

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 this calculation. Any holidays authorized under 5 U.S.C. 6103 or by Executive order and nonworkdays established by Federal statute, Executive order, or administrative order that occur during the period in which the employee is on family and medical leave may not be counted toward the 12-week entitlement to family and medical leave.

(f) If the number of hours in an employee's regularly scheduled administrative workweek is changed during the 12-month period of family and medical leave, the employee's entitlement to any remaining family and medical leave will be recalculated based on the number of hours in the employee's current regularly scheduled administrative workweek.

(g) Each agency shall inform its employees of their entitlements and responsibilities under this subpart, including the requirements and obligations of employees.

(h) An agency may not put an employee on family and medical leave and may not subtract leave from an employee's entitlement to leave under paragraph (a) of this section unless the agency has obtained confirmation from the employee of his or her intent to invoke entitlement to leave under paragraph (b) of this section. An employee's notice of his or her intent to take leave under § 630.1206 may suffice as the employee's confirmation.

[58 FR 39602, July 23, 1993, as amended at 61 FR 64452, Dec. 5, 1996; 65 FR 26486, May 8, 2000]

**§ 630.1204 Intermittent leave or reduced leave schedule.**

(a) Leave under § 630.1203(a) (1) or (2) of this part shall not be taken intermittently or on a reduced leave schedule unless the employee and the agency agree to do so.

(b) Leave under § 630.1203(a) (3) or (4) of this part may be taken intermittently or on a reduced leave schedule

when medically necessary, subject to §§ 630.1206 and 630.1207(b)(6) of this part.

(c) If an employee takes leave under § 630.1203(a) (3) or (4) of this part intermittently or on a reduced leave schedule that is foreseeable based on planned medical treatment or recovery from a serious health condition, the agency may place the employee temporarily in an available alternative position for which the employee is qualified and that can better accommodate recurring periods of leave. Upon returning from leave, the employee shall be entitled to be returned to his or her permanent position or an equivalent position, as provided in § 630.1208(a) of this part.

(d) For the purpose of applying paragraph (c) of this section, an alternative position need not consist of equivalent duties, but must be in the same commuting area and must provide—

(1) An equivalent grade or pay level, including any applicable locality payment under 5 CFR part 531, subpart F; special rate supplement under 5 CFR part 530, subpart C; or similar payment or supplement under other legal authority;

(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).

(e) The agency shall determine the 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).

(f) Only the amount of leave taken intermittently or on a reduced leave schedule, as these terms are defined in § 630.1202, shall be subtracted from the total amount of leave available to the employee under § 630.1203 (e) and (f).

[58 FR 39602, July 23, 1993, as amended at 61 FR 3544, Feb. 1, 1996; 61 FR 64453, Dec. 5, 1996; 70 FR 31314, May 31, 2005]

**§ 630.1205 Substitution of paid leave.**

(a) Except as provided in paragraph (b) of this section, leave taken under § 630.1203(a) of this part shall be leave without pay.

**§ 630.1206**

**5 CFR Ch. I (1–1–10 Edition)**

(b) An employee may elect to substitute the following paid leave for any or all of the period of leave without pay to be taken under § 630.1203(a)—

(1) Accrued or accumulated annual or sick leave under subchapter I of 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 any other agency employee who requests advanced annual or sick leave; and

(3) Leave made available to an employee under the Voluntary Leave Transfer Program or the Voluntary Leave Bank Program consistent with subparts I and J of part 630 of this chapter.

(c) An agency may not deny an employee's right to substitute paid leave under paragraph (b) of this section for any or all of the period of leave without pay to be taken under § 630.1203(a), consistent with current law and regulations.

(d) An agency may not require an employee to substitute paid leave under paragraph (b) of this section for any or all of the period of leave without pay to be taken under § 630.1203(a).

(e) An employee shall notify the agency of his or her intent to substitute paid leave under paragraph (b) of this section for the period of leave without pay to be taken under § 630.1203(a) prior to the date such paid leave commences. An employee may not retroactively substitute paid leave for leave without pay previously taken under § 630.1203(a)

[58 FR 39602, July 23, 1993, as amended at 61 FR 64453, Dec. 5, 1996]

**§ 630.1206 Notice of leave.**

(a) If leave taken under § 630.1203(a) of this part is foreseeable based on an expected birth, placement for adoption or foster care, or planned medical treatment, the employee shall provide notice to the agency of his or her intention to take leave not less than 30 calendar 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 calendar

days, the employee shall provide such notice as is practicable.

(b) If leave taken under § 630.1203(a) (3) or (4) of this part is foreseeable based on planned medical treatment, the employee shall consult with the agency and make a reasonable effort to schedule medical treatment so as not to disrupt unduly the operations of the agency, subject to the approval of the health care provider. The agency may, for justifiable cause, request that an employee reschedule medical treatment, subject to the approval of the health care provider.

(c) If the need for leave is not foreseeable—e.g., a medical emergency or the unexpected availability of a child for adoption or foster care, and the employee cannot provide 30 calendar days' notice of his or her need for leave, 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 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 or denied.

(d) If the need for leave is foreseeable, and the employee fails to give 30 calendar days' notice with no reasonable excuse for the delay of notification, the agency may delay the taking of leave under § 630.1203(a) of this part until at least 30 calendar days after the date the employee provides notice of his or her need for family and medical leave.

(e) An agency may waive the notice requirements under paragraph (a) of this section and instead impose the agency's usual and customary policies or procedures for providing notification of leave. The agency's policies or procedures for providing notification of leave must not be more stringent than the requirements in this section. However, an agency may not deny an employee's entitlement to leave under § 630.1203(a) of this part if the employee fails to follow such agency policies or procedures.

(f) An agency may require that a request for leave under § 630.1203(a) (1)