

Waiver of Notice of Proposed Rule Making and Delayed Effective Date

Pursuant to 5 U.S.C. 553(b)(3)(B), I find that good cause exists for waiving the general notice of proposed rulemaking. In response to a potential pandemic influenza event, the President recently issued the Federal Government's Implementation Plan for the National Strategy for Pandemic Influenza. This proposal has been fashioned in furtherance of that plan. In light of the imminence of the potential threat, providing an advance notice and comment period, before these regulations become effective, would be both impracticable and against the public interest. Accordingly, a waiver of the requirements for proposed rulemaking is justified under these circumstances.

E.O. 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with E.O. 12866.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they will apply only to Federal agencies and employees.

List of Subjects in 5 CFR 531 and 550

Administrative practice and procedure; Claims; Government employees; Reporting and recordkeeping requirements; Wages.

Office of Personnel Management.

Linda M. Springer,
Director.

Accordingly, OPM is amending parts 531 and 550 of title 5 of the Code of Federal Regulations as follows:

PART 531—PAY UNDER THE GENERAL SCHEDULE

1. The authority citation for part 531 continues to read as follows:

Authority: 5 U.S.C. 5115, 5307, and 5338; sec. 4 of Public Law 103-89, 107 Stat. 981; and E.O. 12748, 56 FR 4521, 3 CFR, 1991 Comp., p. 316; Subpart B also issued under 5 U.S.C. 5303(g), 5305, 5333, 5334(a) and (b), and 7701(b)(2); Subpart D also issued under 5 U.S.C. 5335(g) and 7701(b)(2); Subpart E also issued under 5 U.S.C. 5336; Subpart F also issued under 5 U.S.C. 5304, 5305, and 5338; and E.O. 12883, 58 FR 63281, 3 CFR, 1993 Comp., p. 682 and E.O. 13106, 63 FR 68151, 3 CFR, 1998 Comp., p. 224.

Subpart F—Locality-Based Comparability Payments

2. In § 531.605, revise paragraph (d)(3) to read as follows:

§ 531.605 Determining an employee's official worksite.

* * * * *

(d) * * *
(3) An authorized agency official may make a temporary exception to the requirements in paragraphs (d)(1) and (2) of this section in appropriate situations of a temporary nature, such as the following:

- (i) An employee is recovering from an injury or medical condition; or
 - (ii) An employee is affected by an emergency situation, which temporarily prevents the employee from commuting to his or her regular official worksite.
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PART 550—PAY ADMINISTRATION (GENERAL)

3. The authority citation for subpart D of part 550 continues to read as follows:

Authority: 5 U.S.C. 5527; E.O. 10982, 3 CFR parts 1959-1963, p. 502.

4. In subpart D, add § 550.409 to read as follows:

§ 550.409 Evacuation payments during a pandemic health crisis.

(a) An agency may order one or more employees to evacuate from their worksite and perform work from their home (or an alternative location mutually agreeable to the agency and the employee) during a pandemic health crisis. Under these circumstances, an agency may designate the employee's home (or an alternative location mutually agreeable to the agency and the employee) as a safe haven and provide evacuation payments to the employee. An agency must compute the evacuation payments and determine the time period during which such payments will be made in accordance with § 550.404. An evacuated employee at a safe haven may be assigned to perform any work considered necessary or required to be performed during the period of evacuation without regard to his or her grade, level, or title. The employee must have the necessary knowledge and skills to perform the assigned work. Failure or refusal to perform assigned work may be a basis for terminating evacuation payments, as well as disciplinary action.

(b) The head of an agency, in his or her sole and exclusive discretion, may grant special allowance payments, based upon a case-by-case analysis, to offset the direct added expenses incidental to performing work from home (or an alternative location mutually agreeable to the agency and the employee) during a pandemic health crisis.

(c) An agency may terminate evacuation payments under the

conditions listed in § 550.407. An agency must make any necessary adjustments in pay consistent with § 550.408 after the evacuation is terminated.

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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 630

RIN 3206-AK61

Absence and Leave

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing final regulations concerning the use of sick leave. The final rules remove the requirement for an employee to maintain a minimum sick leave balance in his or her sick leave account in order to use the maximum amount of sick leave provided for family care and bereavement purposes. These regulations are being issued as part of OPM's effort to standardize leave policies and provide agencies with guidance on leave programs available to assist employees in the event of a pandemic health crisis.

DATES: *Effective date:* These regulations are effective on September 18, 2006.

Applicability date: These regulations apply on the first day of the first applicable pay period beginning on or after September 18, 2006.

FOR FURTHER INFORMATION CONTACT: Sharon Dobson by telephone at (202) 606-2858; by fax at (202) 606-0824; or by e-mail at pay-performance-policy@opm.gov.

SUPPLEMENTARY INFORMATION: The Office of Personnel Management (OPM) is issuing final regulations to revise the rules concerning the use of sick leave to provide care for a family member, make arrangements necessitated by the death of a family member, or attend the funeral of a family member. The revised regulations will assist employees in balancing their work and family responsibilities and needs. These final regulations will be issued to standardize and simplify leave programs and policies to support consolidating agency human resources and payroll systems, and to continue OPM's efforts to provide agencies with timely guidance on leave programs and policies available to employees in the event of a pandemic health crisis.

On January 5, 2005, OPM issued a comprehensive package of proposed regulations to revise the rules concerning the determination of official duty station for location-based pay entitlements, compensatory time off for religious observances, hours of work and alternative work schedules, and absence and leave (70 FR 1068). The proposed regulations were issued to aid and support the standardization of pay and leave policies under the e-Payroll initiative. The proposed regulations are available at http://frwebgate.access.gpo.gov/cgi-bin/getpage.cgi?dbname=2005_register&position=all&page=1068.

In this final rule, OPM addresses the comments received on the proposed rules in 5 CFR part 630, subpart D, concerning the use of sick leave for family care or bereavement purposes. The 60-day comment period ended on March 7, 2005. A total of seven comments were received from five agencies, an employee organization, and an individual. We will address comments received on the proposed changes to other regulations in subsequent issuances.

Sick Leave for Family Care or Bereavement Purposes

Currently, an employee must maintain 80 hours of sick leave in his or her sick leave account to be entitled to use up to 104 hours (13 workdays) of sick leave for general family care or bereavement purposes and up to 480 hours (12 workweeks) of sick leave to care for a family member with a serious health condition. The proposed regulations modified § 630.401 to remove the requirement an employee must maintain 80 hours of sick leave in his or her sick leave account to use more than 40 hours (5 workdays) of his or her sick leave for family care or bereavement purposes. An agency recommended removing the limit altogether on the total amount of sick leave an employee may use for any family care purpose. The agency believes removing this requirement would give employees greater responsibility for managing their sick leave and would greatly simplify the administration and recordkeeping requirements related to sick leave. In addition, the agency stated that it is difficult for managers to make a distinction between sick leave for general family care or bereavement purposes and sick leave to provide care for a family member with a serious health condition.

OPM believes an annual limit of 104 hours (13 workdays) of sick leave for general family care or bereavement

purposes and 480 hours (12 workweeks) of sick leave to provide care for a family member with a serious health condition is an ample amount of time for most employees to give care and attendance to family members for illness or injury when viewed in the context of other available options and entitlements. The entitlement to use sick leave for general family care or bereavement purposes and/or to provide care for a family member with a serious health condition, in conjunction with a generous annual leave system, including advance annual leave; the leave transfer and leave bank programs; flexible work schedules; telework; unpaid leave under the Family and Medical Leave Act (FMLA); compensatory time off; and compensatory time off for travel will further assist the vast majority of employees to meet their sickness-related family care needs.

An agency and an individual commented that by removing the requirement for an employee to maintain a minimum sick leave balance to use more than 40 hours of sick leave for family care purposes is contrary to the law at 5 U.S.C. 6307(d)(3). This is incorrect. The provisions of the Federal Employees Family Friendly Leave Act (Pub. L. 103-388, October 22, 1994) expired on December 21, 1997. The Federal Employees Family Friendly Leave Act amended the law to provide for a 3-year trial period to expand the purposes for which sick leave may be used by an employee, to include family care and bereavement. Under 5 U.S.C. 6311, OPM has been granted authority to prescribe regulations necessary for the administration of annual and sick leave. (See the memorandum to Directors of Personnel, CPM 97-13, on the "Use of Sick Leave for Family Care or Bereavement Purposes" at http://www.opm.gov/flsa/oca/compmemo/1997_1996/cpm97-13.asp.) Thus, OPM used its permanent regulatory authority to issue regulations to permit an employee to use sick leave to (1) care for a family member who is incapacitated as a result of physical or mental illness, injury, pregnancy, or childbirth; (2) assist a family member who receives medical, dental, or optical examination or treatment; (3) make arrangements for or attend the funeral of a family member; or (4) care for a family member with a serious health condition.

An agency was concerned that removing the 80-hour sick leave balance requirement may result in more employees depleting their sick leave accounts and resorting to requesting advance leave or donated leave under the voluntary leave transfer and leave bank programs. The agency believes the

requirement to maintain a minimum sick leave balance of 80 hours reduces the number of employee requests for advance leave and donated leave and the costs associated with administering those programs. We have not made this change. Employees continue to be responsible for managing their use of sick leave to ensure they retain enough sick leave for both personal and family needs. An employee would continue to be limited to 13 days of sick leave each leave year for general family care or bereavement purposes and a maximum of 12 weeks of sick leave each leave year to care for a family member with a serious health condition.

An agency recommended the final regulations include information on the amount of sick leave an agency may advance to an employee for family care or bereavement purposes or to provide care for a family member with a serious health condition. We agree and have added § 630.401(f) to clarify an agency may advance a maximum of 30 days of sick leave when required by the exigencies of the situation for a serious disability or ailment of the employee or a family member or for purposes related to the adoption of a child.

We also proposed amending § 630.403(b) to establish a Governmentwide policy on the time limit for the receipt of medical documentation supporting an employee's need for sick leave. We proposed this change to ensure all employees are treated equitably and to aid in establishing standardized Governmentwide pay and leave policies. The proposed regulations at § 630.403(b) would require an employee to provide administratively acceptable evidence as to the reason for his or her use of sick leave. The employee must provide such evidence no later than 15 calendar days after the date his or her agency requests documentation. An agency and an employee organization believed imposing a stringent time limitation of 15 calendar days would not be fair for employees facing extenuating circumstances, such as an employee who may not be able to obtain medical certification because of the remoteness of his or her location. We agree and have revised § 630.403(b) to require an employee to provide administratively acceptable evidence, in accordance with the agency's policy, no later than 15 calendar days after the date the agency requests such documentation. If it is not practicable to provide the requested certification, despite the employee's diligent good faith efforts, the employee must provide such certification within a reasonable period of time, but no later than 30

calendar days. This requirement is consistent with the medical certification requirements under the Family and Medical Leave Act (FMLA) provided in the regulations at 5 CFR Part 630, Subpart L.

An agency and an individual commented that providing 15 calendar days for an employee to present medical certification may conflict with the terms of a more restrictive leave policy imposed upon an individual by an agency (often referred to as "leave restriction"). This requirement is consistent with the medical certification requirements for using leave without pay under the FMLA. Because many employees may choose to substitute their sick leave for leave without pay under the FMLA, we believe it is necessary to impose the same requirement for using sick leave that is required under the FMLA—i.e., an employee must provide administratively acceptable evidence no later than 15 days after the agency requests documentation.

Miscellaneous

In this final rule, we are removing the reporting requirements in § 630.408 to reduce the amount of information agencies must maintain on the use of sick leave for family care purposes. However, agencies are required to maintain records sufficient to ensure employees do not exceed their entitlement to sick leave for family care purposes. We are also deleting the procedures in former § 630.409 for the retroactive substitution of sick leave for annual leave used for adoption-related purposes between September 1991 and September 1994, because the time limit for retroactive substitution under this section expired on September 30, 1996.

E.O. 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with E.O. 12866.

Regulatory Flexibility Act

I certify these regulations would not have a significant economic impact on a substantial number of small entities because they would apply only to Federal agencies and employees.

List of Subjects in 5 CFR Part 630

Government employees.

U.S. Office of Personnel Management.

Linda M. Springer,
Director.

Accordingly OPM is amending 5 CFR part 630, to read as follows:

PART 630—ABSENCE AND LEAVE

■ 1. The authority citation for part 630 continues to read as follows:

Authority: 5 U.S.C. 6311; 630.205 also issued under Pub. L. 108-411, 118 Stat 2312; 630.301 also issued under Pub. L. 103-356, 108 Stat. 3410 and Pub. L. 108-411, 118 Stat 2312; 630.303 also issued under 5 U.S.C. 6133(a); 630.306 and 630.308 also issued under 5 U.S.C. 6304(d)(3), Pub. L. 102-484, 106 Stat. 2722, and Pub. L. 103-337, 108 Stat. 2663; subpart D also issued under Pub. L. 103-329, 108 Stat. 2423; 630.501 and subpart F also issued under E.O. 11228, 30 FR 7739, 3 CFR, 1974 Comp., p. 163; subpart G also issued under 5 U.S.C. 6305; subpart H also issued under 5 U.S.C. 6326; subpart I also issued under 5 U.S.C. 6332, Pub. L. 100-566, 102 Stat. 2834, and Pub. L. 103-103, 107 Stat. 1022; subpart J also issued under 5 U.S.C. 6362, Pub. L. 100-566, and Pub. L. 103-103; subpart K also issued under Pub. L. 105-18, 111 Stat. 158; subpart L also issued under 5 U.S.C. 6387 and Pub. L. 103-3, 107 Stat. 23; and subpart M also issued under 5 U.S.C. 6391 and Pub. L. 102-25, 105 Stat. 92.

■ 2. Part 630, subpart D is revised to read as follows:

Subpart D—Sick Leave

Sec.

- 630.401 Granting sick leave.
- 630.402 Requesting sick leave.
- 630.403 Supporting evidence for the use of sick leave.
- 630.404 Use of sick leave during annual leave.
- 630.405 Sick leave used in the computation of an annuity.
- 630.406 Records on the use of sick leave.

Subpart D—Sick Leave

§ 630.401 Granting sick leave.

(a) Subject to paragraphs (b) through (e) of this section, an agency must grant sick leave to an employee when he or she—

- (1) Receives medical, dental, or optical examination or treatment;
- (2) Is incapacitated for the performance of his or her duties by physical or mental illness, injury, pregnancy, or childbirth;
- (3)(i) Provides care for a family member who is incapacitated by a medical or mental condition or attends to a family member receiving medical, dental, or optical examination or treatment; or
- (ii) Provides care for a family member with a serious health condition;
- (4) Makes arrangements necessitated by the death of a family member or attends the funeral of a family member;
- (5) Would, as determined by the health authorities having jurisdiction or by a health care provider, jeopardize the health of others by his or her presence on the job because of exposure to a communicable disease; or

(6) Must be absent from duty for purposes relating to his or her adoption of a child, including appointments with adoption agencies, social workers, and attorneys; court proceedings; required travel; and any other activities necessary to allow the adoption to proceed.

(b) The amount of sick leave granted to an employee during any leave year for the purposes described in paragraphs (a)(3)(i) and (4) of this section may not exceed a total of 104 hours (or, for a part-time employee or an employee with an uncommon tour of duty, the number of hours of sick leave he or she normally accrues during a leave year).

(c) The amount of sick leave granted to an employee during any leave year for the purposes described in paragraph (a)(3)(ii) of this section may not exceed a total of 480 hours (or, for a part-time employee or an employee with an uncommon tour of duty, an amount of sick leave equal to 12 times the average number of hours in his or her scheduled tour of duty each week), subject to the limitation found in paragraph (d) of this section.

(d) If, at the time an employee uses sick leave to care for a family member with a serious health condition under paragraph (c) of this section, he or she has used any portion of the sick leave authorized under paragraph (b) of this section during that leave year, the agency must subtract that amount from the maximum number of hours authorized under paragraph (c) of this section to determine the total amount of sick leave the employee may use during the remainder of the leave year to care for a family member with a serious health condition. If an employee has previously used the maximum amount of sick leave permitted under paragraph (c) of this section in a leave year, he or she is not entitled to use additional sick leave under paragraph (b) of this section.

(e) 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 in paragraphs (a)(3) and (4) of this section must be recalculated based on the new tour of duty.

(f) An agency may advance a maximum of 30 days of sick leave to a full-time employee at the beginning of a leave year or at any time thereafter when required by the exigencies of the situation for a serious disability or ailment of the employee or a family member or for purposes relating to the adoption of a child. Thirty days is the maximum amount of advance sick leave an employee may have to his or her

credit at any one time. For a part-time employee (or an employee on an uncommon tour of duty), the maximum amount of sick leave an agency may advance must be prorated according to the number of hours in the employee's regularly scheduled administrative workweek.

§ 630.402 Requesting sick leave.

An employee must file an application—written, oral, or electronic, as required by the agency—for sick leave within such time limits as the agency may require. The employee must request advance approval for sick leave for the purpose of receiving medical, dental, or optical examination or treatment and, to the extent possible, for the purposes described in § 630.401(a)(3), (4), and (6).

§ 630.403 Supporting evidence for the use of sick leave.

(a) An agency may grant sick leave only when the need for sick leave is supported by administratively acceptable evidence. An agency may consider an employee's self-certification as to the reason for his or her absence as administratively acceptable evidence, regardless of the duration of the absence. An agency may also require a medical certificate or other administratively acceptable evidence as to the reason for an absence for any of the purposes described in § 630.401(a) for an absence in excess of 3 workdays,

or for a lesser period when the agency determines it is necessary.

(b) An employee must provide administratively acceptable evidence or medical certification for a request for sick leave no later than 15 calendar days after the date the agency requests such medical certification. If it is not practicable under the particular circumstances to provide the requested evidence or medical certification within 15 calendar days after the date requested by the agency despite the employee's diligent, good faith efforts, the employee must provide the evidence or medical certification within a reasonable period of time under the circumstances involved, but no later than 30 calendar days after the date the agency requests such documentation. An employee who does not provide the required evidence or medical certification within the specified time period is not entitled to sick leave.

(c) An agency may require an employee requesting sick leave to care for a family member under § 630.401(a)(3)(ii) to provide an additional written statement from the health care provider concerning the family member's need for psychological comfort and/or physical care. The statement must certify that—

- (1) The family member requires psychological comfort and/or physical care;
- (2) The family member would benefit from the employee's care or presence; and

(3) The employee is needed to care for the family member for a specified period of time.

§ 630.404 Use of sick leave during annual leave.

Subject to § 630.401(b) through (e), an agency may grant sick leave to an employee during a period of annual leave for any of the purposes described in § 630.401(a).

§ 630.405 Sick leave used in the computation of an annuity.

Sick leave used in the computation of an annuity is charged against an employee's sick leave account and may not thereafter be used, transferred, or recredited. All sick leave to the credit of an employee as of the date of his or her retirement (or death) and reported to OPM for credit towards the calculation of an annuity is considered used.

§ 630.406 Records on the use of sick leave.

An agency must maintain records of the amount of sick leave used by an employee for family care purposes and to make arrangements for or attend the funeral of a family member under § 630.401(a)(3) and (4). The records must be sufficient to ensure that an employee does not exceed the limitations in § 630.401(b) and (c).

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