

**DEPARTMENT OF THE INTERIOR
MINERALS MANAGEMENT SERVICE MANUAL**

TRANSMITTAL SHEET

Release No. 307

SUBJECT: Administrative Series
 Part 370.630 Attendance and Leave
 Chapters 1-9

EXPLANATION OF MATERIAL TRANSMITTED:

These chapters establish Minerals Management Service (MMS) policy concerning the administration of leave and explain applicable regulations.

Director

Remove:

Part 370.630 – Attendance and Leave

Chapter 1 – General Provisions
Chapter 2 – General Provisions for
 Annual and Sick Leave
Chapter 3 – Annual Leave
Chapter 4 – Sick Leave
Chapter 5 – Court Leave
Chapter 6 – Excused Leave
Chapter 7 – Leave Without Pay
Chapter 8 – Family and Medical Leave Act
Chapter 9 – Military Leave

Insert:

Part 370.630 – Attendance and Leave

Chapter 1 – General Provisions
Chapter 2 – General Provisions for
 Annual and Sick Leave
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OPR: Human Resources Officer
Date: October 22, 2008

**Minerals Management Service
Minerals Management Service Manual**

Effective Date: October 22, 2008

Series: Administrative

Part 370.630: Attendance and Leave

Chapter 8: Family and Medical Leave Act

Originating Office: Human Resources Division, Office of Administration and Budget

1. **Authority.** Title II of the Family and Medical Leave Act of 1993 (FMLA) (Public Law 103-3, February 5, 1993); the Federal Employees Family Friendly Leave Act of 1994 (FEFFLA); and the President's Memorandum on Expanded Family and Medical Leave Policies dated April 11, 1997.

2. Entitlement to Leave.

A. Family Medical Leave (FML) provides eligible Federal employees with a total of 12 administrative workweeks of unpaid leave during any 12-month period for:

1. The birth of a child and care of the newborn. (Entitlement to 12 weeks of leave expires 12 months after the date of birth. Employees may begin this leave prior to the birth.)
2. The placement of a child with the employee for adoption or foster care. (Entitlement to 12 weeks of leave expires 12 months after the placement for adoption or foster care. Employees may begin this leave prior to placement.)
3. The care of the employee's spouse, child, or parent with a serious health condition.
4. A serious health condition of the employee that makes the employee unable to perform the essential functions of their position.

An employee is entitled to a total of up to 12 workweeks of unpaid leave during any 12-month period (not necessarily a calendar year or a leave year). The 12-month period begins on the date the employee first takes the leave and continues for 12 months. The employee is not entitled to 12 additional weeks of leave under the FMLA until the previous 12-month period ends and an event or situation occurs that entitles them to another period of such leave. This may include a continuation of a previous situation or circumstance; e.g., a serious health condition.

B. Under the expanded Family and Medical Leave Policies employees may schedule and be granted up to 24 hours of leave without pay each year for the following activities:

(1) School and early childhood educational activities--to allow employees to participate in school activities directly related to the educational advancement of a child. This would include 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. In this memorandum, "school" refers to an elementary school, secondary school, Head Start program, or a child-care facility.

(2) Routine family medical purposes--to allow parents to accompany children to routine medical or dental appointments, such as annual checkups or vaccinations. Although these activities are not currently covered by the FMLA, the FEFFLA does permit employees to use up to 13 days of sick leave each year for such purposes. Agencies should ensure that employees are able to use up to 24 hours of leave without pay each year for these purposes in cases when no additional sick leave is available to employees.

(3) Elderly relatives' health or care needs--to allow employees to accompany an elderly relative 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. Although Federal employees can use unpaid leave or sick leave for certain of these activities under the FMLA or FEFFLA, such as caring for a parent with a serious health condition, agencies should ensure employees can use up to 24 hours of unpaid time off each year for this broader range of activities related to elderly relatives' health or care needs.

3. **Advance Notice.** An employee must provide 30 days advance notice when the need for leave is foreseeable. If the need for leave is not foreseeable; e.g., because of a medical emergency, the employee must provide notice within a reasonable period of time (15 calendar days and no later than 30 calendar days) appropriate to the circumstances involved.

4. **Medical Certification.**

A. A request for FML for an employee's serious health condition, or for care of an eligible family member with a serious health condition, must be supported by written medical certification issued by the health care provider of the employee or the family member, as appropriate. Department of Labor Form WH-380, Certification of Physician or Practitioner, may be used as written certification. This form may be found on the MMS Pipeline at the following link: <http://pipeline.mms.gov/> under forms. An employee shall provide the written medical certification to their supervisor in a timely manner, not less than 30 calendar days before the leave is to begin or in the case of a need for unforeseeable leave, medical certification will be provided within a reasonable period of time appropriate to the circumstances involved. The written medical certification shall include:

(1) The date the serious health condition began.

(2) The probable duration of the serious health condition.

(3) The appropriate medical facts within the knowledge of the health care provider regarding the serious health condition, including a general statement as to the incapacitation, examination, or treatment that may be required by a health care provider.

B. No personal or confidential information is required in the written medical certification other than that required above.

C. An employee's confidentiality must be protected by ensuring that disclosure of the medical certification is made in accordance with the disclosure provisions of the Privacy Act in 5 U.S.C. 552a(b).

D. For FML for the care of an eligible family member with a serious health condition, the following is also required:

(1) A statement from the health care provider that the eligible family member requires psychological comfort and physical care; needs assistance for basic medical, hygienic, nutritional, safety, or transportation needs or in making arrangements to meet such needs; and would benefit from the employee's care or presence.

(2) A statement from the employee on the care they will provide and an estimate of the amount of time needed to care for the eligible family member.

E. For FML for an employee with a serious health condition, a statement is required that the employee is unable to perform the essential functions of their position, based on written information provided by the supervisor on the essential functions of the employee's position, or if not provided, discussion with the employee about the essential functions of their position.

F. In the case of certification for intermittent leave or leave on a reduced leave schedule for planned medical treatment, the dates on which such treatment is expected to be given and the duration of such treatment is required.

G. If the validity of the original medical certification is in question or doubt, the supervisor may at the MMS's expense, require that the employee obtain the opinion of a second health care provider designated by or approved by the MMS. The requirements for medical certification are the same. The health care provider designated or approved by the MMS shall not be employed by the MMS or be under the administrative oversight of the MMS on a regular basis, unless the office is located in an area where access to health care is extremely limited; e.g., a rural area or an overseas location where no more than one or two health care providers practice in the relevant specialty, or the only health care providers available are employed by the MMS.

H. If the second opinion differs from the original medical certification, the supervisor may require, at the MMS's expense, that the employee obtain an opinion from a third health care provider designated or approved jointly by the agency and the employee. The requirements for medical certification remain the same. The opinion of the third health care provider shall be binding on the agency and the employee.

I. In order to remain entitled to FML, an employee or eligible family member must comply with any requirement that they submit to examination (though not treatment) to obtain a second or third medical certification from a health care provider other than the individual's health care provider. If the individual refuses to submit to such examination and the employee fails to

provide an acceptable medical certification to the supervisor in a timely manner, the employee may be denied FML.

J. If an employee is unable to provide the requested medical certification before FML begins, or if the supervisor questions the validity of the original medical certification provided by the employee and the medical treatment requires FML to begin, the supervisor shall grant provisional leave pending final written medical certification.

K. After FML has begun, if the employee fails to provide the requested medical certification, the supervisor may charge the employee as absent without leave or may allow the employee to request that the provisional leave be charged as leave without pay (LWOP) or annual and/or sick leave, as appropriate.

L. The requirement for medical certification for FML may not be extended to other periods of leave; e.g., annual leave, sick leave, and LWOP. Current MMS policies for granting annual leave, sick leave, and LWOP will continue to apply when an employee requests those types of leave.

M. While an employee is on FML, the supervisor may require, at MMS expense, subsequent medical recertification from the health care provider on a periodic basis, but not more often than every 30 calendar days. However, if the employee requests that the original leave period be extended, the circumstances described in the original medical certification have changed significantly, or the supervisor receives information that casts doubt upon the continuing validity of the medical certification, the supervisor may require subsequent medical recertification more frequently than every 30 calendar days.

N. An employee who is in a position that has specific medical standards, physical requirements, or is covered by a medical evaluation program, as provided by 5 CFR part 339, and who has been on FML because of their serious medical condition, is required upon return to duty to provide written medical certification from their health care provider that they are able to resume work. The written medical certification shall be limited to documentation necessary to prove that the employee meets the specific physical qualifications and/or medical standards for their position. In addition, the supervisor must notify the employee of the requirement for written medical certification to return to duty before the employee begins FML. The MMS may pay the expenses for obtaining the written medical certification. An employee's refusal to provide written medical certification upon return to duty is grounds for appropriate disciplinary or adverse action under 5 CFR 339.102(c).

5. Substituting Paid Leave.

A. FML is unpaid leave. However, an employee may elect to substitute the following paid time off for any or all of the 12-week period of FML taken:

(1) Accrued or accumulated annual or sick leave under 5 U.S.C. 63, consistent with current law and regulations governing the granting and use of annual or sick leave.

(2) Advanced annual or sick leave approved under the same terms and conditions that apply to all employees who request advanced annual or sick leave. The supervisor is not required to advance either annual or sick leave.

(3) Leave made available to an employee under the Voluntary Leave Transfer Program consistent with 5 CFR 630.

(4) Compensatory time off.

B. An employee's right to substitute paid time off for any or all of the period of FML may not be denied as long as the request is in accordance with governing regulations. In addition, a supervisor may not require an employee to substitute paid time off for FML. An employee must notify the supervisor in writing of their intent to substitute paid time off for FML prior to the date FML begins; an employee may not retroactively substitute paid time off for FML.

6. **Holidays.** Any holidays authorized under 5 U.S.C. 6103 or by Executive Order and nonworkdays established by Federal statute, Executive Order, or administrative order that occur during the period in which the employee is on family and medical leave will not be counted toward the 12-week entitlement to family and medical leave.

7. **Supervisor Responsibility.** When an employee requests FML, the supervisor must provide information on the employee's rights and obligations under the FMLA. In addition, supervisors are encouraged to provide information on other programs which may assist employees in balancing their need to take FML and their responsibilities in the workplace. Other options may include the Voluntary Leave Transfer Program, flexible and compressed work schedules, and telework.

8. **Invoking Family and Medical Leave.**

A. An employee must invoke their entitlement to FML. An employee may not be required by anyone to invoke entitlement. An employee who meets the criteria for FML and has complied with the requirements and obligations under this issuance may not be denied FML.

B. An employee may invoke entitlement to FML by giving notice of their intention to take FML in person, in writing, by fax, e-mail, telegraph, or other electronic means. The FML may not be subtracted from the employee's 12-week entitlement without confirmation from the employee. In emergency situations, notice from an employee's spouse, domestic partner, family member, or other responsible party would suffice until the employee is able to contact the supervisor to provide additional information.

C. Each employee invoking entitlement to FML must complete a written request (such as the Standard Form 71, Application for Leave) and submit it to their supervisor. If the Standard Form 71 is used, item 5, "Other" should be marked and beside it specified "Family Leave under FMLA" or "Medical Leave under FMLA." The supervisor must note in "Remarks" the beginning and end of the 12-month period during which the 12 administrative workweeks of FML must be used. If another means of invoking entitlement is used, the supervisor must

document the beginning and end of the 12-month period during which the 12 administrative workweeks or FML must be used.

D. The original SF-71 or other written request, medical certification, and any other pertinent documents will be retained with the employee's time and attendance records.

9. Intermittent Leave or Reduced Leave Schedule.

A. Unless the employee has obtained approval from their supervisor, FML for the birth of a child or for placement for adoption or foster care cannot be taken intermittently or on a reduced leave schedule.

B. When medically necessary, the employee may choose to take FML intermittently or on a reduced leave schedule when caring for an eligible family member with a serious health condition or when the employee has a serious health condition. Situations may include those where the individual's health condition is intermittent, as well as where an employee is only needed intermittently because care is also provided by a third party. The employee must consult with the supervisor and make a reasonable effort to schedule treatment so as not to unduly disrupt the operations of the workplace, subject to the approval of the health care provider.

C. The supervisor and employee are encouraged to work together in developing a schedule for treatment that meets both the employee's family or medical needs and the supervisor's need to manage work. The anticipated duration of the intermittent leave or leave under a reduced leave schedule must be clearly understood by both the employee and the supervisor.

D. If the employee taking FML relating to a serious health condition chooses an intermittent or reduced leave schedule that is foreseeable based on planned medical treatment or recovery from a serious health condition, the employee may be placed temporarily in an available alternative position for which the employee is qualified and which can better accommodate recurring periods of leave. The employee must be informed of any major changes in duties and responsibilities that may result from reassignment to an alternative position. Upon returning from FML, the employee shall be entitled to be returned to their permanent position or an equivalent position.

E. For purposes of applying the above paragraph, an alternative position must be in the same commuting area and must provide:

(1) An equivalent grade or pay level, including any applicable interim geographic adjustment; any applicable locality based comparability payment under 5 U.S.C. 5304; or any applicable special salary rate under 5 U.S.C. 5305 or similar provision of law.

(2) The same type of appointment, work schedule, status, and tenure.

(3) The same employment benefits made available to the employee in their previous position; e.g., life insurance, health benefits, retirement coverage, and leave accrual.

F. The supervisor shall determine an available alternative position that has equivalent pay and benefits consistent with Federal laws including the Rehabilitation Act of 1973 (29 U.S.C. 701) and the Pregnancy Discrimination Act of 1978 (42 U.S.C. 2000e).

G. The number of hours of FML taken intermittently or on a reduced leave schedule shall be subtracted, on an hour-for-hour basis, from the total amount of FML available to the employee.

10. Protection of Employment and Benefits.

A. An employee who takes FML is entitled upon return to the same position they held when the leave began. In the exceptional case where returning the employee to the same position upon return to duty from FML would impose extreme hardship on the MMS, the employee is to be returned to an equivalent position with equivalent benefits, pay, status, and other terms and conditions of employment. As described in 9E (1), (2) and (3) above, the equivalent position must be in the same commuting area and must carry or provide at a minimum, the following:

(1) The same or substantially similar duties and responsibilities, which must entail substantially equivalent skill, effort, responsibility, and authority.

(2) The same employment benefits made available to the employee in their previous position, e.g., life insurance, health benefits, retirement coverage, and leave accrual.

(3) The same or equivalent opportunity for a within-rate or similar increase, performance award, incentive award, or other similar discretionary and nondiscretionary payments consistent with applicable laws and regulations.

(4) The same or equivalent opportunity for premium pay consistent with applicable law and regulations under 5 CFR part 550, subpart A, or 5 CFR part 551, subpart E.

(5) The same or equivalent opportunity for training or education benefits consistent with applicable laws and regulations, including any training that an employee may be required to complete to qualify for their previous position.

C. As a result of taking FML, an employee shall not suffer the loss of any employment benefit accrued prior to the date on which the FML began.

D. Unless provided by or under law, a restored employee shall not be entitled to:

(1) The accrual of any employment benefits during any period of leave.

(2) Any right, benefit, or position of employment other than any right, benefit, or position to which the employee would have been entitled had the employee not taken the leave.

E. The same entitlements and limitations in law and regulations that apply to the position, pay, benefits, status, and other terms and conditions of employment of an employee in an LWOP status shall apply to any employee taking unpaid FML, except where different entitlements and

limitations are specifically provided. In short, an employee on unpaid FML will be subject to the requirements under 5 CFR 531.406(b) to extend a waiting period for a within-rate increase for any time in excess of that allowed under that section. In addition, an employee's entitlement to be restored to an equivalent position does not extend to intangible or immeasurable aspects, such as the perceived loss of potential or future promotion opportunities or the increased possibility of being subject to a future reduction in force.

F. An employee is not entitled to be returned to the same or equivalent position under the FMLA if the employee would not otherwise have been employed in that position at the time the employee returns from FML. For example, if the employee was hired only for a defined period or specific project, such as seasonal work, the MMS is not required to return the employee if the period of employment has expired and the MMS would not otherwise have continued to employ the employee.

G. If, for reasons independent of the FMLA, an employee was reassigned to another position while they were on FML, the employee would be entitled to be returned to the position to which the employee was reassigned or an equivalent position.

H. An employee may not return to an equivalent position where written notification has been provided that the equivalent position will be affected by a reduction in force, if the employee's previous position is not affected by a reduction in force.

I. A supervisor may require an employee to report periodically on their status and intention to return to work. Supervisors must take into account all of the relevant facts and circumstances of the employee's situation if such reports are required. If an employee is not fully recovered when they return to work, the employee may request additional leave, including advance annual or sick leave, donated annual leave from the Voluntary Leave Transfer Program, and additional LWOP. In addition, the employee may request a reassignment or demotion to a different position, work schedule, or type of appointment that better suits the employee's personal needs. If the employee has exhausted all leave and reassignment or demotion to another position is not a viable alternative, the supervisor may take further action under 5 CFR part 752 based on the employee's inability to perform the duties of the position. As provided in 5 CFR 752.404(c) (3), a supervisor must provide information concerning disability retirement to an employee who is eligible. The supervisor must also be aware of the affirmative obligations established in 29 CFR 1613.704, which require reasonable accommodation of a qualified employee who is handicapped.

11. Health Benefits.

A. An employee enrolled in a health benefits plan under the Federal Employees Health Benefits Program who is using unpaid FML may continue their health benefits enrollment while in the LWOP status and arrange to pay the appropriate employee contributions. If an employee on FML does not exceed 365 days in a nonpay status, the employee may choose to either pay their contributions on a current basis, or incur a debt and pay the contributions when they return to pay and duty status.

B. Enrollment will terminate at the end of the pay period which includes the 365th day in consecutive LWOP status. The employee will have a 31-day extension of coverage and conversion rights to a private policy.

12. Employee Rights.

A. The policies regarding FML shall be administered equitably and without discrimination. Employees requesting, using, or returning from FML shall not be directly or indirectly intimidated, threatened, or coerced for the purpose of interfering with the exercise of any rights under the FMLA.

B. If an employee believes that management has not fully complied with the rights and requirements provided under the FMLA, or any regulation of the Act, the employee may file a grievance under the MMS administrative grievance procedure.