United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, D.C. 20240

MAR 18 1994

PERSONNEL MANAGEMENT LETTER NO. 94-1 **AMENDMENT 1** (630)

SUBJECT: Family and Medical Leave (FML)

Attached is a complete copy of the Department of the Interior's policy and guidance on Family and Medical Leave. This issuance implements the regulations set forth by the Office of Personnel Management in 5 CFR 630.1201 - 1211.

Due to a printing error, many pages of the subject Personnel Management Letter were not printed and mailed. Therefore, this amended PML supersedes PML 94-1.

Pat Hastings
Acting Director of Personnel

Attachment

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FAMILY AND MEDICAL LEAVE
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FAMILY AND MEDICAL LEAVE
DEPARTMENT OF THE INTERIOR

1. Authority. The Family and Medical Leave Act of 1993, Public Law 103-3, was enacted on February 5, 1993, and was effective August 5, 1993. Title II of the Act provides certain Federal employees with entitlement to a total of 12 administrative workweeks of unpaid leave during any 12-month period for certain family and medical needs. Title I of the Act covers non-Federal employees and certain Federal employees not covered by Title II.

2. Purpose.

A. The purpose of this issuance is to implement the Office of Personnel Management regulations set forth in 5 CFR 630.1201-1211 and 5 CFR 890.502. These regulations implement sections 6381 through 6387 of Title 5, United States Code.

B. This issuance will also implement Title I of the Family and Medical Leave Act of 1993 for certain Federal employees not covered under Title II of the Act.

3. Policy. It is the policy of the Department of the Interior to be supportive of employees who are trying to balance the demands of the workplace with the needs of families. One way to be supportive is by allowing employees to take reasonable amounts of Family and Medical Leave (FML) for medical reasons, for the birth or adoption and care of a child, and for the care of certain family members with serious health conditions. This issuance establishes a clear Departmental policy that employees must be treated equitably and fairly, and with concern and understanding of the stressful situations they face.

4. Coverage.

A. This issuance covers any employee of the Department who meets the definition of "employee" in section 6301(2) of Title 5, United States Code. Those employees who meet the definition and are covered under Title II of the Family and Medical Leave Act will be referenced as Title II employees.

B. This issuance will also cover Federal employees under Title I of the Family and Medical Leave Act. Title I employees will be treated the same as Title II employees, except in meeting the eligibility requirements in Paragraph 5B, and in calculating the 12-week period of FML in Paragraph 7J. Title I employees include:

(1) Part-time employees who do not have an established regular tour of duty during the administrative workweek;

(2) Employees serving under an intermittent appointment or temporary appointment with a time limitation of 1 year or less who also meet the "eligibility" requirement.

5. **Eligibility.**

A. Title II employees must have completed at least 12 months of Federal service in order to be eligible for Family and Medical Leave (FML). Service is not required to be recent or consecutive. Service under temporary or intermittent appointments may be included; however, military service (other than military duty performed while in a civilian position) and service as an employee of the government of the District of Columbia may not be included. Up to 6 months of leave without pay is creditable towards meeting the 12-month service requirement.

B. Title I employees (temporary and intermittent) are eligible for FML if they:

(1) have at least 12 months of Federal service which does not have to be consecutive; and

(2) have at least 1,250 hours of Federal service during the 12-month period immediately preceding the commencement of FML.

6. **Definitions.** Definition of terms used in this issuance follow:

A. ACCRUED LEAVE means 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 means the unused leave remaining to the credit of an employee at the beginning of a leave year.

C. ACTIVITIES OF DAILY LIVING include adaptive activities such as caring appropriately for one's grooming and hygiene, bathing, dressing, eating, cooking, cleaning, shopping, taking public transportation, paying bills, maintaining a residence, using telephones and directories, and using a post office.

D. ADMINISTRATIVE WORKWEEK means a period of 7 consecutive calendar days designated in advance.

E. ADOPTION refers to a legal process in which an individual becomes the legal parent of another's child. The source of an adopted child, e.g., whether from a licensed placement agency or otherwise, is not a factor in determining eligibility for FML.

F. CONTINUING TREATMENT BY A HEALTH CARE PROVIDER means one or more of the following situations where an employee or an employee's spouse, son, daughter, parent, parent-in-law, or other eligible person:

(1) is treated two or more times for an illness or injury by a health care provider;

(2) is treated two or more times for an illness or injury by a health care provider under the orders of, or on referral by, the individual's health care provider or is treated for the illness or injury on at least one occasion which results in a regimen of continuing treatment under the supervision of the health care provider, e.g., a course of medication or therapy. to resolve the health condition; or

(3) is under the continuing supervision of the health care provider, but may not necessarily be actively treated by the health care provider, due to a serious long-term or chronic condition or disability which cannot be cured, e.g., Alzheimer's disease, severe stroke, or terminal stages of a disease.

G. EMPLOYEE means an individual employed by any office or bureau of the Department of the Interior who meets the definition of "employee" in section 6301(2) of Title 5, United States Code. For purposes of this issuance, "Title II employee" means an employee covered by Title II of the Family and Medical Leave Act; "Title I employee" means an employee covered by Title I of the Act.

H. ESSENTIAL FUNCTIONS means the fundamental job duties of the employee's position, as defined in 29 CFR 1630.2.

I. FAMILY AND MEDICAL LEAVE (FML) means the unpaid period of 12 administrative workweeks to which an employee is entitled for certain family and medical needs, as prescribed under sections 6381 through 6387 of Title 5, United States Code.

J. FAMILY MEMBER means an employee's spouse, son, daughter, parent, parent-in-law, an individual who stood or stands in loco parentis, or an individual related by blood or affinity whose close association with the employee is the equivalent of spouse, son, daughter or parent.

K. FOSTER CARE means 24-hour care for children in substitution for, and away from, their parents or guardian. Such placement is made by or with the agreement of the State as a result of a voluntary agreement by the parent or guardian that the child be removed from the home, or pursuant to a judicial determination of the necessity for foster care, and involves agreement between the State and foster family to take the child.

L. HEALTH CARE PROVIDER means:

(1) A licensed Doctor of Medicine or Doctor of Osteopathy or a physician who is serving on active duty in the uniformed services and is designated by the uniformed service to conduct examinations under this issuance;

(2) A person providing health services who is not a medical doctor, but who is certified by a national organization and licensed by a State to provide the service in question; or

(3) A Christian Science practitioner listed with the First Church of Christ, Scientist, in Boston, Massachusetts.

M. INTERMITTENT LEAVE OR LEAVE TAKEN INTERMITTENTLY means leave taken in separate blocks of time rather than for one continuous period of time, and may include leave periods of less than 1 hour to several weeks.

N. LEAVE WITHOUT PAY means an absence from duty in a nonpay status. Leave without pay may be taken only for those hours of duty comprising an employee's basic workweek.

O. PARENT means a biological parent or an individual who stands or stood in loco parentis to an employee when the employee was a child. In loco parentis refers to the situation of an individual who has day-to-day responsibility for the care and financial support of a child or, in the case of an employee, who had such responsibility for the employee when the employee was a child. A biological or legal relationship is not necessary.

P. REDUCED WORK SCHEDULE means a work schedule under which the usual number of hours of regularly scheduled work per workday or workweek of an employee is reduced. The number of hours by which the daily or weekly tour of duty is reduced is counted as leave for the purpose of this issuance.

Q. REGULARLY SCHEDULED work means work that is scheduled in advance of an administrative workweek as required by 5 CFR 610.111.

R. REGULARLY SCHEDULED ADMINISTRATIVE WORKWEEK means, for a full-time employee, the period within an administrative workweek, established in accordance with 5 CFR 610.111, within which the employee is regularly scheduled to work. For a part-time employee, it means the officially prescribed days and hours within an administrative workweek during which the employee is regularly scheduled to work.

S. SERIOUS HEALTH CONDITION means an illness, injury, impairment, or physical or mental condition that involves:

(1) Any period of incapacity or treatment in connection with or consequent to inpatient care, i.e., an overnight stay in a hospital, hospice, or residential medical care facility;

(2) Any period of incapacity requiring absence from work, school, or other regular daily activities of more than 3 calendar days, that also involves continuing treatment by (or under the supervision of) a health care provider; or

(3) Continuing treatment by (or under the supervision of) a health care provider for a chronic or long-term health condition that is incurable or so serious that, if not treated, would likely result in a period of incapacity of more than 3 calendar days; or for prenatal care.

T. SON OR DAUGHTER means a biological, adopted, or foster child; a stepchild; a legal ward; or a child of a person standing in loco parentis who is:

(1) Under 18 years of age; or

(2) 18 years of age or older and incapable of self-care because of a mental or physical disability as defined in 29 CFR 1630.2(q). A son or daughter incapable of self-care requires active assistance or supervision to provide daily self-care in several of the "activities of daily living."

U. SPOUSE means husband or wife, as defined or recognized under State law for purposes of marriage, including common law marriage in States where it is recognized. In addition, this issuance recognizes non-traditional relationships where an individual related by blood or affinity whose close association with the employe is the equivalent of a spousal relationship.

V. TOUR OF DUTY means the hours of a day (a daily tour of duty) and the days of an administrative workweek (a weekly tour of duty) that constitute an employee's regularly scheduled administrative workweek.

7. Entitlement to Leave.

A. An employee is entitled to a total of 12 administrative workweeks of unpaid leave during any 12-month period for one or more of the following reasons:

(1) The birth of a child of the employee and the initial care of such child;

(2) The placement of a child with the employee for adoption or foster care and the initial care of such child;

(3) The care of the following family member who has a serious health condition: spouse, son, daughter, parent or parent-in-law, or any individual related by blood or affinity whose close association with the employee is the equivalent of a close family relationship, such as spouse, son, daughter or parent; or

(4) A serious health condition of the employee that makes the employee unable to perform the essential functions of his or her position.

B. An employee shall take only the amount of Family and Medical Leave (FML) that is necessary to manage the circumstances that prompted the need for the leave.

C. A mother and a father are each entitled to 12 administrative workweeks of unpaid leave for a birth, adoption, or foster care, or for the care of son or daughter with a serious health condition.

D. The entitlement to a total of 12 administrative workweeks of FML may begin prior to or on the actual date of birth or placement for adoption or foster care; and shall expire no later than 12 months after the date of birth or placement unless a serious health condition exists. Leave for a birth or placement must be concluded within 12 months after the date of birth or placement, even if all 12 administrative workweeks have not been taken at that time.

E. For FML for purposes other than birth or adoption, the 12-month period begins on the date an employee first takes FML and continues for 12 months.

F. An employee is not entitled to 12 additional administrative workweeks of leave until the previous 12-month period ends and an event or situation occurs that entitles the employee to another period of FML. A continuation of a previous situation or circumstance may be the basis for 12 additional administrative workweeks of FML after the initial or previous period ends.

G. FML is in addition to annual leave, sick leave, advanced annual or sick leave, other leave without pay, leave made available to an employee under the voluntary leave transfer program, and compensatory time off or credit hours available to an employee. An employee must obtain approval and meet statutory requirements to take additional leave or other periods of paid time off. (An employee may also substitute paid leave for FML. See Paragraph 12.)

H. A total of 12 administrative workweeks will be made available equally for a full-time or part-time employee in direct proportion to the number of hours in the employee's regularly scheduled administrative workweek. The 12 administrative workweeks of FML will be calculated on an hourly basis and will equal 12 times the average number of hours in the employee's regularly scheduled administrative workweek. If the number of hours in an employee's workweek varies from week to week, a weekly average of the hours scheduled over the 12 weeks prior to the date leave commences shall be used as the basis for calculation.

I. If the number of hours in an employee's regularly scheduled administrative workweek is changed during the 12-month period of FML, the employee's entitlement to any remaining FML will be recalculated based on the number of hours in the employee's current regularly scheduled administrative workweek.

J. For Title I employees who do not have a regularly scheduled administrative workweek, the 12 administrative workweeks will be calculated by taking the number of hours worked for the 12-month period used to determine eligibility, divide by 52, and then multiply by 12.

8. **Notice of Leave.**

A. If Family and Medical Leave (FML) is foreseeable based on an expected birth, placement for adoption or foster care, or planned medical treatment, the employee shall provide notice of his or her intention to take FML to his or her immediate supervisor not less than 30 days before the date the leave is to begin. If the date of birth or placement or planned medical treatment requires leave to begin within 30 days, the employee shall provide such notice as is practicable.

B. If FML is foreseeable based on planned medical treatment, the employee shall consult with his or her supervisor and make a reasonable effort to schedule medical treatment so as not to unduly disrupt the operations of the workplace, subject to the approval of the health care provider. For justifiable cause, request may be made that an employee reschedule medical treatment, subject to the approval of the health care provider.

C. If the need for FML is not foreseeable for such reasons as a medical emergency or the unexpected availability of a child for adoption or foster care, and the employee cannot provide 30 days' notice of his or her need for FML, the employee shall provide notice within a reasonable period of time appropriate to the circumstances involved. If necessary, notice may be given by an employee's personal representative, e.g., a family member or other responsible party. If the need for FML is not foreseeable and the employee is unable, due to circumstances beyond his or her control, to provide notice of his or her need for FML, the FML may not be delayed or denied.

D. If the need for leave is foreseeable, and the employee fails to give 30 days' notice with no reasonable excuse for the delay of notification, the employee may be delayed taking FML until 30 days from the date of notice.

E. The requirement for notification for FML may not be extended to other periods of leave, e.g., annual leave, sick leave, and leave without pay. Current bureau policies for granting annual leave, sick leave, and leave without pay will continue to apply when an employee requests those types of leave.

9. Supervisor Responsibility. When an employee requests FML, the supervisor must provide information on the employee's rights and obligations under the Family and Medical Leave Act (See Paragraph 19). In addition, supervisors are encouraged to provide information on other programs which may assist employees in balancing their need to take FML and responsibilities in the workplace. Other options may include the Voluntary Leave Transfer Program, flexible and compressed work schedules, and flexiplace.

10. Invoking Family and Medical Leave.

A. An employee must invoke his or her entitlement to Family and Medical Leave (FML). An employee may not be required by anyone in the agency to invoke entitlement to FML. 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 his or her intention to take FML in person, in writing, or by telephone, FAX, telegraph, or other electronic means. 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 Standard Form 71, Application for Leave, and submit it to his or her supervisor. Under Item 5, the block "Other" should be marked and beside it specify "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.

D. The original SF-71, medical certification, and any other pertinent documents will be retained with the Time and Attendance Records in the field office. A copy of the SF-71 will be forwarded to the servicing personnel officer for retention in a central file for reporting purposes until the FML Program is fully automated.

11. Intermittent Leave or Reduced Leave Schedule.

A. Family and Medical Leave (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 unless the employee has obtained approval from the supervisor.

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 itself 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 his or her permanent position or an equivalent position, as provided for in this issuance under paragraph 14, Protection of Employment and Benefits.

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, special rate of pay for law enforcement officers, or special pay adjustment for law enforcement officers under Sections 302, 403, or 404 of the Federal Employees Pay Comparability Act of 1990 (P. L. 101-509), respectively; 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; and

(3) The same employment benefits made available to the employee in his or her 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.

12. **Substitution of Paid Leave.**

A. Family and Medical Leave (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 Chapter 63 of Title 5, United States Code, 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;

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

(4) Compensatory time off; and

(5) Credit hours accrued under an alternative work schedule.

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 accord 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 of his or her 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.

C. Substituted paid leave counts toward the 12-weeks of FML and is not in addition to it. Sick leave may not be substituted for FML when the employee is caring for a family member with a serious health condition.

13. **Medical Certification.**

A. A request for Family and Medical Leave (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 health care provider of the eligible family member, as appropriate. Department of Labor Form WH-380, Certification of Physician or Practitioner, is included in this issuance as Appendix A, and may be used as written certification. An employee shall provide the written medical certification to the supervisor in a timely manner. The written medical certification shall include:

(1) The date the serious health condition commenced;

(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 he or she will provide and an estimate of the amount of time needed to care for his or her 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 his or her 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 his or her 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. Second Opinions. If the validity of the original medical certification is questioned or doubted, the supervisor may, at agency expense, require that the employee obtain the opinion of a second health care provider designated or approved by the agency. The requirements for medical certification are the same. The health care provider designated or approved by the agency shall not be employed by the agency or be under the administrative oversight

of the agency on a regular basis unless the agency 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 agency.

H. Third Opinions. If the second opinion differs from the original medical certification, the supervisor may require, at agency 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 he or she 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, the employee may be denied FML.

J. Provisional Leave. 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 the FML to begin, the supervisor shall grant provisional leave pending final written medical certification.

K. If, after FML has commenced, the employee fails to provide the requested medical certification, the supervisor may charge the employee as absent without leave (AWOL); or may allow the employee to request that the provisional leave be charged as leave without pay 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 leave without pay. Current bureau policies for granting annual leave, sick leave, and leave without pay will continue to apply when an employee requests those types of leave.

M. Recertification. While an employee is on FML, the supervisor may require, at agency 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. Certification to Return to Duty. 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 his or her serious medical condition, is required upon return to duty to provide written medical certification from his or her health care provider that he or she is 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 his or her position. In addition, the supervisor must notify the employee of the requirement for written medical certification to return to duty before the employee commences FML. The agency 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).

14. <u>Protection of Employment and Benefits.</u>

A. An employee who takes Family and Medical Leave (FML) is entitled upon return from FML to be returned to the same position held by the employee when the leave commenced.

B. In the exceptional case where returning the employee to the same position upon return to duty from FML would impose extreme hardship on the agency, the employee is to be returned to an equivalent position with equivalent benefits, pay, status, and other terms and conditions of employment. 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) An equivalent grade or pay level, including any applicable interim geographic adjustment, special rate of pay for law enforcement officers, or special pay adjustment for law enforcement officers under section 302, 403, or 404 of the Federal Employees Pay Comparability Act of 1990 (P.L. 101-509), respectively; 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;

(3) The same type of appointment, work schedule, status, and tenure;

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

(5) The same or equivalent opportunity for a within-grade increase, performance award, incentive award, or other similar discretionary and non-discretionary payments consistent with applicable laws and regulations;

(6) 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; and

(7) 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 his or her 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 commenced.

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; or

(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 a leave without pay status shall apply to any employee taking unpaid FML, except where different entitlements and limitations are specifically provided in this issuance. 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-grade 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 unmeasurable 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 Family and Medical Leave Act 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 agency is not required to return the employee if the period of employment has expired and the agency would not otherwise have continued to employ the employee.

G. If, for reasons independent of the Family and Medical Leave Act, an employee was reassigned to another position while he or she was on FML, the employee would be entitled to be returned to the position to which he or she 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 his or her 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 he or she returns to work, the employee may request additional leave, including advanced annual or sick leave, donated annual leave from the Voluntary Leave Transfer Program, and additional leave without pay. 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.

15. <u>Health Benefits.</u>

A. An employee enrolled in a health benefits plan under the Federal Employees Health Benefits Program who is using unpaid Family and Medical Leave (FML) may continue his or her health benefits enrollment while in the leave without pay 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 his or her contributions on a current basis, or incur a debt and pay the contributions when he or she returns to pay and duty status.

B. <u>Exceeding 365 days LWOP.</u> If an employee on FML exceeds the 365 days in a nonpay status, the employee <u>must pay</u> his or her share of the premiums to the bureau finance office on a current basis <u>in order to continue</u> the health benefits coverage

1. When an employee on FML exceeds 365 days in a nonpay status, the Payroll Operations Division will notify the servicing

personnel office from a message reviewed on the paycomp. The servicing personnel office will then expedite their notification of 365 days in a nonpay status to the bureau finance office. Bills of collection will be issued on a current basis for the employee's share of health benefits premiums in order to continue coverage. Close coordination must be established between the bureau finance office and the servicing personnel office in order to smoothly effect the required actions.

2. If the bureau finance office does not receive the payment by the date due, it must notify the employee by certified mail, return receipt requested, that continuation of coverage depends upon payment being made within 15 days after receipt of the notice, or, if the bureau finance office does not receive certification of the receipt of the notice, 60 days after the date of the notice. The bureau finance office shall notify the servicing personnel office that payment has not been made. The servicing personnel office shall terminate the employee's health benefits coverage.

3. If the employee was prevented by circumstances beyond his or her control from making payment within the timeframe established by the bureau finance office, he or she may request reinstatement of the coverage by writing to the servicing personnel office. The request must be filed within 30 calendar days from the date of termination and must be accompanied by verification that the employee was prevented by circumstances beyond his or her control from paying within the time limit.

4. The servicing personnel office determines whether the employee is eligible for reinstatement of coverage when coverage has been terminated because of nonpayment. If the determination is affirmative, coverage is reinstated retroactively to the date of termination. If the determination is negative, the employee may request a review of the decision from the Office of Personnel Management under the provisions of 5 CFR 890.104.

5. An employee whose coverage is terminated because of failure to make payments may register to enroll upon his or her return to duty in a pay status in a position in which the employee is eligible for coverage.

16. <u>Greater Leave Entitlements.</u>

A. The Department of the Interior shall comply with any collective bargaining agreement or employment benefit program or plan that provides greater family or medical leave entitlements to employees than this issuance. The entitlements established by this issuance may not be diminished by any collective bargaining agreement or any employment benefit program or plan.

B. A bureau may adopt leave policies more generous, but not less than those provided in this issuance; however, such policies may not provide entitlement to paid time off greater than that otherwise authorized by law or provide sick leave in any situation in which sick leave would not normally be allowed by law or regulation.

17. Records and Reports. A. Supervisors are to maintain copies of SF-71's, medical certifications, and other pertinent information with the Time and Attendance Reports. Copies of SF-71's are to be forwarded to the servicing personnel officer for reporting purposes until the process is automated. In order to comply with requests for reports from the Office of Personnel Management, the following information concerning each employee who takes FML shall be retained:

(1) The employee's rate of basic pay, which includes applicable interim geographic adjustments or special pay adjustments for law enforcement officers under the Federal Employees Pay Comparability Act, respectively, or locality-based comparability payments;

(2) The employee's occupational series for his or her position;

(3) The number of hours of FML taken;

(4) What FML was for:

(a) Family leave, i.e., for a birth, adoption/foster care, or the care of an eligible family member with a serious health condition.

(b) Medical leave, i.e., for the employee's serious health condition.

B. When an employee transfers outside of the Department of the Interior, information shall be provided the gaining agency on FML taken by the employee during the 12 months prior to the date of transfer. The following information shall be provided along with the SF-1150, Record of Leave Data:

(1) The beginning and ending dates of the employee's 12-month period during which he or she is/was entitled to FML;

(2) The number of hours of FML taken during the employee's 12-month period during which he or she is/was entitled to FML.

18. <u>Time and Attendance Reporting.</u> In reporting FML on the Time and Attendance Reports (T&A) for all but intermittent employees, existing hours codes will be used with indicators recorded in the "Acting Rate" field. Timekeepers will enter the appropriate "NON-PAID" or "PAID" hours codes <u>and</u> one of the four established indicators for FML. Following are the hours codes and indicators:

NON-PAID LEAVE HOURS CODE	PAID LEAVE HOURS CODES
101 = Leave Without Pay	020 = Annual Leave
	025 = Annual Leave (In Lieu of Sick)
	030 = Sick Leave
	041 = Comp Time Taken
	211 = Vacation Leave (BIA Only)
	218 = Personal Leave (BIA Only)
	231 = Credit Hours Used

FAMILY AND MEDICAL LEAVE INDICATORS

9A = Adoption/Foster Care Placement
9B = Birth of Child
9F = Family Member Requiring Care
9M = Medical For Self

Examples of coding the T&A for FML follow in narrative form along with samples in Appendix B:

A. If an employee invokes FML for the birth of a child and wishes to substitute paid annual leave for unpaid time off, the Timekeeper would use Hours Code 020 (Annual Leave) and Indicator 9B (Birth of a Child) in the Acting Rate Field. (See Sample 1 in Appendix B.)

B. If an employee invokes FML, which is unpaid leave, and does not wish to substitute paid leave for caring for a family member with a serious health condition, the Timekeeper would use Hours Code 101 (Leave Without Pay), and Indicator 9F (Family Member Requiring Care) in the Acting Rate Field. (See Sample 2 in Appendix B.)

C. If an employee invokes FML for his or her own serious medical condition and uses it intermittently within a pay period, the Timekeeper would use the appropriate Paid Hours Code and Indicator 9M (Medical Self). (See Sample 3 in Appendix B.)

D. For intermittent employees covered under Title I, contact your payroll representative or this office for specific guidance.

19. Employee Rights.

A. The policies regarding Family and Medical Leave (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 Family and Medical Leave Act.

B. If an employee believes that management has not fully complied with the rights and requirements provided under the Family and Medical Leave Act, or any regulation of the Act, the employee may file a grievance under the administrative grievance procedures of the appropriate bureau, or under negotiated grievance procedures, if appropriate.

Appendix A

Certification of Physician or Practitioner

(Family and Medical Leave Act of 1993)

U.S. Department of Labor

Employment Standards Administration
Wage and Hour Division

1. Employee's Name	2. Patient's Name (If other than employee)

3. Diagnosis

4. Date condition commenced	5. Probable duration of condition

6. Regimen of treatment to be prescribed (indicate number of visits, general nature and duration of treatment, including referral to other provider of health services. Include schedule of visits or treatment, if it is medically necessary for the employee to be off work on an intermittent basis or to work less than the employee's normal schedule of hours per day or days per week.)

a. By Physician or Practitioner

b. By another provider of health services, if referred by Physician or Practitioner

If this certification relates to care for the employee's seriously-ill family member, skip items 7, 8 and 9 and proceed to items 13 thru 20 on reverse side. Otherwise, continue below.

Check **Yes** or **No** in the boxes below, as appropriate

7. Is inpatient hospitalization of the employee required? ☐ Yes ☐ No

8. Is employee able to perform work of any kind? (If "No", skip item 9) ☐ Yes ☐ No

9. Is employee able to perform the functions of employee's position? (Answer after reviewing statement from employer of essential functions of employee's position, or, if none provided, after discussing with employee) ☐ Yes ☐ No

10. Signature of Physician or Practitioner	11. Date	12. Type of Practice (Field of Specialization, if any)

For certification relating to care for the employee's seriously-ill family member, complete Items 13 thru 17 below as they apply to the family member and proceed to Item 20.

13. Is inpatient hospitalization of the family member (patient) required? ☐ Yes ☐ No

14. Does (or will) the patient require assistance for basic medical, hygiene, nutritional needs, safety or transportation? ☐ Yes ☐ No

15. After review of the employee's signed statement (See Item 17 below), is the employee's presence necessary or would it be beneficial for the care of the patient? (This may include psychological comfort.) ☐ Yes ☐ No

16. Estimate the period of time care is needed or the employee's presence would be beneficial.

Item 17 is to be completed by the employee needing family leave

17. When Family Leave is needed to care for a seriously-ill family member, the employee shall state the care he or she will provide and an estimate of the time period during which this care will be provided, including a schedule if leave is to be taken intermittently or on a reduced leave schedule.

18. Employee Signature		19. Date
20. Signature of Physician or Practitioner	21. Date	22. Type of Practice (Field of Specialization, If any)

9323 IN 07 08 025 D759340

93-10-30 TLQ Medic Self

HRS CD	S C	A R	WK IND	SUN 17	MON 18	TUE 19	WED 20	THU 21	FRI 22	SAT 23			24	25	26	27	28	29	30		KEY	NUMBER
010			1		800		800		800		2400	2									A	01234
020		9M	1			800		800			1600	2										
010			1									2		800		800		800		2400	B	934710
030		9M	1									2			800					800		
101		9M	1									2					800			800		
			1									2										
			1									2										
			1									2										
			1									2										
			1									2										
			1									2										
			1									2										
990				FML Begin date for Medical for Self — 10/19/93																		

These two lines are reserved for messages from timekeepers to payroll

DAILY TOTALS

PAY PERIOD TOTALS

LEAVE OVERTIME

FROM TO FROM TO INITIAL

I certify that the time and attendance reported above is correct, and is authorized in accordance with applicable statues and regulations.

O.T. HRS/MIN. _____ CREDIT/COMP. HRS/MIN. _____ NONE

TIME OFF AWARD HOURS

CERTIFIED CORRECT _____ SUPERVISOR

LEAVE STATUS AS OF	ANNUAL	SICK	TYPE	BALANCE
			COMP. TIME	
CURRENT BAL.			LWOP USED YTD	
ADV. BAL.			RESTORED	
TOTAL AVAIL.			HOME/SHORE TV	
PROJ. YEAR END			MIL. LV. USED YTD	
USE/LOSE			CREDIT HRS.	
			TIME OFF AWARD	

REMARKS TO TIMEKEEPER

APPENDIX B
Sample 3

A6 | DATA TYPE | SSN | PREPRINT HOURS CODE | 9323 PAY PERIOD | IN DEPT | 0708 PAY SUB HOURS | 025 WEEK | D7428200 ORGANIZATION CODE

LEAVE AND ABSENCE REPORT

93-10-30 PERIOD END DATE | 01A WK CD | FAMILY, VE

DI-502G (7-93)

HRS CD	S.C.	A R	WK IND	SUN 17	MON 18	TUE 19	WED 20	THU 21	FRI 22	SAT 23	TOTAL	WK IND	SUN 24	MON 25	TUE 26	WED 27	THU 28	FRI 29	SAT 30	TOTAL	COST STRUCTURE KEY	COST STRUCTURE NUMBER
020		9B	1		800	800	800	800	800		4000	2		800	800	800	800	800		4000	4	
			1									2										
			1									2										
			1									2										
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			1									2										
			1									2										
			1									2										
			1									2										
			1									2										
990				FML Begin date for Birth - 10-18-93																		

These two lines are reserved for messages from timekeepers to payroll

PAY PERIOD TOTALS 80 00

DAILY TOTALS

LEAVE | OVERTIME | FROM | TO | HRS | TO | RETURN | LAV | OVRTIME

I certify that the time and attendance reported above is correct, and is authorized in accordance with applicable statutes and regulations.

O.T. HRS/MIN. _____ CREDIT/COMP. HRS/MIN. _____ NONE

TIME OFF AWARD HOURS

CERTIFIED CORRECT _____ SUPERVISOR

LEAVE STATUS AS OF	ANNUAL	SICK
CURRENT BAL.		
ADV BAL.		
TOTAL AVAIL.		
PROJ. YEAR END		
USE [illegible]		

TYPE	BALANCE
COMP. HRS	
[illegible]	
[illegible]	
[illegible]	
[illegible]	
[illegible]	
TIME OFF [illegible]	

REMARKS TO TIMEKEEPER

APPENDIX B
Sample 1

APPENDIX B
Sample 2

DI-502G (7-93)

TIME AND ATTENDANCE REPORT

DATA TYPE	SSN	PAY PERIOD	DEPT	BUR	SUB BUR	BLK	ORGANIZATION CODE	PP END DATE	TK CD	EMPLOYEE NAME

PREPRINT HOURS CODE

HRS CD	S C	A R_o	WK IND	SUN 17	MON 18	TUE 19	WED 20	THU 21	FRI 22	SAT 23	TOTALS	WK IND	SUN 24	MON 25	TUE 26	WED 27	THU 28	FRI 29	SAT 30	TOTAL	KEY	COST STRUCTURE NUMBER
101		9F	1		800	800	800	800	800		40 00	2		800	8 00	800	8 00	800		40 00		
			1									2										
			1									2										
			1									2										
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			1									2										
			1									2										
			1									2										
			1									2										
			1									2										

990 FML Begin date for care of Family Member - 10/18/93

These two lines are reserved for messages from timekeepers to payroll

DAILY TOTALS

PAY PERIOD TOTALS 80 00

LEAVE / OVERTIME: FROM / TO / FROM / TO / INITIAL

I certify that the time and attendance reported above is corre[ct] and is authorized in accordance with applicable statues a[nd] regulations.

_____ O.T. HRS/MIN. _____ CREDIT/COMP. HRS/MIN. _____ NO

_____ TIME OFF AWARD HOURS

CERTIFIED CORRECT _______________ SUPERVISOR

LEAVE STATUS AS OF	ANNUAL	SICK	TYPE	BALANCE
			COMP TIME	
CURRENT BAL.			LWOP USED (YTD)	
ADV. BAL.			RESTORED	
TOTAL AVAIL.			HOME SHORE LV	
PROJ. YEAR END			MIL LV USED YTD	
USE/LOSE			CREDIT HRS	
			TIME OFF AWARD	

REMARKS TO TIMEKEEPER