



Transportation Security Administration

HUMAN RESOURCES POLICY

HRM LETTER 630-3

DATE: March 4, 2004

SUBJECT: Policy on Sick Leave and Family Medical Leave Act

- A. PURPOSE:** The purpose of this policy is to identify the policies for employee use of sick leave and leave without pay under the Family and Medical Leave Act (FMLA) of 1993 within TSA.
- B. SCOPE:** The directive applies to all TSA employees.
- C. ROLES & RESPONSIBILITIES:** The authority to approve a leave request is identified by the organization. Authorized management officials are responsible for reviewing, approving and/or disapproving employee requests for leave. Employees are responsible for following established leave requesting procedures and providing administratively acceptable documentation to support absences, if required. Organizations have the authority to develop individual leave requesting procedures that adhere to the guidelines outlined in this policy.
- D. DEFINITIONS:**
1. *Adoption* – A legal process in which an individual becomes the legal parent of another’s child. For sick leave and FMLA purposes, the definition of adoption also includes all necessary and related travel.
 2. *Family and Medical Leave* –an employee’s entitlement to 12 administrative workweeks of unpaid leave authorized to employees under the Family and Medical Leave Act (FMLA) of 1993.
 3. *Family Member* –Family member for sick leave purposes is defined as spouses and their parents; children, including adopted and foster; parents; siblings and their spouses; and any individual related by blood or affinity whose relation to the employee is the equivalent of a family relationship.
 4. *Health Care Provider* – Generally this is a licensed Doctor of Medicine or Doctor of Osteopathy; any health care provider recognized by the Federal Employee Health Benefits Program or who is licensed or certified under Federal or state law to provide the service in question; a Christian Science practitioner listed with the First Church of Christ, Scientist, in Boston, Massachusetts; or a Native American, including an Eskimo, Aleut, and Native Hawaiian, who is recognized as a traditional healing practitioner by native traditional religious leaders.
 5. *In Loco Parentis* – An individual who had day-to-day responsibility for the care and financial support of an employee when the employee was a child; or a situation in which an employee has day-to-day responsibility for the care and financial support of a child. A biological or legal relationship is not necessary.

6. *Parent* – A biological parent or an individual who stands or stood in loco parentis to an employee when the employee was a child. Does not include parents “in law.”
7. *Reduced Leave Schedule* – For FMLA purposes, this is a work schedule under which the usual number of hours of work per workday or workweek are reduced by the number of hours of family and medical leave taken.
8. *Serious Health Condition* – See Appendix C for definition of a serious health condition for FMLA and sick leave purposes.
9. *Son or Daughter* – A biological, adopted or foster child; a stepchild; a legal ward; or a child of a person who stood in loco parentis. For FMLA purposes, the child must be under 18 years of age or over 18 years of age and incapable of self-care because of mental or physical disability.
10. *Spouse* – For FMLA purposes, this is an individual who is a husband or wife of the employee pursuant to a marriage that is a legal union between one man and one woman. This includes common law marriage between one man and one woman in States where common law marriages are recognized.

E. SICK LEAVE POLICY & PROCEDURES:

1. Earning Rates of Sick Leave

- a. Full-time employees earn 4 hours of sick leave for each full biweekly pay period in a pay status. Earning of sick leave is not affected by length of service.
- b. Part-time employees with an established tour of duty earn sick leave at a rate of 1 hour for each 20 hours of paid duty status with a maximum of 4 hours of sick leave per pay period.

2. Sick Leave Policy

- a. Sick leave may be granted to employees for medical, dental or optical examination or treatment; incapacitation due to physical or mental illness, injury, pregnancy, or childbirth; to prevent exposure of a communicable disease to other employees and/or the general public; and to participate in activities related to the adoption of a child.
- b. Supervisors are responsible for informing employees in writing (email, memo, posters, etc) of the correct sick leave requesting procedures for the organizational unit. Supervisors are also responsible for approving and disapproving sick leave requests for their employees. Supervisors have the discretion to disapprove sick leave requests for non-emergency medical, dental or optical examination or treatment if it is determined that the employee’s services are needed.

- c. Supervisors or other authorized management officials are responsible for managing unscheduled usage of sick leave. Excessive use of unscheduled leave should be addressed immediately. The employee should be informed that excessive use of unscheduled sick leave, even when substantiated by medical documentation, could be the basis for disciplinary action up to and including removal.
- d. Supervisors are responsible for ensuring that employee medical documentation is kept confidential and only disclosed to the necessary management levels.
- e. Supervisors may place an employee in an AWOL status if the employee fails to show up for work and/or does not provide acceptable evidence to support requests for sick leave.

Supervisor's Tip: Supervisors should document any instances where an employee does not show up for work and does not follow established leave requesting procedures. The failure to follow procedures may be the basis for disciplinary action even if the employee provides acceptable medical documentation for the absence.

- f. Employees are responsible for managing their leave needs and making every effort to avoid requests for unscheduled sick leave. Employees are required to make advance requests of sick leave for their own or family member's medical, dental or optical examination or treatment. Employees must use the OPM form 71 (http://www.opm.gov/FORMS/PDF_FILL/opm71.pdf) to request sick leave unless notified otherwise.
- g. In the event of an emergency, employees must follow the established call-in/notification procedures established by their organization. At a minimum the employee will provide an estimate of the time that he/she expects to be absent because of the illness.
- h. Employees are required to provide "administratively acceptable" evidence to their supervisor when requesting sick leave. Administratively acceptable documentation may be medical documentation, employee self-certification or other documentation sufficient to warrant approval of a sick leave request.
- i. The supervisor or management official authorized to approve leave requests will determine if the evidence submitted is administratively acceptable. Employees may be asked to provide additional information if medical certification is unclear or does not indicate that the employee is incapacitated for duty. Medical documentation may also be referred to an agency-authorized physician for review and clarification.
- j. When medical documentation is required, it should at a minimum, provide information on the employee's medical condition; identify how the condition affects the employee's ability to perform the duties of the position; identify the expected duration of the employee's absence; and have the signature of the employee's personal physician or authorized health care provider. For absences other than

medical, dental or optical examination, generic statements such as “under my care” or “received treatment” will not be considered administratively acceptable.

- k. Sick leave may be advanced to employees who have a serious health condition and have exhausted all of their available sick leave. For this purpose, serious health condition is defined as a disability or ailment that lasts for at least 3 consecutive workdays and is supported by a medical certificate.
 - l. The maximum amount of advance sick leave that may be granted in a leave year to a requesting employee is 30 days. For most full time employees, this equates to 240 hours and is prorated for part time employees. Employees may not be granted more than 40 hours (this is prorated for part time employees) of advance sick leave to care for a family member. Only a supervisor or other management official with delegated authority may approve advance sick leave requests.
 - m. Employee requests for advance sick leave must be in writing. The absence must be for at least 3 workdays and be accompanied by appropriate medical documentation signed by an authorized health care provider. The granting or denial of advance sick leave should be made in writing, preferably on the OPM form 71 (http://www.opm.gov/FORMS/PDF_FILL/opm71.pdf). When warranted, sick leave may be advanced whether or not the employee has an annual leave balance. However, the supervisor must consider whether the employee will continue employment with TSA long enough to repay the indebtedness.
 - n. An employee may repay advanced sick leave by; (1) a charge against annual leave provided this action is not for the purpose of avoiding a forfeiture of annual leave at the end of the leave year; (2) substituting donated annual leave, received under the Voluntary Leave Transfer Program, for the advance sick leave; or (3) a monetary settlement upon separation from TSA.
 - o. Management is responsible for notifying the payroll office in writing when an employee separates before repaying the balance of advanced sick leave.
 - p. Employees who are advanced sick leave are not required to repay TSA for the advanced sick leave if the employee dies or is approved for a disability retirement.
3. Use of Sick Leave for Family Care and Bereavement Purposes
- a. Sick leave for family care includes:
 - (1) Providing care for a family member as a result of physical or mental illness, injury, or medical, dental, or optical examination or treatment; or
 - (2) Making arrangements necessitated by the death of a family member or attending the funeral of a family member.

- b. Full-time employees are allowed to use up to 40 hours of sick leave each leave year, regardless of their sick leave balance, for general care of a family member and bereavement purposes.
- c. Generally, sick leave for bereavement purposes will be limited to a maximum of 3 workdays. Management may on a case-by-case basis approve additional use of sick leave for bereavement purposes.
- d. Employees who maintain a sick leave balance of at least 80 hours may be approved to use up to an additional 64 hours of sick leave for general family care and/or bereavement purposes. This allows for a maximum of 104 hours of sick leave for general family care and bereavement purposes in a leave year.

Example: Jane has a sick leave balance of 133 hours. She needs to provide general care for her 5-year old son recovering from the flu. The maximum amount of sick leave that she would be able to use at this point is 53 hours.

- e. Part-time employees may use a pro rated amount of sick leave for general family care and bereavement purposes.

Example: A part-time employee who works 20 hours a week could use 20 hours of sick leave to provide general care for a family member.

4. Sick Leave to Care for a Family Member with a Serious Health Condition

- a. Full-time employees may use a total of 12 administrative workweeks (480 hours) of sick leave to care for a family member with a serious health condition. Employees must maintain a balance of 80 hours in their sick leave account to be eligible to use more than the first forty hours allowed to care for a family member.
- b. Part-time employees may use a pro rated amount of sick leave to care for a family member with a serious health condition.

Example: A part time employee with a regularly 40 hour tour of duty who maintains a sick leave balance of at least 40 hours would be able to use from 21 to 240 hours of sick leave in a leave year to care for a family member with a serious health condition.

5. Sick Leave for Adoption Purposes

- a. Employees may use their sick leave for purposes related to the adoption of a child including: appointments with adoption agencies, social workers and attorneys; court proceedings; required travel related to the adoption; periods of time for bonding and care that are required by the overseeing adoption agency or court; and any other activities that are necessary for the adoption process to proceed.

- b. Employees must provide administratively acceptable evidence for absences related to adoption. Additionally, employees must provide as much notice as possible when requesting absences related to adoption. Unscheduled sick leave will rarely be granted for absences related to adoption.
- c. An employee may not use sick leave if he/she voluntarily chooses to be absent from work to bond or care for an adopted child; such absence must be taken as annual leave or leave without pay. **Exception:** As identified in 5(a), employees who are required by the adoption agency or court to have a specific bonding period with an adopted child, as supported by administratively acceptable documentation, may use sick leave.

6. Approval of Sick Leave Requests

- a. In general, supervisors shall not deny employee use of accrued sick leave unless there is specific knowledge of employee misuse or abuse. Supervisors may require employees to schedule routine medical appointments in timeframes that reduce adverse impact on the organization.
- b. In the event that an employee's sick leave balance is insufficient to cover an approved sick leave request, the employee must request annual leave or LWOP. If the employee or the employee's personal representative are not able to be reached when an employee's available sick leave is depleted, the supervisor will place the employee on LWOP until a request for paid leave is made by the employee or the employee's personal representative.
- c. Employees may not be granted sick leave to perform outside employment, including self-employment, or to seek employment. Employees may not be granted use of sick leave for absences related to military leave unless the requirements for use of sick leave are met.

7. Employee Absences of 3 Days or Less

- a. Generally, employee self-certification will be sufficient for absences of less than three days.
- b. However, supervisors have authority to request administratively acceptable documentation for sick leave absences of less than three days. An employee whose leave record indicates possible abuse of sick leave may be required to submit a medical certificate, or other acceptable documentation, in support of any future request for sick leave, regardless of length.

F. FAMILY AND MEDICAL LEAVE ACT (FMLA) POLICES AND PROCEDURES

1. FMLA Policy

- a. Title II of the Family and Medical Leave Act (FMLA) of 1993 provides TSA employees on appointments without time limitation or time limited appointments of more than one year with up to 12 administrative weeks of leave without pay in a 12-month period for certain personal and family emergencies. To be eligible for FMLA under Title II, employee must earn sick and annual leave and must have worked for the TSA or the Federal Government for at least 12 months. It is not necessary for the 12 months to be recent or consecutive.
- b. Title II of FMLA covers all TSA employees except those employees serving under intermittent or temporary appointments that will expire in one year or less. Employees on appointments of less than one year should refer to the subsection “General Guidelines for TSA Employees Covered by Title I” for more information on their entitlements under FMLA.
- c. An employee may take only the amount of family and medical leave that is necessary to manage the circumstance that prompted the need for leave under FMLA.
- d. Employees are entitled to family and medical leave for one or more of the following reasons:
 - (1) The birth of a son or daughter and the care of that 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; or
 - (4) A serious health condition of the employee that makes the employee unable to perform any one or more of the essential functions of the employee’s position.
- e. TSA has an obligation to inform employees of their entitlement to leave without pay under FMLA. Organizations may use the FMLA fact sheet (Appendix A), a memorandum (sample memo in Appendix B) or other methods to inform employees of their entitlement.
- f. Employees are responsible for invoke their entitlement to FMLA and may not retroactively invoke FMLA. However, if an employee and his or her personal representative are physically or mentally incapable of invoking the employee’s entitlement to FMLA during the entire period in which the employee is absent from work for an FMLA qualifying purpose, the employee may retroactively invoke his/her entitlement to FMLA within 2 workdays after returning to work. In such a case, the incapacity of the employee must be documented by a written medical

certification from a health care provider. In addition, the employee must provide documentation acceptable to the agency explaining the inability of the personal representative to contact the agency to invoke the employee's FMLA entitlement.

- g. The 12-month period begins on the date the employee first takes leave for family or medical needs under the FMLA and continues for 12 months. Employees are not entitled to an additional 12 workweeks of leave until the previous 12-month period ends and there is a new or continuing situation that entitles the employee to use leave under FMLA. An employee does not have the option of choosing a calendar year, fiscal year or any timeframe other than the 12-month period that begins on the first day of use. An employee cannot "carry over" unused FMLA entitlements to the next 12-month period.

Example: If an employee invokes FMLA on September 7, 2003, the employee has until September 6, 2004 to use the 12 administrative workweeks of leave for that 12-month period.

- h. A father and mother are each entitled to 12 administrative workweeks of unpaid leave for birth, adoption, and/or foster care placement or for the care of a son or daughter with a serious health condition.
- i. The 12 administrative workweeks of leave is calculated on an hourly basis and will equal 12 times the average number of hours in an employee's regularly scheduled administrative workweek

Example: If an employee is regularly scheduled for 40 hours in a workweek, the employee is entitled to 480 hours (40x12) of family and medical leave during any 12-month period. A part time employee working 32 hours a week would be entitled to 384 hours (32x12) of family and medical leave.

- j. If there are any Federal holidays or non-workdays established by Federal statute during the period in which an employee is on family and medical leave, those days will not be counted toward the 12-week entitlement to family and medical leave.
- k. An employee may elect to substitute paid time off for any or all of the period of leave taken under the FMLA. This includes accrued annual or sick leave, as applicable; approved advance annual or sick leave; and donated annual leave received under the Voluntary Leave Transfer Program.

Example: John invoked his entitlement to FMLA on January 28, 2004 and will need to be out for 4 weeks (160 hours) for major surgery and recovery. John has elected to substitute the leave without pay under FMLA with paid leave. He will substitute the leave without pay with 65 hours of accrued sick leave, 45 hours of accrued annual leave and 50 hours of annual leave donated to him under the VLTP.

- l. The employee may not be denied the right to substitute applicable paid leave for the leave without pay taken under FMLA. In addition, an employee cannot be required to substitute available paid leave for any leave used under FMLA.
- m. The 12-month period for birth, adoption, or foster care placement may begin prior to the actual birth or placement of a child. If an employee invokes leave under the FMLA prior to the date of birth or placement, the 12-month period begins on the date the employee first uses FMLA.
- n. Upon returning from leave taken under the FMLA, an employee must be returned to his/her position of record or a position with equivalent benefits, pay, status, and other terms and conditions of employment. Whenever possible, the employee should be returned to the original position of record. However, when an employee's placement in the same position would impose extreme hardship on the organizational unit, the employee may be placed in an equivalent position.
- o. An employee is not entitled to any right, benefit, or position of employment unless the employee would have been entitled to that right, benefit, or position had the employee not taken leave under FMLA.

2. Intermittent Use of FMLA and Reduced Leave Schedule

- a. Approval for intermittent use of leave under FMLA or approval to work a reduced schedule under FMLA does not provide an employee with a right to accumulate a substantial amount of unscheduled and unpredictable absences or a right to take unscheduled leave at a moment's notice for an indefinite time period. A continuing need for unscheduled and unpredictable absences may result in a determination that an employee is not qualified for a position where reliable attendance is a bona fide requirement. As a result, appropriate action may be taken based on the employee's inability to perform.
- b. Leave for the care of a covered family member with a serious health condition or leave for the serious health condition of an employee may be taken intermittently or on a reduced leave schedule. Employees may be asked to schedule planned medical treatments in accordance with schedules offered by management, subject to the approval of the attending health care provider.
- c. Employees may not use leave on an intermittent or reduced leave schedule basis for bonding purposes related to birth, adoption, or foster care placement, unless the employee and the employee's organization agree to do so.

3. Employee Responsibilities Under FMLA

- a. Employees must invoke their entitlement to leave under FMLA. An employee may not be placed on leave without pay under FMLA without the verbal, written or explicitly implied consent of the employee.

- b. Employees must give at least 30 days notice if the need for leave is foreseeable. If the employee fails to give 30 days' notice with no reasonable excuse, the supervisor may delay the approval of family and medical leave under FMLA until 30 days after the date notice was provided. If the need for leave is unforeseeable and the employee is unable to provide advance notice due to circumstances out of their control, the leave will not be delayed or denied.
- c. Employees must make a reasonable effort to schedule foreseeable planned medical treatment so as not to unduly disrupt the operations of the organizational unit, subject to the patient's medical needs as determined by the attending health care provider.
- d. Employees may elect to maintain their health benefits coverage by making direct payments to TSA for their portion of the HB premiums while in a LWOP status under FMLA or incurring a debt that will be liquidated by automatic payroll deductions upon return to duty.
- e. An employee cannot invoke FMLA retroactively, unless it can be proven that the employee and any personal representatives were physically or mentally incapable of invoking the employee's entitlement to FMLA during the entire period in which the employee was absent from work. An employee who is able to prove that he/she and any personal representatives were physically or mentally incapable of notifying the office of the employee's intent must invoke FMLA within two days of returning to duty.
- f. Employees are responsible for notifying management of their intent to substitute applicable paid time off for the leave without pay under FMLA. Employees may not retroactively substitute paid leave for LWOP used under FMLA.

4. Medical Documentation

- a. Employees must provide written medical documentation of the serious health condition (see definition in Appendix C) that is the basis for the FMLA request.
- b. The documentation must at a minimum include:
 - (1) The date the serious health condition began;
 - (2) The probable duration of the serious health condition or a statement that the serious health condition is a chronic or continuing condition with an unknown duration;
 - (3) Whether the patient is presently incapacitated and the likely duration and frequency of episodes of incapacity;
 - (4) A general statement as to the incapacitation, examination or treatment that may be required; and

- (5) A statement from the health care provider that the employee is unable to perform the essential functions of his/her position as identified by a management official.
 - c. Medical certification for the care of family member must include all of the above as well as a statement from the health care provider that the employee's family member requires psychological comfort and/or physical care; needs assistance for basic medical, hygienic, nutritional, safety or transportation needs; and would benefit from the employee's care or presence. Employees are also required to provide a statement on the care they will provide for the family member and an estimate of the time period needed to provide this care.
 - d. TSA recommends that employees provide their health care provider with a copy of the Department of Labor's medical certification form to document the serious health condition. (<http://www.dol.gov/esa/regs/compliance/whd/fmla/wh380.pdf>).
 - e. A TSA authorized official may contact the employee's health care provider, with the employee's permission, to clarify medical information pertaining to the serious health condition identified in the submitted documentation. No additional personal or confidential information will be requested.
 - f. If TSA doubts the validity of the submitted medical certification, second and third opinions may be sought at TSA's expense.
5. Guidelines for TSA Employees Covered by Title I of FMLA
- a. Subject to paragraph 2(b) below, employees serving under intermittent and temporary appointments that will expire in one year or less are covered by Title I of the Family and Medical Leave Act of 1993.
 - b. In order to be eligible for family and medical leave under Title I, the employees must have been employed by the Federal Government for at least 12 months and employed with TSA for at least 1,250 hours of service during the 12-month period immediately preceding the need for FMLA leave.
 - c. Employees covered by Title I of the FMLA, deemed eligible for the entitlement may be placed on leave under FMLA without their permission by an authorized management official. These employees may also be required to substitute all available paid leave for leave without pay taken under the FMLA.
 - d. The leave requesting and medical certification procedures are the same for employees covered by Title I and Title II of FMLA.

6. Recordkeeping

- a. Employee use of leave under FMLA is not tracked in the current time and attendance system and therefore must be done manually.
- b. At a minimum, the following information must be recorded for an employee using FMLA:
 - (1) Employee's name, position and pay band;
 - (2) Number of hours of leave, including paid and unpaid leave, used under FMLA;
 - (3) Whether the leave was for birth of child, adoption or foster care, serious health condition of a parent or the serious health condition of the employee; and
 - (4) The beginning and ending dates of the employee's 12-month period.
- c. Employee medical documentation or the medical documentation for a family member shall not be included with the employee's time and attendance records. This information must be kept confidential and only provided to those who must review it to make a decision on the employee's initial or ongoing eligibility for FMLA.

G. EFFECTIVE DATE & IMPLEMENTATION

This policy is effective immediately upon signature.



Richard A. Whitford
Assistant Administrator for
Human Resources

3-4-2004
Date

Filing Instructions: File with HR Management Directives
Effective Date: The date of signature.
Review Date: One year from effective date
Distribution: TSA Affiliated HR Offices, Associate Administrators, Assistant Administrators, and Office Directors
Point Of Contact: TSA HR/DeShawn Shepard /(571) 227-2828

APPENDIX A FAMILY AND MEDICAL LEAVE ACT FACT SHEET

ELIGIBILITY

Title II of FMLA covers TSA employees who have permanent appointments or appointments with time limitations of more than a year; who earn sick and annual leave; and who have completed 12 months of Federal service. The Federal service is not required to be 12 recent or consecutive months nor must all of it be with TSA.

ENTITLEMENT

Covered Federal employees are entitled to 12 workweeks of unpaid leave during any 12-month period for (1) the birth of a son or daughter of the employee and the care of such son or daughter; (2) the placement of a son or daughter with the employee for adoption or foster care; (3) the care of spouse, son or daughter, or parent of the employee who has a serious health condition; or (4) the serious health condition of the employee that makes the employee unable to perform the essential functions of his or her position.

An employee may elect to substitute annual leave and/or sick leave, consistent with current laws and regulations, for any unpaid leave taken under FMLA.

JOB BENEFITS AND PROTECTION

Upon return from FMLA leave, an employee must be returned to the same position or to an equivalent position with equivalent benefits, pay, status, and other terms and conditions of employment. An employee who takes FMLA leave is entitled to maintain health benefits coverage. An employee may pay the employee's share of the premiums on a current basis or upon return to work.

ADVANCE NOTICE

Employees must give at least 30 days notice if the need for leave is foreseeable or as soon as is practicable if the need for leave is unforeseen. An employee may not invoke his or her entitlement to FMLA retroactively unless documented is provided certifying that the employee and the employee's personal representative were incapable of invoking the employee's entitlement to FMLA leave during the entire period of absence. In this case, the employee may retroactively invoke entitlement to FMLA within 2 days of returning to duty.

MEDICAL CERTIFICATION

Employees must provide written medical documentation of the serious health condition that is the basis for the FMLA request. The documentation must at a minimum include: (1) the date the serious health condition began; (2) the probable duration of the serious health condition or a statement that the serious health condition is a chronic or continuing condition with an unknown duration; (3) whether the patient is presently incapacitated and the likely duration and frequency of episodes of incapacity; (4) a general statement as to the incapacitation, examination or treatment that may be required; and (5) a statement from the health care provider that the employee is unable to perform the essential functions of his/her position as identified by a management official.

Appendix B
Sample Memorandum Informing Employee of FMLA Entitlement

Date:

Subject: Family Medical Leave Act (FMLA)

From: TSA Human Resources Representative

To:

You recently contacted your supervisor in regards to your entitlement to leave under the Family and Medical Leave Act for the birth of your child (or other FMLA qualifying event). Under Title II of the Family and Medical Leave Act, you are entitled to 12 weeks (480 hours) of leave without pay during a 12-month period for the following purposes:

- The birth of a son or daughter of the employee and the care of such son or daughter;
- The placement of a son or daughter with the employee for adoption or foster care;
- The care of spouse, son, daughter, or parent of the employee who has a serious health condition; or
- Serious health condition of the employee that makes the employee unable to perform the essential functions of his or her positions.

You may elect to substitute annual leave, sick leave or other available paid leave for any or all of the 12 weeks of leave without pay under FMLA. At your request and management's discretion, you may be allowed to use FMLA intermittently. However, please be aware that management is not required to allow intermittent use of FMLA for reasons related to pregnancy and/or the birth of a child. Intermittent use will only be allowed in instances where it is medically necessary and staffing levels allow.

If you would like to invoke your entitlement to FMLA, you must do so in writing. The attached Department of Labor form, WH-380, must be completed and signed by your health care practitioner. This form along with a completed OPM 71, will serve as notice that you are invoking your entitlement to FMLA, identify the effective date of your request as well as identify the expected length of your absence.

You may elect to maintain your health benefits coverage by making direct payments to TSA for your portion of your benefits or incurring a debt that will be liquidated when you return to duty. If you choose to pay your share of premiums while in an unpaid leave status, you must contact your payroll specialist for amount owed and where to send your payment.

In accordance with applicable recertification of screener duties (*Certification requirements are covered in TSA Management Directive 1900-4, FY 03 Annual Proficiency Review*), you will be returned to the same position or to an "equivalent position with equivalent benefits, pay, status, and other terms and conditions of employment" following your return to duty. Please be advised that FMLA is one of the many leave entitlements that are available for your use. Available sick leave, annual leave, compensatory time and/or credit hours may also be used for purposes related to the birth of a child (or insert other FMLA qualifying event).

Please sign a copy of this memorandum and return it to me. Your signature indicates that you have received this memorandum and acknowledge that you have been informed of your entitlement to FMLA. Your supervisor and an HR representative have also signed this memorandum, acknowledging dissemination of this information to you.

Employee Signature_____

Date_____

Supervisor's Signature_____

Date_____

HR Representative_____

Date_____

APPENDIX C
DEFINITION OF A SERIOUS HEALTH CONDITION

- 1) "Serious health condition" is defined as an illness, injury, impairment, or physical or mental condition that involves: inpatient hospital care; continuing treatment by a health care provider; pregnancy; chronic conditions requiring ongoing treatments; permanent/long-term conditions that require supervision; and non-chronic conditions that require multiple treatments.
 - a) **Hospital Care.** Inpatient care in a hospital, hospice, or residential medical care facility, including any period of incapacity or subsequent treatment in connection with or consequent to such inpatient care.
 - b) **Absence Plus Treatment.** A period of incapacity of more than three consecutive calendar days. This includes any subsequent treatment or period of incapacity relating to the same condition that also involves:
 - i) Treatment two or more times by a health care provider, or by a health care provider under direct supervision of the affected individual's health care provider, or by a provider of health care services under orders of, or on referral by, a health care provider; or
 - ii) Treatment by a health care provider 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 prescription medication or therapy requiring special equipment to resolve or alleviate the health condition).
 - c) **Pregnancy.** Any period of incapacity due to pregnancy, or for prenatal care, even if the affected individual does not receive active treatment from a health care provider during the period of incapacity or the period of incapacity does not last more than 3 consecutive calendar days.
 - d) **Chronic Conditions Requiring Treatments.** A chronic condition which:
 - i) Requires periodic visits for treatment by a health care provider, or by a health care provider under the direct supervision of the affected individual's health care provider;
 - ii) Continues over an extended period of time (including recurring episodes of a single underlying condition); and
 - iii) May cause episodic rather than a continuing period of incapacity (e.g., asthma, diabetes, epilepsy, etc.). The condition is covered even if the affected individual does not receive active treatment from a health care provider during the period of incapacity or the period of incapacity does not last more than 3 consecutive calendar days.
 - e) **Permanent/Long-term Conditions Requiring Supervision.** A period of incapacity that is permanent or long-term due to a condition for which treatment may not be effective. The affected individual must be under the continuing supervision of, but need not be receiving active treatment by, a health care provider (e.g. Alzheimer's, severe stroke, or terminal stages of a disease).
 - f) **Multiple Treatments (Non-Chronic Conditions).** Any period of absence to receive multiple treatments (including any period of recovery) by a health care provider or by a provider of health care services under orders of, or on referral by, a health care provider, either for restorative surgery after an accident or other injury or for a condition that would likely result in a period of incapacity of more than 3 consecutive calendar days in the absence of medical intervention or treatment (e.g, chemotherapy/radiation for cancer, physical therapy for severe arthritis, dialysis for kidney disease).
- 2) Serious health condition does not include routine physical, eye, or dental examinations; a regimen of continuing treatment that includes the taking of over-the-counter medications, general bed-rest, exercise, and other similar activities that can be initiated without a visit to the health care provider; a condition for which cosmetic treatments are administered, unless inpatient hospital care is required or unless complications develop; or an absence because of an employee's use of an illegal substance, unless the employee is receiving treatment for substance abuse by a health care provider or by a provider of health care services on referral by a health care provider. Ordinarily, unless complications arise, the common cold, the flu, earaches, upset stomach, minor ulcers, headaches, routine dental or orthodontia problems, or periodontal disease are examples of conditions that do not meet the definition of a serious health condition and do not qualify for leave under FMLA.
- 3) Allergies, migraine headaches, restorative dental or plastic surgery after an injury, removal of cancerous growth, or mental illness resulting from stress may be serious health conditions, but only if such conditions require inpatient care or continuing treatment by a health care provider.