




The Director

UNITED STATES OFFICE OF PERSONNEL MANAGEMENT
Washington, DC 20415

SEP 10 2010

MEMORANDUM FOR CHIEF HUMAN CAPITAL OFFICERS

FROM: JOHN BERRY
DIRECTOR 

Subject: Extension of 24-Hour LWOP Family Support Policy to Same-Sex Domestic Partners of Federal Employees

In his June 2, 2010, memorandum, President Obama directed Federal agencies to take action immediately to extend certain benefits to same-sex domestic partners of Federal employees and, where applicable, to the children of same-sex domestic partners of Federal employees, to the maximum extent permitted by law. See <http://www.whitehouse.gov/the-press-office/presidential-memorandum-extension-benefits-same-sex-domestic-partners-federal-emplo>. The purpose of this memorandum is to implement section 1(a)(vi) of the President's memorandum to specify that the 24 hours of leave without pay (LWOP) for (i) school and early childhood educational activities; (ii) routine family medical purposes; and (iii) elderly relatives' health or care needs may be used to meet the needs of an employee's same-sex domestic partner or the partner's children.

The 24-hour LWOP policy was established by President Clinton in 1997 to encourage Federal agencies to make 24 hours of unpaid leave available to Federal employees for these three family support purposes as an interim measure while pursuing legislation to amend the Family and Medical Leave Act (FMLA). Although FMLA was never amended for these purposes, President Obama continues to support this LWOP policy with a current emphasis to extend coverage to Federal employees with same-sex domestic partners.

Updated 24-Hour LWOP Family Support Policy

To implement President Obama's directive, Federal agencies should take appropriate action to permit Federal employees with same-sex domestic partners to use 24 hours of LWOP in a leave year for the following reasons:

- (1) **School and Early Childhood Educational Activities.** Federal agencies should allow employees to participate in school activities directly related to the educational advancement of a child, including children of an employee's same-sex domestic partner. This includes parent-teacher conferences or meetings with child-care providers, interviewing for a new school or child-care facility, or participating in volunteer activities supporting the child's

educational advancement. "School" refers to an elementary school, secondary school, Head Start program, or a child-care facility.

(2) **Routine Family Medical Purposes.** Federal employees should be permitted to accompany the children, including the children of their same-sex domestic partners to routine medical or dental appointments, such as annual checkups or vaccinations.

(3) **Elderly Relatives' Health or Care Needs.** Federal agencies should allow employees to accompany an elderly relative, including the elderly relative of their same sex domestic partner 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, phones, banking services, and other similar activities.

To support President Obama's directive, each agency should analyze its existing policies and make revisions, as appropriate, to incorporate language that will support Federal employees' with same-sex domestic partners use of up to 24 hours of LWOP each leave year to support the three activities outlined above. In accordance with this directive, the U.S. Office of Personnel Management (OPM) is updating its April 14, 1997, questions and answers (attached) addressing these issues. Also, please see my June 2, 2010, memorandum for a general explanation of the implementation of President Obama's Memorandum Regarding Extension of Benefits to Same-Sex Domestic Partners of Federal Employees. The memorandum is available at <http://www.chcoc.gov/transmittals/TransmittalDetails.aspx?TransmittalID=2982>.

Additional Information

For additional information, agency Chief Human Capital Officers and/or Human Resources Directors should contact their assigned OPM Human Capital Officer. Employees should contact their agency human resources offices for assistance.

Attachment

cc: Human Resources Directors

QUESTIONS AND ANSWERS

24-HOURS OF LWOP FOR FAMILY SUPPORT

Q1. In his memorandum of June 2, 2010, why did President Obama direct the U.S. Office of Personnel Management (OPM) to amend former guidance implementing a 1997 memorandum issued by President Clinton on the expansion of the Family and Medical Leave Act (FMLA)?

A1. President Clinton instructed Federal agencies to make 24 hours of unpaid leave available to Federal employees as an interim measure to broaden family-friendly leave policies while encouraging Congress to pass legislation which would expand FMLA to grant up to 24 hours of leave without pay (LWOP) for three purposes:

- (1) to participate in school activities directly related to the educational advancement of a 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.

Although the former President's recommendation was never enacted into law, President Obama supports the use of LWOP for family support purposes but takes the initiative one step further by directing agencies to extend this policy to same-sex domestic partners of Federal employees.

Q2. How does OPM define a domestic partnership for purposes of the 24-hour LWOP policy for family support?

A2. On June 2, 2010, OPM issued [a memorandum](#) to begin implementation of [President Obama's memorandum](#) by providing a definition of same-sex domestic partner to be used for the benefits identified in President Obama's memorandum. The new definition is as follows:

The term "domestic partnership" is defined as a committed relationship between two adults, of the same sex, in which the partners—

- (1) are each other's sole domestic partner and intend to remain so indefinitely;
- (2) maintain a common residence and intend to continue to do so (or would maintain a common residence but for an assignment abroad or other employment-related, financial, or similar obstacle);
- (3) are at least 18 years of age and mentally competent to consent to contract;
- (4) share responsibility for a significant measure of each other's financial obligations;
- (5) are not married or joined in a civil union to anyone else;

- (6) are not the domestic partner of anyone else;
- (7) are not related in a way that, if they were of opposite sex, would prohibit legal marriage in the U.S. jurisdiction in which they reside;
- (8) are willing to certify, if required by the agency, that they understand that willful falsification of any documentation required to establish that an individual is in a domestic partnership may lead to disciplinary action and the recovery of the cost of benefits received related to such falsification, as well as constitute a criminal violation under *18 U.S.C. 1001*, and that the method for securing such certification, if required, shall be determined by the agency; and
- (9) are willing promptly to disclose, if required by the agency, any dissolution or material change in the status of the domestic partnership.

Q3. Is the 24-hour LWOP family support policy based on an FMLA authority? Does FMLA apply to domestic partners?

A3. No, the Administration's policy is not based on the authority of the FMLA. The 24 hours of LWOP is based on each agency's authority to schedule work and manage leave and absences.

Q4. Did President Obama's memorandum change the existing policies for granting 24 hours of LWOP for the purposes discussed in this memorandum?

A4. No. President Obama's memorandum does not change the policies to grant 24 hours of unpaid leave for the purposes outlined in Q1 & A1. The critical change is to ensure that this flexibility is extended to cover employees with same-sex partners and their families.

Q5. What other leave and work scheduling flexibilities are currently available to employees with same-sex or opposite-sex domestic partners who need time off from work to care for a family member?

A5. With respect to same-sex or opposite-sex domestic partners, OPM's latest regulations concerning the definitions in 5 CFR part 630, subparts B, H, I, J, and K, related to "family member" and "immediate relative" for the use of sick leave, funeral leave, voluntary leave transfer, voluntary leave bank, and emergency leave transfer are available at <http://www.opm.gov/fedregis>.

These final regulations, published on June 15, 2010, implement Section 1 of the [President's June 17, 2009, Memorandum for the Heads of Executive Departments and Agencies on Federal Benefits and Non-Discrimination](#), promote consistent application of policy across the Federal Government, and allow the Federal Government to serve as a model employer.

OPM's regulations modify the definitions of "family member" and "immediate relative" and create new definitions for associated terms. The new and expanded definitions now

cover grandparents and grandchildren, same-sex and opposite-sex domestic partners, stepparents, step children, foster, guardianship, and similar relationships.

Employees have many leave and work scheduling flexibilities to help them care for their family members, including their same-sex or opposite-sex domestic partners or family members of the domestic partner. For example, if an employee needs time off from work to accompany his or her child, or the child of his or her domestic partner, to a doctor's appointment, he or she may use sick leave for family care. If the use of sick leave is not an available option, an employee may request annual leave, leave without pay, credit hours under a flexible work schedule, compensatory time off, or advanced annual or sick leave from his or her agency. If the employee is experiencing a personal or family medical emergency and has exhausted all of his or her available annual and sick leave, he or she may apply to become a leave recipient under the agency's leave transfer and/or leave bank programs. For various leave and work scheduling flexibilities, see our [leave fact sheets](#) and [work schedules fact sheets](#).

Q6. Does the 24-hour LWOP family support policy also apply to opposite-sex domestic partners?

A6. President Obama's memorandum addresses only same-sex domestic partners. However, the authority to grant LWOP to opposite-sex domestic partners is at the discretion of each agency.

Q7. Does the 24-hour LWOP family support policy give employees an entitlement to 24 hours of LWOP?

A7. No. An employee does not have an entitlement to the 24-hours of LWOP. An employee has a right to request LWOP, subject to the right of the supervisor to approve or disapprove. Ultimately, it is the responsibility of each supervisor to balance support for employees' needs for time away from the workplace with the need to ensure that employees' work requirements are fulfilled and that agency operations are conducted efficiently and effectively.

Q8. Can employees use the 24 hours of LWOP for family support purposes on an intermittent basis (e.g., 1 hour or 1 day at a time)?

A8. Yes. An employee may use the 24 hours of LWOP in the same increments as all other leave granted by his or her agency.

Q9. Who is an "elderly relative?"

A9. An elderly relative is elderly person who is related to the employee by blood, marriage, or by virtue of being the elderly relative of an employee's domestic partner. (See Q2 & A2 for the definition of domestic partner for purposes of the 24 hours of LWOP.) OPM encourages agencies to permit employees to use this LWOP to care for an

elderly relative who may require daily care or assistance in making arrangements for housing, meals, telephones, banking services, and other similar activities.

Q10. With regard to use of LWOP to “participate in school activities directly related to the educational advancement of a child,” what “activities” are included? Are activities associated with child-care facilities included?

A10. OPM encourages agencies to permit employees to participate in activities, such as parent-teacher conferences (including meetings with principals, counselors, teaching staff, or child-care providers); school board meetings; tutoring; interviewing for a new school or child-care facility; and school-sponsored activities, such as sports and recreation programs, field trips, class plays, “career day,” or other volunteer activities supporting a child’s educational advancement. “School” refers to an elementary school, secondary school, Head Start program, or a child-care facility.

Q11. Who is an employee’s child?

A11. An employee’s child is a child related by blood, marriage, or adoption; a foster child; or a child of an employee’s domestic partner. (See Q2 & A2, above, for the definition of domestic partner for purposes of the 24 hours of LWOP.)

Q12. Can an agency require medical certification of an employee who requests time off from work under the expanded family LWOP policy to accompany his or her child or an elderly relative to routine medical or dental appointments? Can an agency require evidence if an employee requests leave to participate in school activities or to make arrangements for housing, meals, telephones, banking services, and other similar activities for an elderly relative?

A12. Yes to both questions. Agencies have discretionary authority to require evidence that is administratively acceptable related directly to such appointments, including medical certification, as appropriate, from an employee who requests LWOP under the 24-hour LWOP family support policy.

Q13. Can an employee use 24 hours of LWOP for family support purposes not specified in the President’s memorandum--e.g., to have an estate or yard sale for an elderly relative who is moving to a retirement or nursing home or to a group setting or to care for his or her child or elderly relative when the normal care provider is unavailable?

A13. A supervisor may approve an employee's request to use additional LWOP or annual leave, compensatory time off, or credit hours under flexible work schedules for purposes not specified in the President's policy, such as organizing or holding an estate or yard sale to sell the belongings of an elderly relative or to care for his or her child or elderly relative when the normal child care or elder care provider is sick or otherwise unavailable. There is no ceiling on LWOP beyond the agency's mission needs and own policies. LWOP is granted at the discretion of the agency.

Q14. Is an employee limited to 24 hours of LWOP for family support purposes each year?

A14. No. Although agencies are encouraged to provide up to 24 hours of LWOP each leave year for these purposes, this does not limit or prohibit an employee from requesting and receiving additional leave or other time off for school activities, routine family medical purposes, and elderly relatives' health or care needs. These needs can be met through the use of annual leave, compensatory time off, credit hours under flexible work schedules, or additional LWOP.

Q15. Can an employee use donated annual leave to take time off from work for the purposes outlined in this memorandum?

A15. No. Under the Federal leave sharing program, an employee may donate annual leave to other Federal employees who have a personal or family medical emergency and who have exhausted their own available annual and sick leave. A leave recipient may use donated annual leave only for the purpose of the medical emergency for which the leave recipient was approved. OPM does not believe routine medical or dental appointments are consistent with the purposes for which donated annual leave may be used--i.e., medical emergencies.

Q16. Is an agency required to keep track of how many hours of LWOP are used for these purposes?

A16. OPM does not require agencies to keep records on the amount of LWOP used for these purposes, but an agency may decide to maintain such records.