

ARTICLE 18

FAMILY LEAVE, NURSING MOTHERS PROGRAM, CHILDCARE SUBSIDY, DAYCARE AND ACCOMODATIONS

SECTION 1- Family Medical Leave Act

The Family and Medical Leave Act (FMLA) entitles covered full-time or part-time employees to approved leave without pay for specified family and medical purposes. Generally, FMLA provides covered employees a total of 12 administrative workweeks of unpaid leave during any 12-month period for certain family and medical needs. However, the amounts differ for certain military purposes.

A. An employee with at least 12 months of qualified Federal service is entitled to take:

Up to 12 administrative workweeks of unpaid leave during a 12-month period for one or more of the following reasons:

1. The birth of a child of the employee and the care of such child
2. The placement of a child with the employee for adoption or foster care
3. The care of a spouse, son, daughter, or parent of the employee who has a serious health condition
4. A serious health condition of the employee that makes the employee unable to perform the essential functions of his or her position
5. Any qualifying exigency arising out of the fact that the employee's spouse, or a son, daughter, or parent is on covered active duty (or has been notified of an impending call or order to covered active duty) in the Armed Forces. Regulations list several categories of qualifying exigencies and impose shorter maximum time limits on some of them.

Up to 26 administrative workweeks of unpaid leave during a single 12-month period to care for a covered member of the Armed Forces with a serious injury or illness. The employee (1) must be the spouse, son, daughter, parent, or next of kin (defined as the nearest blood relative) of a covered service member with a serious injury or illness and (2) provide care for such service member. The serious illness or injury must have been incurred by the covered service member in the line of duty while on active duty in the Armed Forces.

Employees may obtain information about their entitlements under FMLA on the OPM website <http://www.opm.gov/oca/leave/HTML/factindx.sap>, and from the servicing Human Resources Center, <http://intranet.hhs.gov.rockvillehrcenter/>.

B. Consistent with current law and regulations governing the granting and use of annual or sick leave, an employee may, at his or her option, substitute paid leave (annual and/or sick) for unpaid leave under FMLA. Entitlement to leave under FMLA shall be administered in accordance with applicable law, government-wide regulations,

[Agency policy and this Agreement.](#)

- C. The employee is responsible for notifying the supervisor of his/her intention to use FMLA leave. An employee seeking leave under this section shall generally provide the Employer with not fewer than thirty (30) calendar days' notice before the date the leave is to begin of the employee's intention to take such leave, unless the date of such leave is not reasonably foreseeable, in which case the employee shall provide such notice as is practicable. [An employee or representative may initially make an oral request if circumstances prevent a written request. The employee or representative will follow up with a written request as soon as practicable.](#)
- D. Under 5 CFR section 630.1207, the Employer may require that a request for leave ~~under subsections A.3. or A.4. above~~ be supported by written medical certification written by a health care provider. The following procedure will be followed:
1. The employee will provide the written documentation as provided in 5 CFR section 630.1207(b). The information on the medical certification shall relate only to the serious health condition for which the current need for family and medical leave exists. The Employer may not require any personal or confidential information in the written medical certification other than that required by regulations.
 2. An employee must provide the written medical certification no later than fifteen (15) calendar days after the Employer requests such medical certification. The Employer's request may be in writing. If it is not practicable under the particular circumstances to provide the requested medical certification no later than fifteen (15) calendar days after the date requested by the agency despite the employee's, diligent, good faith efforts, the employee must provide the medical certification within a reasonable period of time under the circumstances involved, ~~but not later than thirty (30) days after the date the agency requested the medical certification.~~
 3. If an employee submits a completed medical certification signed by a health care provider, the Employer may not request new information. However, the Employer's medical consultant may, with the employee's permission, contact the health care provider who completed the medical certification for the purposes of clarifying the medical certification.
 4. [Employee medical certification will be treated as confidential by the Employer and it will be reviewed only by the Employer's consulting physician, not the manager or supervisor.](#)
 5. If the Employer doubts the validity of the medical certification, the Employer may require at the Employer's expense that the employee obtain the opinion of a second health care provider designated or approved by the Employer concerning information certified in the medical certification. Any health care provider approved by the

Employer shall not be employed by the Employer or be under the administrative oversight of the Employer on a regular basis.

6. If the opinion of the second health care provider differs from the original certification provided under subsection D.2. above, the Employer may require, at the Employer's expense, that the employee obtain the opinion of a third health care provider designated or approved jointly by the Employer and the employee concerning the information certified in subsection D.2. above. The opinion of the third health care provider shall be binding on the Employer and the employee.
 7. [A copy of the Employer physician's recommendation will be provided to the employee.](#)
 8. [The Employer and employee will use the FMLA forms set forth in appendix X of this Agreement. In the event that the Employer proposes to change the form, it will provide notice to NTEU in accordance with Article 3 of the CBA.](#)
- E. All other conditions/requirements in 5 CFR section 630.1207 are applicable to leave used under the FMLA.
- ~~F. The employee is responsible for notifying the supervisor of his/her intention to use FMLA leave.~~
- G. The use of FMLA leave cannot be invoked retroactively.
- H. [If the Agency is unable to process the FMLA request before leave begins \(ex. employee is unable to provide the requested medical certification before leave begins, or if the agency questions the validity of the original certification provided by the employee\) and the medical treatment requires the leave to begin, the Agency shall grant provisional leave pending final written medical certification.](#)
- I. If after the leave has commenced and the employee fails to provide the requested medical certification within the specified timeframe, the Employer may charge the employee as absent without leave (AWOL) or allow the employee to request that the provisional leave be charged as leave without pay or charged to the employee's annual and/or sick leave account, as appropriate.

SECTION 2 – Adoption or Birth of a Child

- A. Employees are entitled to twelve (12) weeks of FMLA leave for ~~parental maternity or paternity~~ purposes due to the birth of a child or placement of a child with the employee for adoption or foster care or for maternity sick leave purposes. [An employee may request annual leave, sick leave, LWOP, leave earned through Time Off Awards, and/or earned compensatory time and/or credit hours, etc. Approval of leave for these reasons will be consistent with the provisions of this Agreement and applicable statutes and regulations. Supervisors and employees are encouraged to discuss mutually agreeable options for addressing parental interests, including intermittent leave, telework, part-time employment, job sharing arrangements and](#)

[any other appropriate arrangements.](#)

- B. [Because HHS is committed to helping employees balance their work and family responsibilities, the Agency will grant requests for up to six \(6\) months of parental leave, to include the 12-week FMLA entitlement. Employees will be granted six \(6\) weeks of paid administrative leave that can be used in addition to or in lieu of unpaid FMLA leave.](#)
- C. A parent shall be permitted to be absent on partial or full days of annual leave, sick leave, LWOP, earned compensatory time, credit hours, or any combination thereof, to aid or assist in the care of minor children or the mother of the children due to her confinement for maternity reasons. Approval of leave for these reasons will be consistent with the provisions of this Agreement and applicable law and regulation.
- D. For purposes associated with adoption of a child, an employee may request annual leave, sick leave, LWOP, and/or earned compensatory time and/or credit hours. (See Article 16 for information about use of sick leave for adoptions.) The Parties recognize that it is in the interests of both the employee and the Employer that such requests shall be made as early as possible. The employee should submit the leave request for adoption purposes as early as possible, no less than thirty (30) calendar days, in advance of the prospective starting date; if the date of leave is not foreseeable ([e.g., foreign adoptions](#)), the employee shall provide such notice as is practicable. The individual circumstances must be considered in each instance by the leave approving official; reasonable requests shall be granted unless a workload or staffing problem prevents approval. Approval will be consistent with the provisions of the Agreement and applicable statutes and regulations.
- E. [If any portion of a request for parental leave is denied, the supervisor will provide an explanation of the reason\(s\) for the denial of the leave request at the time of the denial. To the extent permitted by law and regulation, the employee, at her discretion, may use earned sick leave, annual leave, LWOP, \(including leave entitlement under FMLA\) or any combination of these for maternity leave purposes. Upon request, employees who meet the criteria for inclusion in the Voluntary Leave Transfer Program will be approved.](#)

SECTION 3- Pregnancy Accommodations

- A. Periods of incapacity due to pregnancy are considered a "serious health condition" under FMLA. Charges to sick leave are appropriate for the period of incapacitation due to pregnancy and confinement, consistent with medical requirements and applicable laws and regulations. The employee also may request and be granted annual leave, LWOP, earned credit hours and/or compensatory time instead of sick leave for the period of incapacitation. A female employee may also substitute sick leave, annual leave, earned compensatory time, credit hours, donated leave, or any combination thereof, for any remaining time of the twelve-week FMLA LWOP entitlement, as appropriate.
- B. Pregnant employees' requests for modification of work duties or a temporary assignment will be considered in accordance with Article 38, Employees with Temporary Disabling Conditions.

- C. If a pregnant employee requests an accommodation, the Agency will make reasonable efforts to accommodate the employee's health needs. Employees and supervisors are encouraged to engage in an interactive dialogue about options for accommodations (such as changes to duties, work schedule, telework, etc.).

SECTION 4- Paternity and Same-Sex Spouse Leave

In accordance with law, a male employee or same-sex spouse is entitled to leave without pay (LWOP) under FMLA if needed to care for the mother during pregnancy, childbirth, and recovery, or to care for a newborn. An employee may substitute paid leave for LWOP to the extent consistent with the law and regulations for using annual and sick leave. For example, an employee is entitled to use sick leave to care for the mother while incapacitated, take a child to medical appointments or care for an ill child, but an employee may not use sick leave to care for a well newborn. Requests for leave pursuant to FMLA should be made in accordance with Section 1 of this Article.

HHS is committed to helping employees balance their work and family responsibilities. Subject to workload, mission, or staffing requirements, HHS will ordinarily grant requests for up to six (6) months of paternity or same-sex spouse leave, which would typically include the employee's three (3) month entitlement to leave pursuant to FMLA. Employees and supervisors are encouraged to discuss mutually acceptable options for addressing maternity and paternity interests, including intermittent leave, telework, part-time or job-sharing arrangements, and other appropriate arrangements, particularly where any portion of an employee's leave request cannot be granted. If any portion of a request for paternity or same-sex spouse leave is denied, the supervisor will promptly provide an explanation of the reason(s) for the denial of the leave request at the time of the denial.

SECTION 5- Nursing Mother's Program

The FDA will take all necessary steps to provide a supportive environment for nursing mothers. Such support will include providing a private lactation room, as well as a reasonable amount of compensated break time in order to express breast milk. Frequency and duration of breaks may vary among nursing mothers. Nursing mothers will not be required to take leave or unpaid time in order to express breast milk. There should be no impact on an employee's ability to maintain her current work schedule, to include AWS, CWS, Maxiflex, telework, etc. Supervisors should work with employees to provide workplace flexibilities- such as flexible start/stop times and break times, approval of credit hours, increased telework, etc.- in order to ensure they have sufficient time to express breast milk. In addition, the FDA will provide the following lactation support:

- Monthly access to consultation services with a lactation specialist via telephone;
- Monthly educational seminars;
- Use of agency provided hospital grade pump;
- Employee-led support group; and

- In-person consultation, as needed and upon request

Lactation Room Requirements – The Agency will provide a minimum of one lactation room per facility, other than a bathroom, that is shielded from view and free from intrusion from coworkers and the public, which may be used by an employee to express breast milk.

To ensure that nursing mothers can initiate milk flow and express comfortably, the room must meet the following conditions:

- Room that locks from the inside (which still allows entry for Emergency Response Personnel) or other way to secure the room from intrusion while being used;
- Be clean and sanitary;
- Have access to electricity, with appropriately located outlets, for the use of a breast pump, functional with a place to sit and a flat surface (e.g., table or counter), other than the floor, to place the breast pump and other supplies;
- Have a sink with hot and cold running, potable water for washing hands and rinsing out breast pump parts;
- Have soap, paper towels, and sanitary wipes;
- Be lighted (soft or natural lighting);
- Be comfortable temperature;
- Have proper ventilation;
- Be stocked with a multi-use hospital grade breast pump;
- Be cleaned daily;
- Have a calming décor;
- Contain pregnancy and breastfeeding pamphlets, books, and other resources to include contact information for consultants and guidance counselors, posted information on events and classes for one or both parents, prenatal education during lunch breaks for both mother and fathers (i.e. “lunch and learns”; breastfeeding literature for nursing mothers that address common issues (e.g., maintaining milk supply); prenatal and breastfeeding education for co-workers to demonstrate the necessity and benefits of pumping in the workplace;
- Contain a refrigerator, with a freezer section, provided exclusively for the storage of breast milk;
- Contain labels and marking pens;
- Contain a microwave for the sterilization of materials and supplies;
- Comfortable seating (e.g., ergonomic chairs, recliners); and
- A reservation system, either online or posted, for use of the nursing mother’s room.

If employees prefer, they may also express milk in their own private offices, or in other comfortable locations agreed upon in consultation with the employee’s supervisor.

1. Use of the Lactation Room –The Employer will provide a scheduling system to reserve the lactation room. Employees will reserve the lactation room on a first-

come, first-served basis. Employees may use the lactation room, when necessary, without supervisory approval or permission.

2. Travel Requirements – Upon request, lactating employees will be exempted from overnight travel – domestic and foreign for a period of one (1) year after an employee returns to work. For nursing mothers who travel, the Agency must ensure that they have an appropriate location and sufficient time for expressing breastmilk, depending on the circumstances.
3. Reassigning Duties –To ensure the safety of nursing mothers and their breastmilk, supervisors will temporarily reassign duties that expose nursing mothers to hazards or hazardous materials until the period of nursing has ended.

SECTION 6- Married and Unmarried

The provisions of this Article apply to married and unmarried employees alike, except to the extent such application would conflict with law or government-wide regulations.

SECTION 7- Confidentiality

No medical documentation required under this article shall be shared with a management official. All medical documentation shall be sent directly to the physician identified by the Employer.

SECTION 8- HHS Child Care Subsidy Program

In accordance with Section 630 of Public Law 107-67 HHS will establish a Child Care Subsidy Program using appropriated funds in order to improve the affordability of child care for lower income Federal employees. The program will be established within one (1) year of the effective date of this agreement.

A. Program Information

The Employer will post all relevant information concerning the Child Care Subsidy Program on the Intranet, including the forms referenced below and Frequently Asked Questions (FAQs). In addition, information and/or forms may be obtained from the designated Child Care Program Coordination Team for each OPDIV.

B. Eligibility and Coverage

Eligibility. The Employer's child care subsidy will be available to Wage Grade and General Schedule career employees nationwide full-time and part-time, employees who have an adjusted gross family income of \$75,000 or less (IRS form 1040, Line 37 and 21 on IRS form 1040A). The child care subsidy covers the children of Agency employees from birth through age 13 and disabled children through age 18.

Children Covered. Consistent with the implementing regulations of Public Law 107-67, a child is defined as a biological child who lives with the Federal employee, an adopted child, a stepchild, a foster child, a child for whom a judicial determination of support has been obtained, or a child who is supported by the Federal employee who is a parent or guardian and makes regular and substantial contributions.

Services Covered. The subsidy will apply to child care services provided at Federal child care centers, non-Federal child care centers, and in family child care homes as long as the providers are licensed and/or regulated by the State and/or local regulating authorities. In addition, the subsidy applies to both full-time and part-time programs, such as before and after school programs and daytime summer programs.

Amount of Subsidy. The child care subsidy offered will range from \$50 to \$75 per week, per child, based on an employee's adjusted gross family income levels as follows:

<u>Total Household Income</u>	<u>\$ of Child Care Costs Paid by Employer</u>
<u>\$40,000 and below</u>	<u>\$75</u>
<u>\$40,001 - \$47,000</u>	<u>\$70</u>
<u>\$47,001 - \$54,000</u>	<u>\$65</u>
<u>\$54,001 - \$61,000</u>	<u>\$60</u>
<u>\$61,001 - \$70,000</u>	<u>\$55</u>
<u>\$71,001 - \$75,000</u>	<u>\$50</u>

There is no limit on the number of children per family for whom employees may receive the subsidy.

Subsidy Payments. Child care subsidy payments will normally be made to the child care provider.

Reduction of Subsidy. Child care subsidy amounts paid by the Employer will be reduced by the amount of other state and local subsidies received. Employees are responsible for determining whether acceptance of the Employer's child care subsidy affects their eligibility for child care subsidies from any other sources.

C. Applying for the program

Application Process. To apply for the child care subsidy employees must complete and submit the application packet via first class mail, facsimile transmittal, or e-mail (all applications are mailed, Federal employees are not allowed to email social security numbers) to Federal Employee Education and Assistance Fund (FEEA), HHS/HRSA Child Care Program, 3333 S. Wadsworth Boulevard, Suite 300, Lakewood, CA, 80227-5122. The application packet must include the following forms:

- Child Care Subsidy Application Form-HHS-698, "Department of Health and Human Services, Office of the Secretary Child Care Subsidy Program Application
- Child Care Provider Application Form-OPM Form 1644, "Child Care Provider Form.' The provider does not need to complete Section IV, Provider's Financial Institution,
- SF-50 - "Notification of Personnel Action"
- Pay statements for the two most recent pay periods for each parent or guardian
- Most recent signed IRS tax filing forms for each parent or guardian (federal forms only, state forms and W-2's are not required)
- Copy of child care provider's license or letter of compliance with state or local child care agency
- Copy of Child Care Provider's Rate Sheet

Approval/Denial of Subsidy Requests. Employees will receive written notice regarding whether their request for a child care subsidy has been approved or denied within 10 workdays of submission of the request. If the request has been denied, the written denial will include the reason(s) for the denial.

Recertification. Each year the employee must submit an annual enrollment recertification with documentation. Once an employee is initially approved for the subsidy, the employee will receive information regarding what is required for recertification normally within 60 days before the recertification documentation is due. FEEA sends letters to all participants in January or

early February requesting their Federal tax return, current Leave & Earning and a rate sheet for their day care provider.

D. Monitoring the Program

A. Monitoring the Program. The parties agree to work together to maximize employee participation in the program in terms of the number of employees who participate in the program each year and/or the amount of child care subsidy offered. To that end, the parties will jointly monitor the program and regularly exchange feedback for improving the program. In addition, the Agency will share with NTEU all information it gathers concerning the child care subsidy program in a timely manner. The Agency will also provide annual participation reports to NTEU which will include the name and GS level of each participant, number of children covered, and the amount of the total subsidy received.

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SECTION 9- DAY CARE

Within three (3) years of execution of this CBA, HHS agrees to establish a space for a day care facility in its Headquarters facilities and will provide notice in accordance with Article 3 to NTEU prior to implementation. In accordance with GSA regulations, HHS employees will be provided priority for slots in any day are facility in HHS space.