

UNITED STATES DEPARTMENT OF AGRICULTURE
FOOD SAFETY AND INSPECTION SERVICE
WASHINGTON, DC

FSIS NOTICE

44-24

10/16/24

TIME OFF FOR SAFE LEAVE PURPOSES

I. PURPOSE

This notice provides instructions and leave options when employees need time off for safe leave purposes.

II. BACKGROUND

A. On May 15, 2024, the U.S. Office of Personnel Management issued a memo entitled, [Maximizing Access to Leave to Seek Safety and Recover from Domestic Violence, Dating Violence, Sexual Assault, Stalking, and Related Forms of Abuse or Harassment \(Safe Leave\)](#). The memo directs agencies to support employees who request time off from work for qualifying safe leave purposes to the maximum extent practicable when they are seeking safety and recovering from domestic violence, dating violence, sexual assault, stalking, and related forms of abuse or harassment (including economic abuse or other forms of technological abuse), or assisting a family member for such safe leave purposes.

B. Safe leave is not a new category of leave. Employees may request to use accrued or advanced annual and/or sick leave, donated leave (if they are an approved leave recipient), earned compensatory (comp) time or travel comp time, credit hours (for employees on flexible schedules), unpaid leave, family friendly sick leave, court leave, weather and safety leave, and leave under the Family and Medical Leave Act (FMLA), as appropriate, for safe leave purposes (see [FSIS Directive 4630.2, Leave](#)).

III. GENERAL

A. Employees may request time off for safe leave purposes when they engage in the following or similar activities for themselves or to assist family members as appropriate:

1. Seeking medical treatment, including mental health services such as counseling or therapy;
2. Securing housing or relocating;
3. Obtaining services from organizations or groups that provide services for survivors of domestic violence, dating violence, sexual assault, image-based abuse, human trafficking, and/or stalking;
4. Participating in safety planning or taking other actions to increase safety;
5. Attending court to obtain a protective order, participate in child custody proceedings, or obtain legal or other victim services; or

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6. Otherwise dealing with the consequences of the abusive behavior (for example, arranging for childcare or enrolling a family member in a new school).

B. Covered family members under family friendly leave provisions include:

1. Spouse;
2. Parents (includes stepparents);
3. Parents-in-law;
4. Children (includes stepchildren, adopted children, foster children, guardianship) and their spouses;
5. Siblings and their spouses;
6. Grandparents and their spouses;
7. Grandchildren and their spouses; and
8. Any individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship.

C. Covered family members under FMLA include:

1. Parents;
2. Spouse;
3. Child under 18, or over 18 and unable to provide self-care due to a physical or mental disability.

D. Supervisors are to consult the Labor and Employee Relations Division in cases of suspected leave abuse by emailing FSISHR1@usda.gov or calling them at 1-FSISHR1 (1-877-374-7471).

IV. REQUESTING TIME OFF

A. Generally, employees are to request time off in advance. Supervisors are to be accommodating, to the maximum extent practicable as permitted by law, and understand employees may not be in a position to request such leave in advance due to reasons beyond their control. When this happens, supervisors are to retroactively approve requests for the use of an appropriate form of paid or unpaid leave when employees return to work.

B. For safe leave purposes, supervisors are to allow an employee the opportunity to request leave or other time off through a third party, such as a family member, in cases where the employee does not feel comfortable speaking with a supervisor. The supervisor is to approve requests made by a third party for safe leave purposes.

C. Employees are not required to provide personal details in their leave requests but are required to provide enough information to determine the correct type of leave to be charged for the absence. The type of leave charged depends on the specific activities that necessitated the absence and whether employees are using the leave for themselves or family members.

D. Supervisors are to consider employee entitlements to specific types of leave (e.g., sick leave or leave under FMLA) or if the request for leave should be granted. However, employees who establish eligibility for leave under FMLA and meet the administrative requirements, have an entitlement to leave.

V. TIME OFF OPTIONS

A. Employees have various leave options available to them (see [FSIS Directive 4630.2](#)) when they need time off for safe leave purposes depending on the specific activities and whether they are engaging in the activities for themselves or assisting family members engaged in those activities.

B. Annual Leave: Employees may be granted annual leave for all safe leave purposes. Employees who request leave to testify as witnesses during a criminal trial against the perpetrator are to be granted court leave.

C. Advanced Annual Leave: Employees who have exhausted their accrued annual leave are to be granted advance annual leave in an amount not exceeding what they would accrue in the remainder of the leave year for all safe leave purposes.

D. Annual Leave In lieu of Sick Leave: Employees may use annual leave in lieu of sick leave to obtain treatment for illnesses or injuries as a result of domestic violence, dating violence, sexual assault, stalking, or related forms of abuse or harassment. Employees have a right to take annual leave, the timing of which would be subject to approval even when using it in lieu of sick leave.

E. Sick Leave: Employees are entitled to use sick leave consistent with current laws and regulations for granting and using sick leave. The date of abuse should not be a factor in approving sick leave. For example, an employee suffered abuse 6 months ago and is now experiencing symptoms of post-traumatic stress disorder and requests sick leave. The fact that the abuse occurred 6 months ago should not be a factor in approving the leave. Sick leave may not be used for safe leave purposes that are not allowable under sick leave regulations (e.g., participating in child custody proceedings). It may be used without limitation when, as a result of domestic violence, dating violence, sexual assault, stalking, or related forms of abuse or harassment, the employee:

1. Is receiving a medical, dental, or optical examination or treatment for injuries (including mental health services such as counseling or therapy provided by a health care provider); or
2. Is incapacitated for the performance of duties due to physical or mental illness or injury.

F. Advanced Sick Leave: Employees who have exhausted their accrued sick leave, are to be granted advanced sick leave for eligible safe leave purposes (listed in subparagraph V. D.). Employees may not carry more than 240 hours of advanced sick leave at any given time.

G. Sick Leave for General Family Care: Employees are entitled to use up to 13 days (104 hours for full-time employees) of sick leave each year when, as a result of domestic violence, dating violence, sexual assault, stalking, or related forms of abuse or harassment, they need to:

1. Provide care for a family member who is incapacitated as a result of physical or mental illness or injury; or
2. Attend to a family member receiving medical, dental, or optical examination or treatment (including mental health services such as counseling or therapy provided by a health care provider).

H. Sick Leave for the Serious Health Condition of a Family Member: Employees are entitled to use up to 12 weeks (480 hours for full-time employees) of sick leave each leave year when they need to provide care for a family member with a serious health condition as a result of domestic violence, dating violence, sexual assault, stalking, or related forms of abuse or harassment (includes 13 days of sick leave for general family care or bereavement purposes in a leave year). The number of hours of sick leave used by employees in a leave year for general family care or bereavement must be subtracted from the 480-hour entitlement to provide care to a family member with a serious medical condition. For example, if an employee uses 80 hours for general family care and bereavement purposes so far in the leave year, they can use up to 400 hours by the end of the leave year to care for a family member with a serious medical condition.

I. Family Medical Leave Act (FMLA): Annual leave, sick leave, and donated annual leave under the Voluntary Leave Transfer or Leave Bank Programs may be substituted for FMLA unpaid leave as appropriate.

1. **Self:** Leave under FMLA may be used as appropriate if domestic violence, dating violence, sexual assault, stalking, or related forms of abuse or harassment results in a serious health condition for the employee that makes them unable to perform the essential functions of their position.
2. **Family Member:** Employees may only use leave under FMLA to care for a specifically defined group of family members when domestic violence, dating violence, sexual assault, stalking, or related forms of abuse or harassment results in a serious health condition or injury (including mental health).
3. Covered family members under FMLA include:
 - a. Spouse;
 - b. Parent; and
 - c. Child under 18 (or over 18 and unable to provide self-care due to a mental or physical disability).

J. Donated Annual Leave: Employees are eligible to apply for donated annual leave if the domestic violence, dating violence, sexual assault, stalking, or related forms of abuse or harassment results in a medical emergency for either the employee or their covered family member, that is likely to require the employee to be absent from work for a prolonged period and result in a substantial loss of income because of the employee's lack of available paid leave.

K. Weather and Safety Leave: Supervisors are to consider granting weather and safety leave to an employee who is unable to safely work at an approved location (agency worksite or approved telework/remote work location) because of safety risks associated with domestic violence, dating

violence, sexual assault, or stalking and other related forms of abuse or harassment (e.g., an active threat of physical violence at the work location including threats communicated online). Granting weather and safety leave would depend on the safety risks associated with the given work location and cannot be granted based on a safety issue for a family member.

VI. SUPPORTING DOCUMENTATION

- A. An employee's written and signed self-certification statement that they are dealing with domestic violence, dating violence, sexual assault, stalking, or related forms of abuse or harassment should generally be sufficient to grant leave for safe leave purposes.
- B. If a supervisor deems it necessary to request additional information for purposes of verification, or in the case of the employee invoking FMLA leave, supporting information may include, but need not be limited to, a service provider's statement, or a doctor's statement, as well as a protection order or police or court reports.
- C. Under no circumstances is a supervisor to require the employee to contact law enforcement or otherwise report the violence as a condition for accessing time off for safe leave purposes.

VII. WORKPLACE AND WORK SCHEDULING FLEXIBILITIES

- A. Supervisors are to consider the use of workplace flexibilities such as telework, temporary remote work, or flexible work schedules.
- B. **Telework and Remote Work:** To the maximum extent practicable, supervisors should permit telework-ready employees to work from alternative agency-approved worksites or to work remotely if they (or family members for whom the employees provide care) experience problems associated with domestic violence, dating violence, sexual assault, stalking, or related forms of abuse or harassment.
- C. **Flexible Work Schedule:** To the maximum extent practicable, supervisors are to permit employees who are on approved flexible work schedules to adjust their work schedules, such as reporting times and work hours, to accommodate activities related to safe leave purposes in accordance with internal policies and collective bargaining agreements.

VIII. QUESTIONS

Refer questions to FSISHR1@usda.gov with "Safe Leave" in the subject line or call 1-877-FSISHR1 (1-877-374-7471) and select option 4.



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