

Proposed Rules

Federal Register

Vol. 74, No. 176

Monday, September 14, 2009

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 630

RIN 3206-AL93

Absence and Leave; Sick Leave

AGENCY: Office of Personnel Management.

ACTION: Proposed rule with request for comments.

SUMMARY: The U. S. Office of Personnel Management (OPM) is issuing proposed regulations to modify definitions related to family member and immediate relative in 5 CFR part 630 for purposes of use of sick leave, funeral leave, voluntary leave transfer, voluntary leave bank, and emergency leave transfer. These changes would implement Section 1 of the President's June 17, 2009 Memorandum on Federal Benefits and Non-Discrimination and ensure that agencies are considering the needs of a widely diverse workforce and providing the broadest support possible to employees to help them balance their increasing work, personal, and family obligations.

DATES: Comments must be received on or before November 13, 2009.

ADDRESSES: You may submit comments, identified by RIN number "3206-AL93," using either of the following methods:

Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

Mail: Jerome D. Mikowicz, Deputy Associate Director, Center for Pay and Leave Administration, U.S. Office of Personnel Management, Room 7H31, 1900 E Street, NW., Washington, DC 20415-8200.

FOR FURTHER INFORMATION CONTACT: Brenda Roberts by telephone at (202) 606-2858; by fax at (202) 606-0824; or by e-mail at pay-performance-policy@opm.gov.

SUPPLEMENTARY INFORMATION: The U.S. Office of Personnel Management (OPM)

is issuing proposed regulations to modify definitions related to family member and immediate relative in 5 CFR part 630 for purposes of use of sick leave, funeral leave, voluntary leave transfer, voluntary leave bank, and emergency leave transfer. These regulations would ensure that agencies are considering the needs of a widely diverse workforce and providing the broadest support possible to employees to help them balance their increasing work requirements and personal and family obligations. As part of OPM's continued efforts to support the needs of the Federal workforce during times of sickness, funerals, and medical or other emergencies, we are proposing to make the definitions of *family member* and *immediate relative* more explicit to include more examples of relationships that are covered under the phrase "[a]ny individual related by blood or affinity" whose close association with the employee is the equivalent of a family relationship. These examples include step-parents and step-children, grandparents, grandchildren, and same-sex and opposite-sex domestic partners. By making the definitions of *family member* and *immediate relative* more explicit, we ensure more consistent application of policy across the Federal Government, implement the Section 1 of the President's June 17, 2009 Memorandum on Federal Benefits and Non-Discrimination, and set an example of the Federal Government as a model employer of a diverse workforce.

Background

The current definition of *family member* in 5 CFR 630.201 and 630.902 was derived from the definition of *immediate relative* used to reflect the provisions of 5 U.S.C. 6326 for funeral leave. (See 34 FR 13655, August 26, 1969.) In the Civil Service Commission's (CSC's and now OPM's) funeral leave regulations for immediate relatives of members of the Armed Forces who died as a result of wounds, disease, or injury incurred while serving in a combat zone, the CSC recognized that there were many cases in which an employee's close relationship to another person was equivalent to a family relationship, although a blood relationship did not exist. Examples provided in the regulations included foster children and stepchildren. Therefore, in the current definition of

immediate relative for funeral leave purposes, and in the definition of *family member* for purposes of sick leave, voluntary leave transfer, voluntary leave bank, and the emergency leave transfer programs, we included "[a]ny individual related by blood or affinity" whose close association with another person is the equivalent of a family relationship. At that time, the CSC provided no further guidance on what relationships would be covered under this category. The intent was for agencies to make the determination on a case-by-case basis based on the close relationship of the employee to the other individual, which might vary from employee to employee. The CSC did not believe it was necessary then to make these two definitions more specific.

However, because of the lack of more specific examples, administration and the approval of leave across and within agencies have been inconsistent. Where agencies have created their own written policies defining whom they include in the category of individuals related by blood or affinity whose close association with another individual is equivalent to a family relationship, implementation necessarily differs from agency to agency. In other cases, moreover, agencies have no written policies, and it then falls to an employee's supervisor to make determinations without consistent overarching guidance. In order to provide more equitable and consistent Governmentwide administration of the leave programs, we believe it is important to define additional categories of individuals who are covered when relying on the phrase "[a]ny individual related by blood or affinity" whose close association with the employee is the equivalent of a family relationship.

With America's changing demographics and socio-economic trends, employees have increasing personal needs and family care obligations. Two-parent families often need both parents to be engaged in the workforce, and many parents raise children in single-parent homes. Employees face increasing demands to provide care to aging relatives or other family members outside of the nuclear family. OPM believes it is important to address the needs of a more diverse workforce. By ensuring consistent policies within the Federal Government

we set an example as the model employer of a diverse workforce.

In order to strengthen Government support for employees and help them balance their increasing work, personal, and family obligations, we are revising and adding to the definitions in 5 CFR part 630, subparts B, H, I, J, and K, to specify more of the types of relationships for which employees may use leave under these regulations.

Our proposed changes do not apply to the Family and Medical Leave Act (FMLA). The situations in which an employee can invoke FMLA leave and the individuals for whom an employee can provide care under FMLA are specified in law.

We are not re-defining the phrase “[a]ny individual related by blood or affinity” whose close association with the employee is the equivalent of a family relationship. We have broadly interpreted the phrase in the past to include such relationships as grandparent and grandchild, brother and sister-in-law, fiancé(e), cousin, aunt and uncle, other relatives outside definitions (1)–(4) in current 5 CFR 630.201 and 630.902, and close friend, to the extent that the connection between the employee and the individual was significant enough to be regarded as having the closeness of a family relationship even though the individuals might not be related by blood or formally in law. The current definition is not altered by the changes we are proposing, and the above list is not intended to be exhaustive, but illustrative. The purpose of the amendments we are proposing to the current definitions of *family member* and *immediate relative* is to make the application of the leave program across the Federal Government as uniform as possible, to implement Section 1 of the President’s June 17, 2009 Memorandum on Federal Benefits and Non-Discrimination, and to continue to cover significant relationships.

Definitions

OPM’s proposed regulations would amend the definition of *family member* in part 630, subparts B (Definitions and General Provisions for Annual Leave and Sick Leave) and I (Voluntary Leave Transfer) and *immediate relative* in subpart H (Funeral Leave); and include new definitions for *committed relationship*, *domestic partner*, *parent*, and *son or daughter*. We are also making conforming changes to subparts J (Voluntary Leave Bank Program) and K (Emergency Leave Transfer Program) because both subparts reference the current definition of *family member*.

The definitions are being changed as follows.

The current definition of *family member* at 5 CFR 630.201 and 5 CFR 630.902 reads—

“*Family member* means the following relatives of the employee:

- “(1) Spouse, and parents thereof;
- “(2) Children, including adopted children and spouses thereof;
- “(3) Parents;
- “(4) Brothers and sisters, and spouses thereof; and
- “(5) Any individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship.”

We are modifying the definition of *family member* to include domestic partners, grandparents, and grandchildren. Our proposed definition reads—

“*Family member* means an individual with any of the following relationships to the employee:

- “(1) Spouse, and parents thereof;
- “(2) Sons and daughters, and spouses thereof;
- “(3) Parents, and spouses thereof;
- “(4) Brothers and sisters, and spouses thereof;
- “(5) Grandparents and grandchildren, and spouses thereof;
- “(6) Domestic partner, including domestic partners of any individual in paragraphs (2)–(5) of this definition; and
- “(7) Any individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship.”

We are also defining the terms *committed relationship*, *domestic partner*, *parent*, and *son or daughter*. The proposed definition of *domestic partner* reads—

“*Domestic partner* means an adult in a committed relationship with another adult, including both same sex and opposite sex relationships.

Committed relationship means that the employee, and the domestic partner of the employee, are each other’s sole domestic partner (and are not married to or domestic partners with anyone else); and share responsibility for a significant measure of each other’s common welfare and financial obligations. This includes, but is not limited to, any relationship between two individuals of the same or opposite sex that is granted legal recognition by a state or by the District of Columbia as a marriage or analogous relationship (including, but not limited to a civil union).

The proposed definition of *parent* reads—

- “*Parent* means—
- “(1) A biological, adoptive, step, or foster parent of the employee, or a

person who was a foster parent of the employee when the employee was a minor;

“(2) A person who is the legal guardian of the employee or was the legal guardian of the employee when the employee was a minor or required a legal guardian; or

“(3) A person who stands in loco parentis to the employee or stood in loco parentis to the employee when the employee was a minor or required someone to stand in loco parentis.

“(4) A parent, as described in paragraphs (1) through (3) of this definition, of an employee’s domestic partner.”

Finally, we are also proposing a definition of *son or daughter*, which reads—

“*Son or daughter* means—

- “(1) A biological, adopted, step, or foster son or daughter of the employee;
- “(2) A person who is a legal ward or was a legal ward of the employee when that individual was a minor or required a legal guardian;

“(3) A person for whom the employee stands in loco parentis or stood in loco parentis when that individual was a minor or required someone to stand in loco parentis; or

“(4) A son or daughter, as described in paragraphs (1) through (3) of this definition, of an employee’s domestic partner.”

We are also proposing a new definition of *immediate relative* for the purposes of funeral leave under subpart H, which uses the same categories of relationship as the definition of *family member*. In order to be consistent with the definition of *family member* of subparts B and I, we are also taking the opportunity to write the definition of *immediate relative* in the present tense and to define *immediate relative* by relationship to the employee rather than by relationship to the deceased. The proposed definition reads—

“*Immediate relative* means an individual with any of the following relationships to the employee:

- “(1) Spouse, and parents thereof;
- “(2) Sons and daughters, and spouses thereof;
- “(3) Parents, and spouses thereof;
- “(4) Brothers and sisters, and spouses thereof;
- “(5) Grandparents and grandchildren and spouses thereof;

“(6) Domestic partner, including domestic partners of any individual in paragraphs (2)–(5) of this definition; and

“(7) Any individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship.”

In the Voluntary Leave Transfer Program regulations in 5 CFR part 630,

subpart I, we are proposing the same change to the definition of *family member* and the addition of the same definitions of *committed relationship*, *domestic partner*, *parent*, and *son or daughter* as we are proposing in 5 CFR 630.201. In the voluntary leave bank and emergency leave transfer programs, we are referencing the changes we are making in the definitions section of the voluntary leave transfer program.

E.O. 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with E.O. 12866.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they will apply only to Federal agencies and employees.

List of Subjects in 5 CFR 630

Government employees.

U.S. Office of Personnel Management.

John Berry,

Director.

Accordingly, OPM is proposing to amend 5 CFR part 630 as follows:

PART 630—ABSENCE AND LEAVE

1. The authority citation for part 630 continues to read as follows:

Authority: 5 U.S.C. 6311; § 630.205 also issued under Pub. L. 108–411, 118 Stat 2312; § 630.301 also issued under Pub. L. 103–356, 108 Stat. 3410 and Pub. L. 108–411, 118 Stat 2312; § 630.303 also issued under 5 U.S.C. 6133(a); §§ 630.306 and 630.308 also issued under 5 U.S.C. 6304(d)(3), Pub. L. 102–484, 106 Stat. 2722, and Pub. L. 103–337, 108 Stat. 2663; subpart D also issued under Pub. L. 103–329, 108 Stat. 2423; § 630.501 and subpart F also issued under E.O. 11228, 30 FR 7739, 3 CFR, 1974 Comp., p. 163; subpart G also issued under 5 U.S.C. 6305; subpart H also issued under 5 U.S.C. 6326; subpart I also issued under 5 U.S.C. 6332, Pub. L. 100–566, 102 Stat. 2834, and Pub. L. 103–103, 107 Stat. 1022; subpart J also issued under 5 U.S.C. 6362, Pub. L. 100–566, and Pub. L. 103–103; subpart K also issued under Pub. L. 105–18, 111 Stat. 158; subpart L also issued under 5 U.S.C. 6387 and Pub. L. 103–3, 107 Stat. 23; and subpart M also issued under 5 U.S.C. 6391 and Pub. L. 102–25, 105 Stat. 92.

2. In § 630.201, paragraph (b) is amended by revising the definition of *family member* and by adding definitions of *committed relationship*, *domestic partner*, *parent*, and *son or daughter* to read as follows:

§ 630.201 Definitions.

* * * * *

(b) * * *

Committed relationship means that the employee, and the domestic partner of the employee, are each other's sole domestic partner (and are not married to or domestic partners with anyone else); and share responsibility for a significant measure of each other's common welfare and financial obligations. This includes, but is not limited to, any relationship between two individuals of the same or opposite sex that is granted legal recognition by a state or by the District of Columbia as a marriage or analogous relationship (including, but not limited to a civil union).

Domestic partner means an adult in a committed relationship with another adult, including both same sex and opposite sex relationships.

* * * * *

Family member means an individual with any of the following relationships to the employee:

- (1) Spouse, and parents thereof;
- (2) Sons and daughters, and spouses thereof;
- (3) Parents, and spouses thereof;
- (4) Brothers and sisters, and spouses thereof;
- (5) Grandparents and grandchildren, and spouses thereof;
- (6) Domestic partner, including domestic partners of any individual in paragraphs (2)–(5) of this definition; and
- (7) Any individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship.

* * * * *

Parent means—

- (1) A biological, adoptive, step, or foster parent of the employee, or a person who was a foster parent of the employee when the employee was a minor;
- (2) A person who is the legal guardian of the employee or was the legal guardian of the employee when the employee was a minor or required a legal guardian; or
- (3) A person who stands in loco parentis to the employee or stood in loco parentis to the employee when the employee was a minor or required someone to stand in loco parentis.
- (4) A parent, as described in paragraphs (1) through (3) of this definition, of an employee's domestic partner.

* * * * *

Son or daughter means—

- (1) A biological, adopted, step, or foster son or daughter of the employee;
- (2) A person who is a legal ward or was a legal ward of the employee when that individual was a minor or required a legal guardian;
- (3) A person for whom the employee stands in loco parentis or stood in loco

parentis when that individual was a minor or required someone to stand in loco parentis; or

(4) A son or daughter, as described in paragraphs (1) through (3) of this definition, of an employee's domestic partner.

* * * * *

3. In § 630.803, revise the definition of *immediate relative* and add definitions of *committed relationship*, *domestic partner*, *parent*, and *son or daughter* to read as follows:

§ 630.803 Definitions.

* * * * *

Committed relationship means that the employee, and the domestic partner of the employee, are each other's sole domestic partner (and are not married to or domestic partners with anyone else); and share responsibility for a significant measure of each other's common welfare and financial obligations. This includes, but is not limited to, any relationship between two individuals of the same or opposite sex that is granted legal recognition by a state or by the District of Columbia as a marriage or analogous relationship (including, but not limited to a civil union).

Domestic partner means an adult in a committed relationship with another adult, including both same sex and opposite sex relationships.

* * * * *

Immediate relative means an individual with any of the following relationships to the employee:

- (1) Spouse, and parents thereof;
- (2) Sons and daughters, and spouses thereof;
- (3) Parents, and spouses thereof;
- (4) Brothers and sisters, and spouses thereof;
- (5) Grandparents and grandchildren, and spouses thereof;
- (6) Domestic partner, including domestic partners of any individual in paragraphs (2)–(5) of this definition; and
- (7) Any individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship.

Parent means—

- (1) A biological, adoptive, step, or foster parent of the employee;
- (2) A person who is the legal guardian of the employee or was the legal guardian of the employee when the employee was a minor or required a legal guardian; or
- (3) A person who stands in loco parentis to the employee or stood in loco parentis to the employee when the employee was a minor or required someone to stand in loco parentis.
- (4) A parent, as described in paragraphs (1) through (3) of this

definition, of an employee's domestic partner.

Son or daughter means—

(1) A biological, adopted, step, or foster son or daughter of the employee;

(2) A person who is a legal ward or was a legal ward of the employee when that individual was a minor or required a legal guardian;

(3) A person for whom the employee stands in loco parentis or stood in loco parentis when that individual was a minor or required someone to stand in loco parentis; or

(4) A son or daughter, as described in paragraphs (1) through (3) of this definition, of an employee's domestic partner.

4. In § 630.902, revise the definition of *family member* and add definitions of *committed relationship*, *domestic partner*, *parent*, and *son or daughter* to read as follows:

§ 630.902 Definitions.

* * * * *

Committed relationship means that the employee, and the domestic partner of the employee, are each other's sole domestic partner (and are not married to or domestic partners with anyone else); and share responsibility for a significant measure of each other's common welfare and financial obligations. This includes, but is not limited to, any relationship between two individuals of the same or opposite sex that is granted legal recognition by a state or by the District of Columbia as a marriage or analogous relationship (including, but not limited to, a civil union).

Domestic partner means an adult in a committed relationship with another adult, including both same sex and opposite sex relationships.

* * * * *

Family member means an individual with any of the following relationships to the employee:

(1) Spouse, and parents thereof;

(2) Sons and daughters, and spouses thereof;

(3) Parents, and spouses thereof;

(4) Brothers and sisters, and spouses thereof;

(5) Grandparents and grandchildren, and spouses thereof;

(6) Domestic partner, including domestic partners of any individual in (2)–(5) above; and

(7) Any individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship.

* * * * *

Parent means—

(1) A biological, adoptive, step, or foster parent of the employee;

(2) A person who is the legal guardian of the employee or was the legal guardian of the employee when the employee was a minor or required a legal guardian; or

(3) A person who stands in loco parentis to the employee or stood in loco parentis to the employee when the employee was a minor or required someone to stand in loco parentis.

(4) A parent, as described in paragraphs (1) through (3) of this definition, of an employee's domestic partner.

* * * * *

Son or daughter means—

(1) A biological, adopted, step, or foster son or daughter of the employee;

(2) A person who is a legal ward or was a legal ward of the employee when that individual was a minor or required a legal guardian;

(3) A person for whom the employee stands in loco parentis or stood in loco parentis when that individual was a minor or required someone to stand in loco parentis; or

(4) A son or daughter, as described in paragraphs (1) through (3) of this definition, of an employee's domestic partner.

5. In § 630.1002, add the definitions of *committed relationship*, *domestic partner*, *parent*, and *son or daughter* to read as follows:

§ 630.1002 Definitions.

* * * * *

Committed relationship has the meaning given that term in subpart I of this part.

Domestic partner has the meaning given that term in subpart I of this part.

* * * * *

* * * * *

Parent has the meaning given that term in subpart I of this part.

* * * * *

Son or daughter has the meaning given that term in subpart I of this part.

6. In § 630.1102, add the definitions of *committed relationship*, *domestic partner*, *parent*, and *son or daughter* to read as follows:

§ 630.1102 Definitions.

* * * * *

Committed relationship has the meaning given that term in subpart I of this part.

* * * * *

Domestic partner has the meaning given that term in subpart I of this part.

* * * * *

Parent has the meaning given that term in subpart I of this part.

Son or daughter has the meaning given that term in subpart I of this part.

* * * * *

[FR Doc. E9–22030 Filed 9–11–09; 8:45 am]

BILLING CODE 6325–39–P

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 875

RIN 3206–AL92

Federal Long Term Care Insurance Program: Eligibility Changes

AGENCY: U.S. Office of Personnel Management.

ACTION: Proposed regulation.

SUMMARY: The U.S. Office of Personnel Management (OPM) is issuing a proposed regulation to expand eligibility to apply for coverage under the Federal Long Term Care Insurance Program (FLTCIP). Under the proposed regulation, the definition of “qualified relative” is expanded to cover the same-sex domestic partners of eligible Federal and U.S. Postal Service employees and annuitants. The proposed regulation will help agencies address the family needs of an increasingly diverse workforce, and will enhance the Federal Government's ability to compete with the private sector for talent.

DATES: OPM must receive comments on or before November 13, 2009.

ADDRESSES: You may submit comments, identified by docket number and/or RIN number by any of the following methods:

• *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

• *Mail:* John Cutler, Senior Policy Analyst, Insurance Policy Group, Strategic Human Resources Policy, Office of Personnel Management, 1900 E Street, NW., Room 3415, Washington, DC 20415; or deliver to OPM, Room 3415, 1900 E Street, NW.; or FAX to (202) 606–0633.

FOR FURTHER INFORMATION CONTACT: John Cutler, at john.cutler@opm.gov or (202) 606–0735.

SUPPLEMENTARY INFORMATION: The President's Memorandum of June 17, 2009, on Federal Benefits and Non-Discrimination requests that the Office of Personnel Management (OPM) extend certain benefits that can be provided to same-sex domestic partners of Federal employees consistent with Federal law. In response, OPM is proposing a regulatory change to expand eligibility to apply for coverage under the Federal Long Term Care Insurance Program