

shall not suffer the loss of any employment benefit accrued prior to the date on which the leave commenced.

(d) Except as otherwise provided by or under law, a restored employee shall not be entitled to—

(1) The accrual of any employment benefits during any period of leave; or

(2) Any right, benefit, or position of employment other than any right, benefit, or position to which the employee would have been entitled had the employee not taken the leave.

(e) For the purpose of applying paragraph (d) of this section, the same entitlements and limitations in law and regulations that apply to the position, pay, benefits, status, and other terms and conditions of employment of an employee in a leave without pay status shall apply to any employee taking leave without pay under this part, except where different entitlements and limitations are specifically provided in this subpart.

(f) An employee is not entitled to be returned to the same or equivalent position under paragraph (a) of this section if the employee would not otherwise have been employed in that position at the time the employee returns from leave.

(g) An agency may not return an employee to an equivalent position where written notification has been provided that the equivalent position will be affected by a reduction in force if the employee's previous position is not affected by a reduction in force.

(h) As a condition to returning an employee who takes leave under § 630.1203(a)(4), an agency may establish a uniformly applied practice or policy that requires all similarly-situated employees (*i.e.*, same occupation, same serious health condition) to obtain written medical certification from the health care provider of the employee that the employee is able to perform the essential functions of his or her position. An agency may delay the return of an employee until the medical certification is provided. The same conditions for verifying the adequacy of a medical certification in § 630.1207(c) shall apply to the medical certification to return to work. No second or third opinion on the medical certification to return to work may be required. An

agency may not require a medical certification to return to work during the period the employee takes leave intermittently or under a reduced leave schedule under § 630.1204.

(i) If an agency requires an employee to obtain written medical certification under paragraph (h) of this section before he or she returns to work, the agency shall notify the employee of this requirement before leave commences, or to the extent practicable in emergency medical situations, and pay the expenses for obtaining the written medical certification. An employee's refusal or failure to provide written medical certification under paragraph (h) of this section may be grounds for appropriate disciplinary or adverse action, as provided in part 752 of this chapter.

(j) An agency may require an employee to report periodically to the agency on his or her status and intention to return to work. An agency's policy requiring such reports must take into account all of the relevant facts and circumstances of the employee's situation.

(k) An employee's decision to invoke FMLA leave under § 630.1203(a) does not prohibit an agency from proceeding with appropriate actions under part 432 or part 752 of this chapter.

(l) An employee who does not comply with the notification requirements in § 630.1206 and does not provide medical certification signed by the health care provider that includes all of the information required in § 630.1207(b) is not entitled to family and medical leave.

[58 FR 39602, July 23, 1993, as amended at 61 FR 3544, Feb. 1, 1996; 61 FR 64453, Dec. 5, 1996; 65 FR 26487, May 8, 2000; 70 FR 31314, May 31, 2005]

§ 630.1209 Health benefits.

An employee enrolled in a health benefits plan under the Federal Employees Health Benefits Program (established under chapter 89 of title 5, United States Code) who is placed in a leave without pay status as a result of entitlement to leave under § 630.1203(a) of this part may continue his or her health benefits enrollment while in the leave without pay status and arrange to pay the appropriate employee contributions into the Employees Health

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Benefits Fund (established under section 8909 of title 5, United States Code). The employee shall make such contributions consistent with 5 CFR 890.502.

§ 630.1210 Greater leave entitlements.

(a) An agency shall comply with any collective bargaining agreement or any agency employment benefit program or plan that provides greater family or medical leave entitlements to employees than those provided under this subpart. Nothing in this subpart prevents an agency from amending such policies, provided the policies comply with the requirements of this subpart.

(b) The entitlements established for employees under this subpart may not be diminished by any collective bargaining agreement or any employment benefit program or plan.

(c) An agency may adopt leave policies more generous than those provided in this subpart, except that such policies may not provide entitlement to paid time off in an amount greater than that otherwise authorized by law or provide sick leave in any situation in which sick leave would not normally be allowed by law or regulation.

(d) The entitlements under sections 6381 through 6387 of title 5, United States Code, and this subpart do not modify or affect any Federal law prohibiting discrimination. If the entitlements under sections 6381 through 6387 of title 5, United States Code, and this subpart conflict with any Federal law prohibiting discrimination, an agency must comply with whichever statute provides greater entitlements to employees.

[58 FR 39602, July 23, 1994, as amended at 61 FR 64454, Dec. 5, 1996]

§ 630.1211 Records and reports.

(a) So that OPM can evaluate the use of family and medical leave by Federal employees and provide the Congress and others with information about the use of this entitlement, each agency shall maintain records on employees who take leave under this subpart and submit to OPM such records and reports as OPM may require.

(b) At a minimum, each agency shall maintain the following information

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concerning each employee who takes leave under this subpart:

(1) The employee's rate of basic pay, as defined in 5 CFR 550.103;

(2) The occupational series for the employee's position;

(3) The number of hours of leave taken under § 630.1203(a), including any paid leave substituted for leave without pay under § 630.1205(b); and

(4) Whether leave was taken—

(i) Under § 630.1203(a) (1), (2) or (3) of this part; or

(ii) Under § 630.1203(a)(4) of this part.

(c) When an employee transfers to a different agency, the losing agency shall provide the gaining agency with information on leave taken under § 630.1203(a) of this part by the employee during the 12 months prior to the date of transfer. The losing agency shall provide the following information:

(1) The beginning and ending dates of the employee's 12-month period, as determined under § 630.1203(c) of this part; and

(2) The number of hours of leave taken under § 630.1203(a) of the part during the employee's 12-month period, as determined under § 630.1203(c) of this part.

[58 FR 39602, July 23, 1993, as amended at 60 FR 67288, Dec. 29, 1995; 61 FR 64454, Dec. 5, 1996]

Subpart M—Reservist Leave Bank Program

SOURCE: 56 FR 20518, May 6, 1991, unless otherwise noted. Redesignated at 64 FR 72253, Dec. 27, 1999.

§ 630.1301 Purpose and applicability.

(a) *Purpose.* The purpose of this subpart is to establish procedures and requirements for a reservist leave bank program in Executive agencies under which an employee may contribute unused accrued annual leave to a leave bank established by the Office of Personnel Management (OPM) for use by eligible returnees who have been members of the Armed Forces of the United States serving on active duty during the Persian Gulf War and who return to civilian employment with their agencies.