

Notice: Page 5 of the attached Partnership Agreement to the Family and Medical Leave Act references Form CD-518 ("Application for Family and Medical Leave"). Form CD-518 is no longer in use. To invoke entitlements under FMLA, employees should use [Form OPM-71](#).



UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office
ASSISTANT SECRETARY AND COMMISSIONER
OF PATENTS AND TRADEMARKS
Washington, D.C. 20231

TO: ALL EMPLOYEES #94-15

FROM: Office of the Assistant Secretary of Commerce and
Commissioner of Patents and Trademarks

SUBJECT: Partnership Agreement to the Family and Medical Leave
Act

The PTO, POPA, NTEU 243 and NTEU 245 have agreed under the auspices of the Partnership Council to cooperatively implement the Family and Medical Leave Act (FMLA). This memo contains a summary of the agreed upon procedures for implementation of this act. This regulation provides covered employees with an entitlement to 12 work weeks of unpaid leave during any 12 month period for certain family and medical reasons.

Leave without pay under FMLA is in addition to annual leave, sick leave, advanced annual or sick leave, other leave without pay, transferred leave or compensatory time off already available to you under existing regulations, policy and contractual agreements with your union. For example, FMLA leave is in addition to the maternity/paternity leave policy set forth in the attached memo dated September 30, 1993.

Reasons for Taking Leave

You are entitled to leave without pay (LWOP) under FMLA for any of the following reasons:

1. The birth of a child of the employee and the care of the child (within 12 months of the birth).
2. The placement of a child with the employee for adoption or foster care (within 12 months of placement).
3. The care of the employee's spouse, child or parent who has a serious health condition.
4. The employee's own serious health condition which makes the employee unable to perform the essential functions of his or her position.

If you are requesting FMLA leave for the reasons in categories 1 and 2 above, the law requires that you request permission to take the time off on an intermittent or reduced schedule. Absent an exigency of the office, your supervisor will allow you to take the FMLA leave on an intermittent or reduced schedule. If you request FMLA leave under categories 3 or 4 above, you are entitled to take the leave intermittently (taking LWOP for a part of each work week) or on a reduced leave schedule (LWOP for a part of each work day).

Substituting Paid Time Off

Once an employee has invoked the FMLA and the schedule for time off has been established, an employee may elect to substitute paid time off for any or all of the period of leave without pay (LWOP) taken under the FMLA. In these situations the employee must request the specific times that paid leave will be utilized. Paid leave may not be substituted retroactively.

If after establishing the schedule for time off under FMLA the employee needs to modify this schedule, he/she will merely request the variation on a CD-518 subject to supervisory approval. This must be done for every change to enable every FMLA hour to be properly tracked and recorded.

Remember that current law and regulation governing granting and using annual and sick leave (including advanced leave) apply, e.g. you may not use sick leave to care for anyone other than yourself unless it is to care for a family member with a contagious disease.

Subject to supervisory approval and in accordance with contractual provisions as well as existing overtime policies which have been published by the Assistant Commissioners, employees may substitute earned compensatory time for LWOP under any FMLA category. It is recognized that lack of funds or budget restrictions can serve to preclude overtime work from being approved. However, since compensatory time off will be used in lieu of payment for overtime in FMLA situations, lack of

**For the employees in the Patent Corps only, all applicable standards and policies set forth in the Patent Corps overtime policy of March 26, 1990 from Acting A/C for Patents, James E. Denny, addressed to "All Personnel Under the Assistant Commissioner for Patents", will apply to FMLA compensatory time, except 1) the productivity standards for all non-first year employees set forth in item (6) of that memo will be replaced by: "For the Purposes of earning FMLA compensatory time, FS productivity will be based on the employee's cumulative most recent four (4) full quarters of work."; and 2) no group-specific restrictions will be imposed on earning FMLA compensatory time contrary to item (7) of that memo. The above is not precedential and applies only to working compensatory time for FMLA purposes.*

paid overtime, lack of funds or budget restrictions will not be a reason for denying an overtime request. Lack of suitable work is an acceptable reason for denying a request to substitute compensatory time off for LWOP under FMLA. Suitable work is work that can be performed during overtime hours. Consistent with the needs of the office, an employee who is working on a full-time basis may be allowed to accrue and use compensatory time which will be substituted for LWOP. If the employee is using earned compensatory time for categories 1 or 2 above, all of the compensatory time must be exhausted within the applicable 12 month period covered by FMLA.

Since the entitlement to FMLA time off is in addition to time off available to you under existing regulations, policy and contractual agreements with your union, expectant parents may accrue and use compensatory time as set forth in the attached memo on maternity and paternity leave without invoking FMLA. You cannot accrue under any circumstances, more than 80 hours of compensatory time.

Whenever there is a reasonable expectation that an employee will qualify for and intends to invoke FMLA, he/she may request to begin working compensatory time in advance. This is intended to give an employee the opportunity to work compensatory time in advance whenever there is a reasonable expectation that the employee will qualify for and invoke FMLA leave. For example, if an employee or their immediate family member is undergoing testing to determine the precise nature of a serious health condition as defined by the FMLA (such as to determine if a tumor is malignant), or it is known that surgery that qualifies under the FMLA will be scheduled in the next few months, the employee will be granted permission to begin working overtime thus to begin accruing compensatory time under this policy. The employee would in these circumstances make a "best guess" of the schedule that would be needed for the FMLA leave, and the schedule would be modified as necessary. The approval to earn comp, time in advance would be limited to 120 days in advance of the FMLA leave invocation date. In the rare situation that it is determined that the purpose for which the FMLA is requested will not occur, at management's option, the employee will either get paid for the comp time earned, or have to schedule the comp time off within three months after this determination, but no later than one year after the request to earn comp time for FMLA leave was approved.

This does not preclude an employee from requesting further compensatory work during the duration of the FMLA eligibility. Any request for working compensatory time under the FMLA shall be approved or disapproved as soon as possible but no later than 5 working days after the request.

Job Benefits and Protection

Upon return from leave under FMLA, you will be returned to the same position or an equivalent position with equivalent pay status, terms and other conditions of employment. While on FMLA leave, your health benefits coverage will continue. You are responsible for paying your employee contribution upon return to work for periods of LWOP.

Advance Notice

You should provide notice of your intent to take FMLA leave not less than 30 days before leave is to begin when the need for the absence is foreseeable, or as soon as possible in all other cases.

It is recognized that there will be events beyond the control of the employee that will require the employee to take FMLA leave before the employee is able to provide 30 days notice, such as medical emergencies. In these situations, the employee need only provide a reasonable period of time appropriate to the circumstances involved. Supervisors shall waive the 30 day requirement in these instances. Any request for leave under the FMLA shall be approved or disapproved as soon as possible but no later than five working days after the request. However, if the need for leave 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 leave, the leave may not be delayed. Tentative approval shall be granted in such a circumstance.

Medical certification

A supervisor may require you to produce medical certification from a physician to support FMLA leave in conjunction with your own serious health condition or FMLA leave taken to care for a parent, spouse or child with a serious health condition. However, a medical certification will not normally be required.

Remedies

If you believe that you have been denied any of the rights and requirements of FMLA, you may file a grievance under the Department's grievance procedures or negotiated grievance procedures, whichever is applicable to you, or pursue a remedy under Federal law prohibiting discrimination. Eligibility as a spouse under FMLA at the PTO includes an individual related by affinity whose close association with the employee is the equivalent of a spousal relationship with no distinction based on gender or matrimony.

Additional Information

As a general rule, you are covered under this regulation if you are a full-time or part-time employee with 12 months of service. The 12 months doesn't have to be recent or even consecutive. Part-time employees have a prorated entitlement.

This regulation is effective now, so if you feel you want to invoke your entitlement to FMLA leave, you can contact your supervisor or the Employee Relations office at 305-8121 for more information.

The FMLA is intended to allow you to balance your work and family life by taking reasonable amounts of leave for medical reasons, for the birth or adoption/foster care of a child and for the care of a child, spouse or parent who has a serious health condition. The FMLA balances the demands of the office with your needs to promote the stability and economic security of families and promote the national interest in preserving family integrity.

This policy has been developed under the new partnership process. We will work cooperatively during a one year period on this subject. We will then review our progress on administering this new benefit.

There are specific data gathering and reporting requirements imposed by Congress that you, your supervisor and your timekeeper will have to follow. In order to fulfill these requirements, there is a specific form entitled, "Application for Family and Medical Leave" (FMLA - CD-518) that must be used. The CD-518 must be attached to the employee time and attendance record and a copy of the form must be forwarded to Personnel in an envelope marked, "Office of Personnel, Employee Relations Division, Attention: FMLA Coordinator, PK-1, Suite 601." A copy of the application form is attached which you can reproduce as necessary. If an employee does not use all of the FMLA leave requested and approved in block 7 of the CD-518, the correct amount of FMLA hours actually used must be entered in block 9. If the employee subsequently requests more FMLA leave, a new form must be completed. A copy of all forms indicating the actual amount of hours used must be forwarded to the Office of Personnel. Several other restrictions apply so please call your servicing Employee Relations Analyst for details in your situation.

An underlying document containing the agreed upon program details has been prepared entitled "Family and Medical Leave Act, How it Will Work at the PTO". Any employee or supervisor may obtain this document from the office of Personnel.

For the PTO Partnership Council:

_____/s/_____
Bruce A. Lehman
Assistant Secretary of Commerce and
Commissioner of Patents and Trademarks

____5/13/94____
DATE

_____/s/_____
Ronald J. Stern, President
Patent Office Professional Association

____5/13/94____
DATE

_____/s/_____
A. Jeanette Devins, President
NTEU, Chapter 243

____5/13/94____
DATE

_____/s/_____
Meryl L. Hershkowitz, President
NTEU, Chapter 245

____5/13/94____
DATE