility matching annual leave system provides only for nonpayable leave and contains no portion of payable leave, then the following will apply to all residents at that facility:

1. The leave year for nonpayable leave purposes will be July 1 and through June 30. Where the index hospital's leave year is different than these dates, however, the facility Director may, as an alternative, use the same leave year as that of the index hospital of nonpayable annual leave purposes. In any case, the dates of the leave year used for these purposes will be documented in the annual leave plan. Where the later leave year is used, the plan will document that this is the leave year used by the index hospital. (The leave year for other purposes, such as sick and military leave will continue to be the calendar leave year indicated in paragraph 5d of this chapter.

2. Up to 120 days of unused nonpayable leave to a resident's credit at the end of the leave year may be carried forward into the next year *if this is the practice at the index hospital*. If it is not the practice at the index hospital to carry forward unused nonpayable leave balances from one leave year to the next, which is the more common situation, then the VA annual leave plan will also follow this policy. In any event, accumulated balances of nonpayable leave are not an entitlement and will not be paid on separation.

(e) Extreme care will be exercised in establishing the VA annual leave system in terms of matching the index hospital. The VA annual leave system will conform *in policy and in practice* with that of the index hospital, subject to the constraints described herein. A signed letter describing the leave system at the index hospital does not in itself constitute sufficient documentation for establishing the matching VA annual leave system. Directors will fully satisfy themselves at all times that the annual leave system established for VA residents conforms to the actual practices of the index hospital.

(f) The PAID system will accommodate the recording and compilation of *payable leave only* for full-time residents in accordance with each individual facility plan. (See coding instructions in MP-6, Pt. V, supp. No. 1.5, ch. 3. App. A.) The PAID system will not be involved in accounting for nonpayable leave except as may be incorporated in PAID instructions. Facilities will establish their own control systems to

record and compile the earning and use of nonpayable leave for all residents, full-time and intermittent. The control systems established locally will provide that a strict daily record be kept, showing accumulated balance, amount used and for what purposes. Service chiefs responsible for the house officer's training are also responsible for maintaining the records and control systems necessary with regard to nonpayable leave. The Chief of Staff is directly responsible for the accuracy and adequacy of all records maintained by service chiefs in this connection.

(4) **Changes.** Facilities may modify or change their leave plans only on a prospective basis, at the beginning of a pay period, or on July 1 if only nonpayable leave is involved. Facilities should make a regular annual review of their leave plan to determine its currency and accuracy.

b. **Sick Leave**

(1) **Full-Time.** The sick leave provisions for full-time physicians and dentists contained in paragraph 7 are applicable to sick leave for full-time residents except that the maximum amount of sick leave which may be advanced may not exceed 15 calendar days. The Chief Academic Affiliations Officer (14) may approve exceptions to these provisions under unusual circumstances when requested.

(2) **Intermittent.** Facility directors may grant authorized absence for illness not to exceed 15 days per year of training to each resident who is appointed on an intermittent basis. The Chief Academic Affiliations Officer (14) may approve additional authorized absence under unusual circumstances when requested. The extent of such absence will be in proportion to service and may be authorized at any time during appointments. These absences are not an entitlement and do not accrue from year to year. The amount of these absences which may be granted will be reduced in the same manner as sick leave is charged under paragraph 7a. The service chief responsible for the resident's training is also responsible for controlling and documenting absences for this purpose. The Chief of Staff is directly responsible for the accuracy and adequacy of all records maintained by service chiefs in this connection.

c. **Military Leave**. Full-time residents whose periods of training in VA are not limited to 1 year or less are entitled to the same military leave benefits provided full-time physicians and dentists.

d. **Court Leave.** Full-time residents are eligible for and will be granted court leave in the same manner as other eligible Federal employees.

e. **Holidays.** The holiday provisions for full-time physicians and dentists contained in part II, chapter 3 of this handbook, and paragraph 8 of this chapter, are applicable to residents under this paragraph.

f. **Authorized Absence.** The authorized absence provisions for full-time physicians and dentists in paragraph 9 also apply to residents under this paragraph except the provisions pertaining to education and training in paragraph 9 (residents may be detailed to non-VA institutions for these purposes per VA Handbook 5007, part II, appendix E, and the provisions pertaining to participation in civic organizations in paragraph 9n. Absences of residents to undergo American Specialty Board and State licensure examinations will be authorized. The amount of absence authorized will not exceed the time actually required for taking the examination and for travel to and from the place of examination. Any additional absence will be charged to annual leave, or LWOP if annual leave is not available.

## APPENDIX A. SAMPLE SICK LEAVE QUESTIONS AND ANSWERS

- **Sick Leave for Family Care** [**or**] **Bereavement** [**Purposes**]

**Q.** *Jerry[, a full-time employee,] wants to take 2 weeks off when his wife comes home from the hospital with their new baby. [Jerry used 10 hours of sick leave earlier in the leave year.] Can he use sick leave? How much?*

**A.** Full-time employees may use [104] hours of sick leave each [leave] year to provide medical care and assistance to family members. [ ] Part-time employees and employees with uncommon tours of duty are permitted to use sick leave in an amount [equal to the number of hours of sick leave he or she normally accrues during a leave year. Jerry may be granted 80 hours of sick leave to provide assistance to his wife. In conjunction with the previously used 10 hours of sick leave and the current requested 80 hours of sick leave, Jerry will use a total of 90 hours of sick leave for the leave year. Jerry may use an additional 14 hours of sick leave during the leave year for general family care or bereavement purposes].

**Q.** *Sharon is a new employee and has a balance of 23 hours of sick leave in her account. Sharon has requested sick leave to care for her son who broke his leg falling out of a tree. How much sick leave can she use?*

**A.** Sharon may use her [current balance of] 23 hours of sick leave to care for her son[. She may also request an additional 81 hours of advance sick leave to care for her son, if necessary. Employees may use up to a maximum of 104 hours of sick leave each leave year for general family care and bereavement purposes]. [ ] However, there is no entitlement to advance sick leave. Advancing leave is always [at the] discretion [of management].

**Q.** *Joel has been named executor of his mother's estate. He used 20 hours of sick leave to make arrangements for and attend the funeral. It is now 3 months later. Joel has requested 32 hours of sick leave to meet with the lawyers and to appear in probate court. He has 289 hours of sick leave. Is he entitled to sick leave?*

**A.** An employee may use sick leave to "make arrangements necessitated by the death of a family member." This may include funeral arrangements and other immediate actions necessary, including the reading of the will. However, for absences necessary to settle the estate of the deceased, annual leave and leave without pay (at the [ ] discretion [of management]) are appropriate.

- **Sick Leave to Care for a Family Member with a Serious Health Condition**

**Q.** *John wants to use some of his 600 hours of sick leave to be with his wife while she is in labor and delivery and stay with her and the new baby afterwards. He has requested 12 weeks of sick leave.*

**A.** John is entitled to use [up to 12 administrative workweeks of] sick leave to care for his wife. However, the entitlement to use sick leave is limited to the period of his wife's incapacitation--generally 6 to 8 weeks for most births. There is no entitlement to use sick leave to care for a healthy newborn.

- **Sick Leave for [General] Family Care [or] Bereavement [Purposes] and Sick Leave to Care for a Family Member with a Serious Health Condition**

**Q.** *Jennifer has 500 hours of sick leave in her account and her husband Mel has more than 1,000 hours of sick leave. Their daughter has the flu. Jennifer has used 72 hours of sick leave for general family care purposes this year, and Mel has used 40 hours. They decide to alternate days off on sick leave to care for their daughter. How much leave can each of them use?*

**A.** Jennifer is limited to an additional 32 hours at this time, since she has already used 72 hours for general family care purposes[. The maximum amount of sick leave that Jennifer may use per leave year for general family care or bereavement purposes is 104 hours (13 days).] Mel may use an additional 64 hours of sick leave for general family care [or bereavement] purposes.

**Q.** *After 2 days, Jennifer's daughter is rushed to the hospital with a severe asthma attack as a result of complications of the flu. She will be hospitalized until the asthma is under control and her condition stabilizes (at least 2-3 days). Jennifer and Mel request additional sick leave for family care. How much sick leave can Jennifer and Mel use at this time?*

**A.** [Employees are entitled to use up to a total of 480 hours (12 administrative workweeks) of sick leave to provide care to a family member with a serious health condition. Jennifer has now used 80 hours of sick leave (she has 420 hours of sick leave remaining in her account) and Mel has used 48 hours of sick leave for family care purposes. Jennifer and Mel may each use up to a total of 480 hours of sick leave, less any sick leave previously used for family care].

- **Sick Leave for Adoption**

**Q.** *Carl and his wife are in the process of adopting a child. He will need to take a number of days off from work to finalize the adoption. How much sick leave can Carl use for adoption purposes?*

**A.** Carl may use an unlimited amount of sick leave for purposes related to the adoption of a child. For example: Appointments with adoption agencies, social workers, and attorneys; court proceedings; required travel; any period of time the adoptive parents are ordered or required by the adoption agency or by the court to take time off from work to care for the adopted child; and any other activities necessary to allow the adoption to proceed. **Sick leave may not be used by adoptive parents who voluntarily choose to be absent from work to bond with an adopted child.**

## APPENDIX B. SAMPLE MEMORANDUM TO ALL EMPLOYEES VOLUNTARY LEAVE TRANSFER PROGRAM

**TO:** All Employees

**FROM:** Director

**SUBJ:** Voluntary Leave Transfer Program

1. The voluntary leave transfer program permits Federal employees to donate annual leave to other Federal employees who are experiencing a medical emergency. For the purpose of this program, a medical emergency is a medical condition of an employee or a family member of the employee that is likely to require the employee's absence from duty for a prolonged period of time and to result in a substantial loss of income to the employee because of the unavailability of paid leave.

2. Any employee who has experienced or is experiencing a medical emergency, as described above, may make a written request to become a participant in the voluntary leave transfer program. The request must contain the following information: (a) name, position title, and grade or pay level of the potential leave recipient; (b) the reasons why transferred leave is needed, including a brief description of the nature, severity, and anticipated duration of the medical emergency, and if it is a recurring one, the approximate frequency of the emergency; and (c) certification from a physician, or other appropriate expert, with regard to the medical emergency. Additional information may be requested to support the application.

3. Completed requests in memorandum form should be forwarded to me through the Human Resources Management Officer. Applicants will be notified within 10 workdays of their eligibility to participate in the program as leave recipients.

4. In order to ensure the privacy of those who wish to participate in the program, employees who are eligible and are approved as leave recipients will have the discretion of determining their own means of informing potential leave donors from within VA. Potential donors from other Federal agencies may be considered in accordance with the regulations governing the program.

5. The donation of leave is entirely voluntary. However, employees may not donate leave to their immediate supervisor(s). There are also minimum requirements and limitations on the amount of leave that can be donated. Employees who are interested in donating annual leave to a specific recipient may contact the Human Resources Management office for additional information.

6. Annual leave donations will be transferred from the accounts of donors to the leave recipient's account. These leave donations will be used for the recipient's current leave charges and to liquidate any advanced leave indebtedness. When the leave recipient's medical emergency no longer meets the criteria of this policy (for example, the employee is able to return to duty), the remaining annual leave in that person's account will be re-credited to donors on a prorated basis in accordance with OPM regulations and VA policy.

7. VA supports the concept of the leave transfer program. However, the decision to apply to become a leave recipient, or to donate leave, is personal and must be made on a completely voluntary basis**.**

(SIGNATURE)

## APPENDIX C. SAMPLE APPLICATION MEMORANDUM VOLUNTARY LEAVE TRANSFER PROGRAM

**DATE:**

**TO:** Director ( )

**THRU:** Human Resources Management Officer ( )

**FROM:** John L. Doe

**SUBJ:** Voluntary Leave Transfer Program

1. I, John L. Doe, Clerk-Typist, GS 312-3, am applying to become a leave recipient under the voluntary leave transfer program.

2. On January 1, 2XXX, I was involved in an automobile accident and suffered multiple injuries. At present I am undergoing therapy for both my wrists and one leg, all of which were broken in the accident. My physician, Dr. John A. Smith, anticipates that I will not be able to return to duty until approximately August 1, 2XXX. Attached is a copy of his medical report which indicates the treatment I have received, current therapy plans, and the prognosis of my case.

3. Due to this accident, I have used all of my accrued annual and sick leave. I have also been granted 30 days of advance sick leave, and I am currently on leave without pay (LWOP).

4. If I am approved for this program, I understand that it will be my responsibility to inform employees who may wish to donate annual leave on my behalf.

5. Thank you for considering this application.

(NAME)

Attachment

## APPENDIX D. SAMPLE MEMORANDUM TO APPROVED LEAVE RECIPIENT VOLUNTARY LEAVE TRANSFER PROGRAM

**DATE:**

**TO:** Name of Applicant

**FROM:** Decision Official

**SUBJ:** Voluntary Leave Transfer Program

1. I am pleased to inform you that you meet the requirements for participation in the voluntary leave transfer program and have been approved as a leave recipient for the period of your medical emergency.

2. At your discretion, you may inform other employees that you have been approved as a leave recipient and they may request the transfer of annual leave to your account to be used in connection with your medical emergency. Leave donations from employees of other Federal agencies may be accepted in some circumstances, in accordance with the regulations governing the program. All donations are voluntary, and the minimum amount of leave that may be transferred from a donor is four hours or, for certain title 38 employees, one day. Employees you supervise may not donate leave to you.

3. Please contact (Human Resources Management Officer or designee) on (Telephone Number) in the near future for additional information about this program and your responsibilities as a leave recipient.

4. We sincerely hope that this program will be of assistance to you during your medical emergency.

(Signature)

cc: Human Resources Management Office
Payroll

## APPENDIX E. SAMPLE MEMORANDUM OF DISAPPROVAL AS LEAVE RECIPIENT/VOLUNTARY LEAVE TRANSFER PROGRAM

**DATE:**

**TO:** Name of Applicant

**FROM:** Decision Official

**SUBJ:** Voluntary Leave Transfer Program

1. We have carefully reviewed your request to become a leave recipient under the voluntary leave transfer program and the circumstances of your request. However, based on our evaluation, you do not meet the criteria established for participation in the program. Specifically, you have not presented evidence that your medical emergency will require that you be absent from duty without available paid leave for a least 24 work hours.* Therefore, we are unable to approve your request.

2. You may contact (Name), (Title of Human Resources Management Official), and (Telephone Number) if you desire additional information related to the program and your application.

(Signature)

***Another example:** The reasons for your absence are not associated with a medical emergency you or a family member are experiencing.

## APPENDIX F. SAMPLE MEMORANDUM FOR RESTORATION OF LEAVE/VOLUNTARY LEAVE TRANSFER PROGRAM

**DATE:**

**TO:** Name of Donor

**FROM:** Human Resources Management Officer

**SUBJ:** Restoration of Transferred Annual Leave

1. You donated annual leave to John Doe to help him during his medical emergency. Mr. Doe's emergency has ended. Five hours of annual leave will be restored to you on November 19, 2XXX.

2. Any transferred annual leave remaining to the credit of a leave recipient when that individual's medical emergency terminates is restored, in accordance with VA Handbook 5011, part III, chapter 2, and to the extent administratively feasible, by transfer to the annual leave accounts of the leave donors who, on the date leave restoration is made, are employed by a Federal agency and subject to chapter 63 of title 5, U.S.C. or VA Handbook 5111, part III, chapter 2, as appropriate. The amount of annual leave to be restored to each leave donor is determined by the fiscal office in accordance with provisions in the above policy.

3. If you retire from Federal service, die, or are otherwise separated from Federal service before the date unused transferred annual leave can be restored, the unused transferred annual leave will not be restored.

4. You may elect to have your portion of the unused-transferred annual leave restored by:

(a) crediting the restored annual leave to your annual leave account in the current leave year;

(b) crediting the restored annual leave to your annual leave account effective as of the first day of the first leave year beginning after the date of election; or

(c) donating such leave in whole or part to another leave recipient.

5. If you elect to donate only part of your restored leave to another leave recipient under paragraph 4(c) above, then you may elect to have the remaining leave credited to your annual leave account under paragraph 4(a) or (b) above.

6. Transferred annual leave restored to your account under paragraph 4(a) or (b) above shall be subject to the limitation imposed by 5 U.S.C. 6304(a) for title 5 employees or by VA Handbook 5011, part III, chapter 3, for title 38 employees under the title 38 leave system at the end of the leave year in which the restored leave is credited to your annual leave account.
7. Please indicate your election on the attached memorandum and return it to the Human Resources Management Office within 2 workdays. Contact (name of human resources official) on (telephone

number) if you would like to know the names of currently approved leave recipients, or have any other questions.

(Name)

Attachment

# APPENDIX G
# ANNUAL LEAVE ACCRUAL RATE TABLE WITH EXAMPLES

| | CATEGORY I | CATEGORY II | CATEGORY III |
|---|---|---|---|
| **Employee Type** | **Accrual Rates for 1 to Less Than 3 Years of Service** | **Accrual Rates for 3 Years to Less Than 15 years of Service** | **Accrual Rates for 15 or More Years of Service** |
| Full-time Title 5 Employees | 4 hours per pay period | 6 hours per pay period | 8 hours (1 day) per pay period |

The examples given below illustrate the application of credit awarded for [prior work experience] or military service. In addition to establishing proof of eligibility there must be proof that the granting of such a credit is necessary in order to achieve an agency mission or performance goal.

EXAMPLE 1
A newly appointed IT Specialist enters Federal service with a total of 4 years of experience in the IT field. According to her resume and information submitted on the Verification Form, she was Acting Help Desk Technician for two of those years. Out of the four years, she is granted 2 years of creditable service because the duties and responsibilities of that position are directly related to those in the new position. The employee is initially placed in Leave Category I and earns 4 hours of annual leave per pay period. Subsequently, upon completion of one additional year, she will advance to Leave Category II and will earn 6 hours per pay period.

***Note:*** *In one year, her prior two years of experience (2 years + 1 year = 3 years) will advance her to Leave Category II.*

EXAMPLE 2
An employee, who has worked as an accountant for "ABC Company," for 12 years, is appointed as an accountant in the Federal Government. Instead of the accountant accruing annual leave at the rate of 4 hours per pay period as a new employee, his 12 years of experience as an accountant will be approved as creditable service, thus allowing him to begin accruing annual leave at a rate of 6 hours per pay period under Leave Category II.

***Note:*** *In three years, his prior 12 years of experience (12 Years + 3 Years = 15 years) will advance him to Leave Category III.*

EXAMPLE 3
A military retiree with an honorable discharge and who served in an active duty, uniformed service for 27 years, has been appointed to the position of Employee Relations Manager. He was an HR Specialist for 10 years and an HR Lead Specialist in Employee Relations for 17 years. The Selecting Official at the facility, where he has applied for the position, has certified that the military retiree has 15 years and 5 months of credible service. He will be placed in leave Category III and will accrue 8 hours of annual leave each pay period.

N*ote: Even though he is newly appointed to Federal Service, the credit he receives for his prior [work experience acquired during his military] service places him in Leave Category III.*

Department of Veterans Affairs

# VERIFICATION OF CREDITABLE SERVICE FOR PRIOR WORK EXPERIENCE OR ACTIVE DUTY UNIFORMED MILITARY SERVICE

**PART I - EMPLOYEE INFORMATION** *(To be completed by Selecting Official)*

**PRIVACY ACT STATEMENT:** Solicitation of this information is authorized by Executive Order, and 5 U.S.C., 6303, "Leave Accrual," and solicitation of the Social Security Number (SSN) is authorized by Executive Order 9397, "Using Social Security Number as Identifier." This information, including the SSN, will be used to verify periods of creditable service in all military service claimed, during campaigns and expeditions or in prior positions. Furnishing this information, including the SSN, is voluntary, but failure to comply may make it difficult or impossible to verify periods of creditable service for which credit for annual leave may be given.

| 1. NAME OF EMPLOYEE *(Include other name(s) service record might be under)* | | 2. SOCIAL SECURITY NUMBER |
|---|---|---|
| RUBY PRATT | | 123-45-6789 |
| 3. JOB TITLE | 4. GRADE | 5. ESTIMATED APPOINTMENT DATE |
| SENIOR IT SPECIALIST | 13 | 11-30-05 |
| 6. NAME OF VA FACILITY | | 7. FACILITY ADDRESS |
| BIG TOWN VAMC | | ANY CITY, NOWHERE 00000 |

8. LIST DUTIES PERFORMED DURING **MILITARY SERVICE** RELATED TO THE NEW POSITION *(Attach form DD214)*

| | FROM | TO | DUTIES | YEARS | MONTHS |
|---|---|---|---|---|---|
| 8A. | 01/01/05 | 10/01/05 | SOFTWARE PROGRAMMING, WEB DESIGN, DESK PUBLISHING, AS | | |
| 8B. | 01/01/05 | 12/30/04 | HELP DESK MANAGER - DATA ANALYSIS, PROCLARITY COORDI | | |
| 8C. | | | | | |

9. LIST DUTIES PERFORMED IN PRIOR POSITIONS RELATED TO THE NEW POSITION.
*(Attach Optional Form (OF) 612 or resume showing dates, duties and responsibilities)*

| | FROM | TO | DUTIES | YEARS | MONTHS |
|---|---|---|---|---|---|
| 9A. | N/A | | | | |
| 9B. | | | | | |
| 9C. | | | | | |

**CERTIFICATION:** I certify that the above information is accurate to the best of my knowledge. I understand that I will lose any credit for prior work experience or active duty uniformed military service if: (1) I fail to complete one full year of continuous service with the Department of Veterans Affairs; (2) I transfer to another agency (at which time a new Service Computation Date (SCD) will be established); or (3) I separate from Federal service. I further understand that I may not receive dual credit for service nor be considered for creditable service using this same period of service once I have completed one full year in this position. However, once I complete one full year of continuous service with the Department of Veterans Affairs, the period of service for which I was granted service credit for my prior work experience or active duty uniformed service work experience becomes permanently creditable for the purpose of determining my annual leave accrual rate for the duration of my Federal career. I further understand that I may not receive dual credit for service nor be considered for creditable service using the same period of service once I have completed one full year in this position.

| 10A. SIGNATURE OF EMPLOYEE | 10B. DATE SIGNED |
|---|---|
| Ruby Pratt | 11/15/05 |

**PART II - JUSTIFICATION/RECOMMENDATION** *(To be completed by Selecting Official)*

1. NAME OF POSITION CRITICAL IN THE ACHIEVEMENT OF VA'S MISSION AND PERFORMANCE GOALS

SENIOR IT SPECIALIST

2. PLEASE IDENTIFY EFFORTS MADE TO RECRUIT FOR THIS POSITION BY RESPONDING TO THE FOLLOWING ITEMS:
*(Include supporting documentation to justify your recommendation)*

| 2A. HOW LONG WAS THIS POSITION VACANT? | 2B. HOW MANY TIMES DID YOU ATTEMPT TO RECRUIT FOR THIS POSITION? | 2C. NUMBER OF CANDIDATES DECLINING JOB OFFER? |
|---|---|---|
| 11 MONTHS | 3 | 5 |

3. IDENTIFY THE PERFORMACE GOAL(S) TO BE ACHIEVED BY THIS POSITION *(Continue on next page if needed)*

TO PROVIDE THE CUTTING EDGE TECHNOLOGICAL EXPERTISE REQUIRED TO DEVELOP AND ANALYZE DATA AS WELL AS PROVIDE THE MUCH NEDED WEB ENHANCEMENTS THAT WILL ENABLE VA TO MEET THE NEEDS OF BOTH INTERNAL AND EXTERNAL CUSTOMERS.

VA FORM DEC 2006 **0869** Adobe Forms Designer 6.0

**CERTIFICATION:** This position is determined to be mission critical and meets the requirements for achieving the Department of Veterans Affairs performance goal(s). Accordingly, I certify that the prior work experience or active military duty serivce, as stated on this form and other supporting documentation submitted, establishes proof of acceptable and qualifying experience for granting this employee the years and months of creditable service, stated below, for the purpose of establishing his/her annual leave accrual rate.

| 4. GRANTED YEARS AND MONTHS OF CREDITABLE SERVICE | | | |
|---|---|---|---|
| 3 YEARS / 9 MONTHS | | | |
| 5A. SIGNATURE OF SELECTING OFFICIAL Samantha Jones | | 5B. TITLE OF SELECTING OFFICIAL DIRECTOR OF INFORMATION TECHNOLOGY | 5C. DATE SIGNED 12/21/2006 |
| 6A. ACTION ☒ APPROVED ☐ DISAPPROVED | 6B. SIGNATURE OF APPROVING OFFICIAL J. R. Jones | 6B. TITLE OF APPROVING OFFICIAL DIRECTOR, VAMC BIG TOWN | 6C. DATE SIGNED 11/11/2005 |

**PART III - HUMAN RESOURCES REGULATORY COMPLIANCE** ***(To be completed by Human Resources Officer)***

**STATEMENT:** The documentation of prior work experience submitted on this form meets the criteria for awarding creditable service and is complaint with the regulations for granting creditable service for annual leave accrual.

| 7A. SIGNATURE OF HUMAN RESOURCES OFFICER | 7B. DATE SIGNED |
|---|---|
| Judy Piscataway | 12/21/2006 |

CONTINUATION SPACE FOR ADDITIONAL INFORMATION

**NOTE:** This form must be approved prior to the employee's entrance on duty date.

## [APPENDIX I. ADMINISTRATIVE LEAVE – ALL OTHER PURPOSES

1. This appendix contains the Governmentwide and/or VA sponsored administrative leave activities for title 5 employees and title 38 employees. Additional activities available to title 38 employees are found in part II, chapter 3, paragraph 9 of this handbook.]

2. **Voting and Registration**.

   a. Approving officials may [grant limited amounts of administrative leave in circumstances in which an employee would otherwise have no reasonable opportunity to vote on a regular election day because of the employee's work schedule. This administrative leave should generally be limited to the hours required to vote and should generally not exceed 3 hours in duration. Administrative leave should be provided only to the extent it does not interfere with VA mission or operations.

   b. Approving officials may provide administrative leave for early voting on a scheduled workday only if it does not interfere with VA mission or operations and if one of the following two conditions is met:

      (1) The employee will be unable to vote on the regular election day because of activities directly related to the agency's mission (such as Temporary Duty travel) and cannot vote by absentee ballot or by early voting on a non-workday; or

      (2) Early voting hours are the same as, or exceed, voting hours on the regular election day.

   c. Administrative leave may **not** be used to cover service by poll workers or poll observers in connection with elections, whether that service is partisan or nonpartisan, paid or unpaid. However, agencies may approve other available workforce flexibilities to allow employees to serve as poll workers or poll observers, such as annual leave, compensatory time off earned via overtime work, compensatory time off for travel, credit hours under a flexible work schedule, adjustment of working hours under a flexible work schedule, or leave without pay.]

3. **Civil Defense and Disaster Activities.**

   a. **Community Programs.** Responsible officials in Central Office and heads of field facilities may, from year to year, authorize employees under their jurisdiction who have volunteered and been selected for civil defense assignments to participate in pre-emergency training programs and test exercises conducted by any State or political subdivision thereof. Employees may be authorized to participate in these programs or exercises

without charge to leave (administrative [leave]) up to a total of 40 hours during a calendar year.

b. **State Guard or Civil Air Patrol.** Employees called by State or local authorities to emergency duty for protective or rescue work in the State Guard (any State military organization which is not a part of the National Guard) or Civil Air Patrol shall be excused by the facility head without charge to leave (administrative [leave]) for such duty for a period of not more than 3 workdays for any one incident. Administration Heads, Assistant Secretaries, Other Key Officials, and Deputy Assistant Secretaries may approve such absence in excess of 3 days but not to exceed 5 workdays Administrative Absence. Absence for this purpose beyond 5 days for one incident must be charged to annual leave or to LWOP if annual leave is not available. (See paragraph 9 for instruction on granting military leave to a National Guardsman who is called to duty for law enforcement.)

4. **Blood Donor Programs.** Employees who give blood without compensation to the Red Cross (or any similar organization), to any VA patient or employee, or to replace blood required by any VA employee, may be excused without charge to leave (Excused Absence for any portion of the day blood is donated which may be desirable for rest and recuperation [during the employee's tour of duty; typically up to 4 hours].

5. **Tardiness or Brief Periods of Absence.** An unavoidable or necessary absence from duty and tardiness of less than 1 hour may be excused when the reasons for the absence appear to be adequate to the leave approving official (administrative [leave]). Alternatively, unexcused absences or tardiness may be handled by either:

   a. Allowing the employee to use earned compensatory time, annual leave, or LWOP to cover the period of the absence. However, in this case, if the leave charge exceeds the period of absence, the employee will not be required to work during the period covered by leave.

   b. Charging the time absent to AWOL.

   ***NOTE**: In order for tardiness to be a basis for disciplinary action, the time lost must be charged to AWOL; any prior tardiness that had been excused, or charged to leave or compensatory time, may be used merely to cite a pattern of tardiness.*

6. **[Early Dismissal Before a Holiday.** Authorized officials may provide a limited amount of administrative leave so that employees with a scheduled workday immediately before a holiday are allowed to end their workday early. This leave may not exceed 2 hours unless specifically approved by the Secretary. This leave must be provided as a general goodwill gesture, not as a performance award.

7. **Physical Fitness Activities.** Authorized agency officials may provide limited amounts of administrative leave for approved physical fitness activities provided they do so consistent with 5 U.S.C. § 7901 and OPM regulations on administrative leave, including consideration of the decision factors in 5 C.F.R. § 630.1403(a)(6).

    a. Approval of administrative leave for physical fitness activities is granted based on agency judgments of mission needs and approving officials may not grant the administrative leave as an entitlement without regard to mission needs.

    b. Time spent in physical fitness activities approved by an authorized agency official for employees with mandatory fitness standards is considered duty time and not administrative leave.

8. **Volunteer Activities.** Authorized agency officials may provide limited amounts of administrative leave for approved volunteer activities, if the authorized agency official determines that the use of leave would satisfy one or more of the four guiding principles in section part III, chapter 2, paragraph 12c(1)(a). Management must balance support for employees' volunteer activities with the need to ensure that employees' work requirements are fulfilled and that VA operations are conducted efficiently and effectively.]

9. **Duty Connected Injury or Illness** (see part III, chapter 3, paragraph 11 regarding Workers' Compensation Programs).

    a. An employee who suffers a duty-connected injury or illness will be excused without charge to leave (Administrative [Leave]) for remainder of the day of injury for any absence during a workday (including local travel time) required for initial examination or outpatient treatment by a United States medical officer, or any duly qualified physician or at any hospital of the employee's choice.

    b. When disability starts, employees having leave credits may elect to use such leave to cover all or any part of the absence. In such cases, compensation for disability will not begin and the time periods specified in OWCP regulations will not begin to run until leave has ceased.

    c. An employee who sustains a disabling job-related traumatic injury may elect continuation of regular pay for a period not to exceed 45 days, instead of using leave credits. In these cases, the employee will be excused without charge to leave for any fraction of a day or shift on the day of the injury with no charge to the 45-day period. This 45-day period starts on the first full calendar day or first full shift when disability begins.

    d. An employee who chooses to take LWOP instead of paid leave while securing examination and treatment as outlined in subparagraph (b) above, may receive OWCP compensation payments for this time if the case meets the criteria for such payment under the OWCP rules and regulations.

10. **Armed Forces Examinations.** Employees will be excused without charge to leave (Administrative Absence), generally not to exceed 1 day, to obtain physical examination to determine fitness for entry on extended active duty or assignment to active duty with the Armed Forces, or to determine qualifications for retention in reserve components provided no military pay is received for the period.

11. **Absence for Congressional Medal of Honor Holders.** When all Congressional Medal of Honor holders are invited, employees who are Medal of Honor holders shall be excused without charge to leave (administrative [leave]) for sufficient time to attend or participate in events such as:

    a. Inaugurations of the President of the United States.

    b. Conventions of the Congressional Medal of Honor Society.

    c. Memorial Day or Veterans Day services.

12. **Change in Facility.**

    a. An employee who is being transferred for the convenience of the Government from one VA facility to another may be excused without charge to leave (Administrative [Leave]) for the time required, not to exceed 2 workdays, to make arrangements for moving. If the employee is authorized absence (Official Duty Status) not to exceed 10 calendar days to make a round trip in an official travel and duty status to find housing at the new location; time required for getting settled at the new location, not to exceed 1 workday, may be granted as excused absence without charge to leave administrative [leave]). Where no advance round trip is made to the new location, the employee may be authorized absence not to exceed 5 workdays with no charge to leave (Administrative [Leave]) to find housing and move into it within one year after the change in facility.

    b. If a VA employee transfers to another Federal agency and that agency authorizes a round trip to find housing, VA will maintain the employee in a duty status during the authorized round trip of absence (See VA Financial Policies and Procedures, Relocation Packages Volume XIV, Chapter 8).

13. **[Workforce Realignment and Restructuring.** Authorized agency officials may use administrative leave to support various workforce realignment initiatives. However, no more than 12 weeks of administrative leave may be used for workforce realigning purposes without a higher threshold jointly approved by the Office of Personnel Management and the Office of Management and Budget. Administrative leave may also be appropriate when management determines that the absence of the employee from the office is in the interest of the agency or of the Government as a whole, such as the period of time between an employee's receipt of notice of involuntary separation (e.g., due to a reduction in force) and the effective date of that separation.]

14. **State or Local Holidays.** If an office is closed on a State or local holiday because it is determined that Federal work may not be properly performed, as provided in part II, chapter 3 of this handbook, absence on such day is not chargeable to leave for any employee of the office. This is so even if such absence occurs within a period of approved leave, or at the beginning or end of approved leave. Such approved time off is considered authorized absence (holiday excused) without charge to leave.

15. [For certain VA-sponsored activities, employees may be excused from duty but not placed on administrative leave. For these activities or events, the employee will remain in an official duty status.

    a. **Civil Defense and Disaster Activities - VA Programs.** Employees required to be absent from their normal duties because of planning, training, or other similar responsibilities in VA's own disaster and civil defense program will be considered to be in an official duty status.

    b. **Taking Examinations.**

        (1) **Civil Service Examinations.** Employees required to take civil service examinations in connection with a pending placement action within VA shall be excused without charge to leave (Official Duty Status) for the time necessary for this purpose. Employees' absence when taking open competitive civil service examinations on their own initiative shall be charged to leave.

        (2) **VA Placement Matters.** Employees required to report for placement interviews or examinations in connection with placement within VA shall be excused without charge to leave (Official Duty Status) for the time involved when such matters are conducted during the employees' regular work hours.

        (3) **Medical Examination and Treatment.** Employees who are examined or treated in VA facilities for illness or minor non-duty-connected injury, or who are ordered for VA employment or civil service medical examinations, vaccinations, X-rays, etc., or who are authorized to participate in any VA or civic health or immunization program, shall be excused without charge to leave (Official Duty Status) for the time necessary to be examined, treated, or vaccinated. This authority to excuse employees for medical examinations or treatment is limited to brief periods, usually not to exceed 1 day (44 Comp. Gen. 333).

    c. **Conferences or Conventions.**

        (1) **Attendance at National Conventions of Service Organizations.** Prior approval of the Secretary, or Deputy Secretary, is required for attendance at National Conventions of Veterans Services Organizations as a representative

of VA. When approved, such absence will be without charge to leave (Official Duty Status).

(2) **Attendance at Meetings.**

(a) Employees may be excused without charge to leave (Official Duty Status) to attend meetings which are concerned with the functions or activities of VA, or which will contribute to improved conduct, supervision, or management of those functions or activities. This will include meetings, conventions (religious retreats in the case of Chaplains) or conferences of recognized professional technical, or administrative organizations and of private organizations if attendance at the meetings will contribute to improved conduct, supervision, or management of the functions or activities of VA. However, representatives of labor organizations may not be granted excused absence for meetings concerning internal labor organization matters.

(b) The opportunity for development afforded by participation in professional, administrative, or technical meetings is a significant factor in creating the kind of working atmosphere which helps to attract and retain competent personnel and improve the work of the agency. Attendance at gatherings of scientists or other professional, technical, or administrative persons is a positive means of facilitating effective communication of ideas and information in areas of significant agency need. Therefore, a scientist, or other professional or administrative, or technical employee of any kind who desires to attend a professional, technical, or administrative meeting is encouraged to request approved absence (Official Duty Status; or Administrative [Leave] if not directly related to specific duties but considered gainful knowledge to achieve VA missions) for this purpose. Such requests will be processed as expeditiously as possible and reasonable efforts will be made to distribute opportunities for attendance widely among those who are eligible.

(c) Excused absence may be approved for attendance at meetings even if travel at Government expense is not approved. However, the period of authorized absence without charge to leave for travel at the employee's expense will not exceed the time for which per diem would have been paid had travel been authorized at Government expense.

d. **Training.**

(1) **General.** Employees may be excused (Official Duty Status) to attend educational lectures, seminars, courses of instruction, etc., in the VA in-service training programs and to participate in other training as defined in 5 U.S.C. § 4104. While absent from the usual worksite for such activity, the employee is considered to be on official duty during normal work hours.

(2) **Representing Labor Organizations.**

(a) Administration Heads, Assistant Secretaries, Other Key Officials and Deputy Assistant Secretaries in Central Office and facility directors may excuse labor organization representatives without charge to leave (Official Duty Status) for training sponsored by labor organizations or the agency where the training will be of benefit to both the agency and the labor organization within the purposes of Title VII of P.L. 95- 454.

(b) Normally attendance at labor organization conventions is considered internal organization business unless there is clear and unequivocal information to the contrary.

(c) Requests for excused absence (Official Duty Status) for training of a labor organization representative should be submitted by the employee in writing together with information supplied by the exclusive organization setting forth the content of training, its duration, a statement of how the training is related to the employee's performance of VA duties and a statement that the training is required (Official Duty Status). In addition, the employee's request should be submitted sufficiently in advance so that the facility can review the matter and make a decision.

e. **Participation in Hearings, Appeals.**

(1) VA employees required or authorized to be present at VA or other Federal hearings or boards will be authorized absence from normal duties without charge to leave (Official Duty Status) for that purpose.

(2) The responsible supervisor, with the advice of the Human Resources Office, will grant the employee, and designated representative if he or she is a VA employee, a reasonable amount of time during regular working hours without charge to leave (Official Duty Status) for preparation of reply to charges, preparation of a case for presentation in a hearing, or preparation of an appeal either with VA or to the designated Federal agency. Generally, 1 day will be sufficient for any of these absences. However, the supervisor will take into consideration the complexity of the case and length of the charges or hearing record in determining what may be considered a reasonable amount of time.

f. **Participation in Civic Organizations.** The absence of facility directors is authorized, and they may authorize other responsible officials to attend periodic meetings of local civic organizations without charge to leave (Official Duty Status).

g. **Rest Periods.**

(1) Heads of VA establishments may authorize brief periods (Official Duty Status) during which employees may interrupt their work to obtain refreshments, or relief from fatigue or constant attending to duty. There may not be more than two such periods during any single 8-hour period and they should normally not exceed 15 minutes each and should be regulated to maintain adequate coverage of essential functions at all times.

(2) Employees may be permitted (Official Duty Status) to partake of refreshments at their desks or other workspace during such periods, except where good taste would indicate otherwise.

h. **Securing Government Equipment, Supplies, Records, or Property.** An employee shall be allowed reasonable time as determined by management without charge to leave (Official Duty Status) during the tour of duty to pick up and return equipment, records, or property of any kind used in the performance of official duties.

i. **Wash-up Time.** Where necessary, employees shall be excused without charge to leave (Official Duty Status) for a reasonable time as determined by management before the end of a tour of duty to wash up.

j. **Change of Uniforms.** An employee who is required to wear a uniform and who is not permitted to wear it home, shall be excused without charge to leave (Official Duty Status) for a reasonable time as determined by management after the beginning of a tour of duty to change to a uniform and before the end of a tour of duty to change to street clothes. In those cases where administrative necessity requires the changing into and out of uniforms outside the employee's tour of duty, compensation under the overtime pay regulations will be provided when appropriate. (See part II, chapter 3, paragraph 2 of this handbook).

k. **Parades, Ceremonies and Civic Activities.** Employees may be excused (Official Duty Status) to attend officially authorized parades and ceremonies, or civic activities consistent with the prevailing practice among all Federal agencies in the local area. Employees in a leave status immediately prior to or following such a period will be charged leave for the entire period.

l. **Federal Wage System Operations.** All members of local wage survey committees, while performing committee duties, and all data collectors, while performing duties connected with the data collection function, are to be considered on official assignment to the interagency function, not on leave.

## [APPENDIX J. ADMINISTRATIVE LEAVE BY LAW, REGULATION, OR PRESIDENTIAL DIRECTIVE]

1. Certain laws, regulations, and Presidential Directives grant use of paid time off for specific purposes. The following is a list of the most common uses of paid time off due to a specific law, regulation, or Presidential Directive. This is not an exhaustive list.

2. **Meetings with Labor Organizations and Other Groups.** Employees representing labor organizations may be excused [Official Duty Status – coded Union Official Time] in accordance with the provisions of Title VII of P.L. 95-454 [and the applicable contractual bargaining agreement]. See 5 U.S.C. § 7131 regarding official time.

3. **Leave For Military Funerals.**

   a. **Participation in Military Funerals.** Employees who are Veterans of any war, campaign, or expedition (for which a campaign badge has been authorized) or members of honor or ceremonial groups of organizations of such Veterans may be excused from duty without loss of pay or deduction from their annual leave (Administrative [Leave]), for such time as may be necessary, but not in excess of 4 hours in any one day, to enable them to participate as active pallbearers or as members of firing squads or guards of honor in funeral ceremonies for members of the Armed Forces of the United States whose remains are returned from abroad for final interment in the United States. Where a national cemetery is on or adjacent to VA grounds, employees may be excused without charge to leave to participate in any military funeral.

   b. **Funeral Leave for Veterans Participating in a Funeral Ceremony.** A veteran of a war, or of a campaign or expedition for which a campaign badge has been authorized, or a member of an honor or ceremonial group of an organization of those veterans, may be excused from duty without loss of pay or charge to leave for up to 4 hours of excused absence to serve as a pallbearer, member of a firing squad, or guard of honor in a funeral ceremony for a member of the Armed Forces whose remains are returned from abroad. (See 5 U.S.C. § 6321)

   c. **[Funeral Leave for Combat-Related Death of an Immediate Relative.** An employee is entitled to up to three workdays of funeral leave to make arrangements for or to attend the funeral of an immediate relative who died as a result of wounds, disease, or injury incurred while serving as a member of the Armed Forces in a combat zone. If the employee provides satisfactory reasons, the 3 workdays do not need to be consecutive. (See 5 U.S.C. § 6326 and 5 C.F.R. 630, subpart H for additional guidance).

4. **Return to Civilian Employment After Active-Duty Military Service in Support of the Overseas Contingency Operations.** Federal civilian employees who are called

to active duty in support of the Overseas Contingency Operations (OCO) (formerly the Global War on Terrorism) and subsequent OCO are entitled to 5 days of excused absence upon their return from active duty (pro-rated for part-time employees and employees on uncommon tours of duty). (See CPM 2008-21; CPM 2008-12; CPM 2003-14).

a. An employee may be granted 5 days of excused absence only after he or she returns from at least 42 consecutive days of active military service in connection with the continuing OCO.

b. **Multiple Deployments.** For subsequent periods of active duty in support of the OCO, management may not grant more than 5 days of excused absence within a 12-month period. The 12-month period begins on the first day of excused absence and ends 365 days later. An employee called to active duty on multiple occasions is therefore entitled to receive 5 days of excused absence as long as the service meets the 42 consecutive days standard and the employee has not received 5 days of excused absence during the previous 365 days.

c. The 5 days of excused absence must be granted as soon as an eligible employee reports back for Federal civilian duty or notifies the agency of his or her intent to return to civilian duty, except in the following situations:

(1) If the employee received 5 days of excused absence following a period of active duty but was not granted the 5 days of administrative leave for a second or subsequent period of active duty, he or she may take the 5 days of administrative leave at mutually agreeable time.

(2) If, for any other reason, the employee was not granted the 5 days of administrative leave upon return, he or she should be granted the 5 days of at a time mutually agreeable to the employee and the agency.

(3) Additionally, the 5 days of excused absence must be used for a continuous period immediately upon return. The days may not be “stockpiled” for use at a later date. The commencement of the 5 days of excused absence represents a return to Federal civilian employment (i.e., to pay and duty status), and the employee is obligated to report for work at the end of the 5-day period.

5. **Geographic Relocation of Military Spouses.** Management may provide up to 5 days of administrative leave to employees accompanying a spouse who is a member of a military service during a geographic relocation occurring as directed by the service member’s orders. (See E.O. 14100 and OPM’s memorandum) Management is encouraged to provide administrative leave in this scenario).

6. **Presidential Directives.** An executive order, Presidential memorandum, or official written statement by the President in which the President specifically directs agency

heads to provide employees with a paid excused absence under a specified set of conditions.]

**[Appendix K - Investigative Leave and Notice Leave – Required Determinations**

1. **Baseline Factors.** As identified in part III, chapter 2, paragraph 12e(9), management may place an employee on investigative leave or notice leave only after considering the following baseline factors:

   a. The nature and severity of the employee's exhibited or alleged behavior;

   b. The nature of the agency's or employee's work and the ability of the agency to accomplish its mission; and

   c. Other impacts of the employee's continued presence in the workplace that may be detrimental to legitimate Government interests, including whether the employee poses an unacceptable risk to—

      (1) The life, safety, or health of employees, contractors, vendors or visitors to a Federal facility;

      (2) The Government's physical assets or information systems;

      (3) Personal property;

      (4) Records, including classified, privileged, proprietary, financial or medical records; or

      (5) The privacy of the individuals whose data the Government holds in its systems.

2. **Written Determination.** Management may place an employee on investigative leave or notice leave only if management has made a written determination documenting that they have—

   a. Determined, after consideration of the baseline factors (above), that the continued presence of the employee in the workplace during an investigation of the employee or while the employee is in a notice period, as applicable, may—

      (1) Pose a threat to the employee or others;

      (2) Result in the destruction of evidence relevant to an investigation;

      (3) Result in loss of or damage to Government property; or

      (4) Otherwise jeopardize legitimate Government interests, including maintaining a safe environment for Veterans and employees, that is conducive to meeting VA's mission. For senior leaders, legitimate Government interests include creating and maintaining a culture of accountability; and

   b. Considered the following options (or a combination thereof):

(1) Keeping the employee in a duty status by assigning the employee to duties in which the employee no longer poses a threat, as described in a, above;

(2) Proposing an indefinite suspension, in accordance with VA Handbook 5021;

(3) Allowing the employee to voluntarily take leave (paid or unpaid) or paid time off, as appropriate under the rules governing each category of leave or paid time off;

(4) Carrying the employee in absent without leave status, if the employee is absent from duty without approval; and

(5) For an employee subject to a notice period, curtailing the notice period if there is reasonable cause to believe the employee has committed a crime for which a sentence of imprisonment may be imposed, consistent with 5 C.F.R. 752.404(d)(1); and

c. Determined that none of the options in b, above, are appropriate.]