

## **LEAVE OF ABSENCE WITH & WITHOUT PAY APPROVAL/DENIAL GUIDELINES**

The following table is designed to assist supervisors/managers in making informed decisions when determining whether or not leave requests should be approved or denied. This table is not intended to address every situation but should serve as a useful guide. It is imperative that all supervisors/managers with leave approval authority read the Division of Personnel's *Administrative Rule* (W. VA. CODE R. § 143-1-1, *et seq.*, *Family and Medical Leave Act / Parental Leave Act* policy, *Delayed Payroll Assignment* policy, and guides regarding paid leave, unpaid leave, attendance management, the Family and Medical Leave Act (FMLA), West Virginia Parental Leave Act (PLA), and the Fair Labor Standards Act (FLSA). This general information should not be construed to supersede any law, rule, or policy. In the case of any inconsistencies, statutory and regulatory provisions shall prevail.

An internal leave usage procedure should be developed by the agency and shared with all employees. Annual and sick leave, when possible, should be scheduled in advance and in compliance with internal policy and the *Administrative Rule*. However, there are situations in which leave cannot reasonably be requested in advance, e.g., inclement weather, transportation problems, unexpected illness, and a death in the immediate family. When granting leave requests is discretionary, the appointing authority should generally grant the leave at those times that will not materially affect the agency's efficient operation. More importantly, requests for leave should be handled in a consistent manner throughout the agency. Annual and sick leave shall not be granted in advance of the employee's accrual of the leave.

SITUATION	FACTORS TO CONSIDER	DECISION
<p>1. Employee requests sick leave in advance or calls in re-requesting sick leave.</p>	<p>Did the employee follow proper agency procedure when requesting the leave?</p>	<p>If procedure was not followed, the leave should still be approved but the employee should be reminded of procedure and informed that future failure to follow procedure will result in denial of paid leave resulting in unpaid unauthorized leave and/or disciplinary action for continued occurrences. Reasonable travel time for healthcare appointments may also be charged to sick leave not to exceed a total of three (3) hours travel time per occurrence</p>
	<p>Does the employee have sufficient accrued leave to cover the absence?</p>	<p>If the employee has insufficient sick leave accrued, annual leave shall be substituted if requested. Sick leave accrual may be prorated for employees granted a Medical Leave of Absence Without Pay (MLOA) or satisfying the conditions for approval of a MLOA. Leave of absence without pay shall be granted in accordance with the <i>Administrative Rule</i>. An employee must also be informed in writing regarding potential exhaustion of leave and the proper procedure for requesting a MLOA and he or she should also be provided written confirmation of each instance of removal from the payroll. If applicable, the employee must be informed of assignment or possible future assignment to delayed payroll status in accordance with the Division of Personnel <i>Delayed Payroll Assignment Policy</i>.</p>
	<p>Will the absence exceed three (3) consecutive days or scheduled shifts?</p>	<p>If no physician's statement is provided, the employee's pay must be docked for unauthorized leave. However, the supervisor is obligated to inform the employee of the necessity of the physician's statement which is to be submitted within two (2) days upon return to work. If the statement from the attending physician specifies a period of incapacity of less than the entire absence, only the period of incapacity shall be charged to sick leave and the remaining absence shall be charged to annual leave, if annual leave is available to the employee and is not otherwise restricted.</p>
	<p>Does the leave qualify as FMLA and/or PLA leave?</p>	<p>Provide the employee appropriate forms to request paid or unpaid FMLA and/or PLA leave. If the leave requested falls under the guise of FMLA and/or PLA (See the <i>FMLA/PLA Policy and Guide</i>), the employer shall approve the leave and provide the employee notice of designation of the leave as FMLA or PLA. Exhaustion of paid leave shall be accomplished in accordance with FMLA and PLA guidelines. If the employee is eligible for leave under both laws, he or she is entitled to the most generous benefits and rights provided under the different parts of <b>each</b> law. The decision as to which is more generous must be <b>made by the employee</b>.</p>
	<p>Is the employee on leave restriction?</p>	<p>If so, leave may be denied if the employee did not comply with the directives outlined in the plan of improvement setting forth the leave restrictions. The employee should be informed in writing of each instance of removal from the payroll. If the employee is not currently on leave restriction and/or delayed payroll but it appears as though he or she is misusing sick leave, the employee should be evaluated for placement on leave restriction and/or delayed payroll (See <i>Attendance Management</i> guide and <i>Delayed Payroll Assignment</i> policy).</p>

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2. Employee requests sick leave for an immediate family member as defined in the <i>Administrative Rule</i> .	Consider all factors outlined in Situation 1.	See #1.
	Has the employee exhausted the forty (40) hours of family sick leave entitlement?	If so, discretionary annual leave may be requested in accordance with the <i>Administrative Rule</i> . Annual leave must be granted and exhausted if the leave is FMLA or PLA qualifying.
3. Employee requests leave for a death in the immediate family.	Consider all relevant factors outlined in Situation 1.	See #1.
	Will the absence exceed three (3) consecutive days or scheduled shifts?	An employee is entitled to three (3) days of sick leave for a death of a member of the immediate family, as defined in W. VA. CODE R. § 143-1-1, <i>et seq.</i> If sick leave is requested to commence immediately preceding and/or following the leave granted for death in the immediate family, a physician's statement will not be required unless the employee is on leave restriction or the additional sick leave exceeds three (3) consecutive scheduled workdays, provided that the employee presents verification of a qualifying death. In the absence of verification of a qualifying death, the employee shall be required to present a physician's statement for the entire period of absence. Approval of annual leave beyond this period is discretionary.
4. Employee requests MLOA for an illness or injury.	Is the employee eligible for MLOA?	An injured or ill <b>permanent</b> employee is eligible for a MLOA not to exceed six (6) months within a twelve month period provided he or she meets the requirements set forth in W. VA. CODE R. § 143-1-14.8.
	Did the employee follow procedure and documentation requirements when requesting the leave of absence?	If procedure was not followed, the leave should still be approved but the employee should be reminded of procedure and documentation requirements and informed that future failure to follow procedure will result in denial of MLOA and possible charge to unauthorized leave or disciplinary action. Employers need to provide sufficient assistance to the employee to help him or her comply with procedures.
	Has the employee exhausted all sick and annual leave?	The employee is required to exhaust all sick and annual leave prior to the commencement of a MLOA. However, if the request is a result of a compensable injury received in the course of and resulting from covered employment with the State or its political subdivisions, the employee is not required to exhaust all sick and annual leave but may elect to receive Temporary Total Disability (TTD) benefits rather than paid sick leave. In addition, if the leave is designated as FMLA leave, exhaustion of paid leave shall be accomplished in compliance with the applicable requirements.
	Does the physician's statement indicate that the employee has a disability of such nature as to render the employee permanently unable to perform his or her duties?	If so, he or she is ineligible for a MLOA, unable to resume employment, and must resign, retire, or be dismissed.

SITUATION	FACTORS TO CONSIDER	DECISION
5. Employee requests leave for FMLA or PLA purposes.	Is the employee eligible for FMLA and/or PLA?	See the <i>FMLA/PLA Policy and Guide</i> .
	Did the employee follow proper procedure and documentation requirements when requesting the leave?	If procedure was not followed, the leave should still be approved but the employee should be reminded of procedure and informed that future failure to follow procedure will result in denial of paid leave and possible charge to unauthorized leave or appropriate disciplinary action. However, leave cannot be approved if required documentation is not provided.
	Has the employee exhausted sick and annual leave as required by FMLA or PLA?	If the leave is being requested for a member of the employee's immediate family, he or she can only exhaust the 40 hours of sick leave to which they are entitled and annual leave. Leave of absence without pay may be granted in accordance with W. VA. CODE R. § 143-1-14.8, and in compliance with FMLA and PLA requirements (See the <i>FMLA/PLA Policy and Guide</i> ).
	Will the employee be taking leave intermittently (taken in small increments rather than in consecutive days)?	Employees are entitled to use leave intermittently under the FMLA in most situations. (See the <i>FMLA/PLA Policy and Guide</i> ).
6. Employee cannot return to work upon exhaustion of MLOA.	Has personal leave of absence without pay been considered?	The employee is eligible for a personal leave of absence without pay in addition to the six (6) months of medical leave of absence without pay. However, this leave is discretionary and should be afforded to employees in a consistent manner throughout the agency and in accordance with W. VA. CODE R. § 143-1-14.8. Personal leave of absence without pay should be seriously considered if a short extension of leave would permit the employee to recover and return to work.
	Can the employee return at less than full duty?	An employee may be permitted to return to work at less than full duty in compliance with W. VA. CODE R. § 143-1-14.4(h). If return at less than full duty is denied, the Director of the West Virginia Division of Personnel must approve denial.
	Does the physician's statement indicate the employee has a disability of such a nature as to render him or her permanently unable to perform his or her duties?	If the employee submits a physician's statement certifying permanent disability, he or she is ineligible for a MLOA, unable to resume employment, and the employee-employer relationship must be severed unless personal leave of absence is approved or an alternative position is available.
7. Employee has been on extended leave of absence without pay due to a compensable work-related illness or injury.	Is the employee receiving workers' compensation TTD benefits?	The employee should continue to submit a physician's statement and request for an extension of the MLOA. If the leave is a result of a serious health condition as defined in the FMLA, the leave shall be designated as FMLA. The employee may be dismissed only upon failure to return to work after exhaustion of leave entitlement and at such time he or she is no longer receiving or eligible to receive TTD benefits or for a legal infraction relating to his or her employment. In rare circumstances, an employee may be dismissed for performance issues that were discovered after the employee began his or her MLOA.

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8. Employee calls in requesting annual leave.	Consider all factors outlined in Situation 1.	See #1. If the employee does not have sufficient accrued and unused annual leave, a personal leave of absence without pay may be approved in accordance with W. VA. CODE R. § 143-1-14.8.
	What are the circumstances necessitating the request (internal policy should provide guidance regarding acceptable circumstances)?	If there is a legitimate reason why leave could not be requested in advance or if calling in to request annual leave is not contrary to internal policy, annual leave may be approved. However, if a pattern of calling in exists, the employee's pattern of leave usage should be reviewed. If a problem is found to exist, the employee should be advised that future incidents may result in his or her pay being docked for unauthorized leave and appropriate disciplinary action may be taken. In limited situations, based on work activity and claimed need for absence the employee may be required to report to work.
9. Employee requests annual leave for sick leave purposes.	Did the employee follow proper agency procedure when requesting the leave?	If procedure was not followed, the leave should still be approved but the employee should be reminded of procedure and informed that future failure to follow procedure will result in denial of paid leave and possible charge to unauthorized leave or disciplinary action.
	Has the employee exhausted all sick leave?	If not, the approval of annual leave is discretionary.
	Will the absence exceed three (3) consecutive days or scheduled shifts?	When requesting annual leave for sick leave purposes, the employee may be required to submit a physician's statement in accordance with W. VA. CODE R. § 143-1-14.4(g). If no physician's statement is provided, the employee must be charged unauthorized leave and his or her pay must be docked accordingly. However, the supervisor is obligated to inform the employee of the necessity of the physician's statement which is to be submitted within two (2) days of the employee's return to work. If the employee's physician/practitioner has placed restrictions or limitations on the employee's work activities, the employee must furnish the prescribed physician's statement immediately upon return to work.

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10. Employee is tardy.	Does the employee have sufficient accrued annual leave to cover the absence?	The employee may be permitted to utilize annual leave for the absence. However, the minimum charge is 15 minutes so the employee must not begin work until 15 minutes after the start of his or her scheduled start time. If the employee has insufficient accrued and unused leave, he or she can be taken off from the payroll for the period of tardiness (typically processed as personal leave of absence without pay). If no acceptable reason is provided for the tardiness, the employee's pay can be docked for unauthorized leave. In certain situations, an employee may be required to vacate the office area for the remainder of time between reporting to work late and the completion of a full 15 minute leave charge interval. The employee would be expected to promptly report as directed and to be ready to begin working.
	Are work schedules such that an adjusted schedule may be allowed?	If the employee has no accrued annual leave or desires not to use accrued leave and is not on leave restriction, he or she may be allowed to schedule adjust and make up the time by staying late or coming in early within the same workweek.
	Is the employee on leave restriction?	Except in mitigating circumstances, if the employee is on leave restriction his or her pay should be docked for unauthorized leave and appropriate disciplinary action may be taken.
	What are the circumstances surrounding the tardiness (internal policy should provide guidance regarding acceptable circumstances)?	If the reason(s) provided for the tardiness is acceptable, annual leave or schedule adjustment may be approved. However, if tardiness has become a pattern for the employee, his or her leave usage should be reviewed. The employee should be advised that future incidents may result in his or her pay being docked for unauthorized leave and appropriate disciplinary action may be taken.
11. Employee cannot report to work due to inclement weather.	Is the situation addressed in Division of Personnel Policy DOP-P4, <i>Emergency Situations/Inclement Weather</i> ?	Base decisions on Division of Personnel Policy DOP-P4 and internal procedure. Situations such as these usually affect multiple employees and all should be treated consistently and fairly throughout the agency.
12. Employee requests leave of absence for personal reasons.	Does the employee wish to exhaust annual leave?	It is the employee's decision as to whether or not he or she wants to exhaust paid annual leave prior to commencement of personal leave of absence without pay. However, the agency may require exhaustion of annual leave as a condition for approval of personal leave without pay.
	How have other similar requests been handled?	Personal leave of absence without pay is approved or denied at the discretion of the appointing authority. When evaluating requests for personal leave of absence without pay, consistency based upon business need is the predominant factor to consider.

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13. Employee requests time off to assist with disaster relief.	Is the employee a certified disaster service volunteer of the American Red Cross?	If not, the agency may grant annual leave at its discretion. If so, he or she may be granted leave with pay for not more than fifteen (15) work days in a calendar year to participate in specialized disaster relief service upon the request of the American Red Cross. Leave shall be granted only upon the approval of the employee's immediate supervisor. Such leave shall be granted without loss of pay, annual leave, sick leave, earned overtime compensation, seniority, or compensatory time and the employee's regular rate of pay for those regular work hours during which the employee is absent. When such leave is approved, the supervisor shall make a report to the governor which includes the name of the employee and the cost of salary and benefits of that employee during the period of Red Cross Disaster Leave (See W. VA. CODE §15-5-15a). Leave beyond fifteen (15) work days may be approved as annual leave at the discretion of the appointing authority.
14. Employee requests time off to respond to an emergency medical services/fire fighter call.	Is the employee a member of a volunteer fire department or an emergency medical service attendant?	If not, the agency may grant annual leave at its discretion. If so, the employee may not be dismissed or disciplined when, in the line of emergency duty, he or she responds to an emergency call prior to the time he or she is due to report for work and which emergency results in a loss of time from his or her employment. This is not a paid leave entitlement - only the right to respond and be tardy to work without calling in. Annual leave or pay reduction must cover the absence. The employee losing time must supply his or her supervisor with a written statement from the chief of the volunteer fire department, director, supervisor, or other appropriate person in charge of the emergency medical service entity. For more information see, <i>Employers Prohibited from Discharging Employees for Time Lost as Volunteer Firemen or Emergency Medical Service Attendant</i> , W. VA. CODE § 21-5-17 and <i>Employers Prohibited from Discharging Employees for Time Lost as Emergency Medical Service Personnel</i> , W. VA. CODE § 21-5-18).
15. Employee requests court, jury, or hearing leave.	Is the employee or a member of his or her immediate family a plaintiff, defendant, or other interested party? Does he or she have a personal, financial, or vested interest in the outcome of the proceeding?	<p>If so, the employee is not entitled to Court, Jury, and Hearing Leave as provided in W. VA. CODE R. § 143-1-14.10. However, annual leave should generally be approved in this situation if appropriate written confirmation of the necessity for the absence is provided by the employee.</p> <p>-----</p> <p>If not, the employee is entitled to court, jury, or hearing leave without charge to annual leave for time spent in compliance to a subpoena to serve on a jury or appear as a witness that falls within the employee's scheduled workday. However, the employee is required to submit a subpoena and/or written confirmation of the time spent at court for the hearing or jury duty. Compensation such as appearance fees received by the employee for participation in court, jury, or hearing functions may be required to be surrendered to the agency based upon internal policy established by the agency.</p> <p>When an employee is released from service prior to the end of the workday, and there is more than one hour remaining in the employee's scheduled workday after allowing for reasonable return travel time, the employee shall return to work or request approval for annual leave</p>

SITUATION	FACTORS TO CONSIDER	DECISION
16. Employee requests military leave.	Is the leave being requested for routine training/drills or for active duty as ordered or authorized by proper authority?	Employees ordered to military duty by proper authority must be granted time off. For assistance in determining eligibility for paid or unpaid leave, refer to W. VA. CODE R. § 143-1-14.9, and W. VA. CODE §15-1F-1 for leave entitlement information. Additional information can be obtained from the Division of Personnel's web site at - <a href="http://www.personnel.wv.gov/Pages/default.aspx">www.personnel.wv.gov/Pages/default.aspx</a> .
17. Employee requests educational leave.	Is the employee eligible?	Program eligibility is limited to <b>full-time permanent</b> employees. Refer to W. VA. CODE R. § 143-1-14.11 and Division of Personnel Policy DOP-P16, <i>Educational Expense Reimbursement/Leave Program</i> .
	Will the leave be subsidized or non-subsidized?	Subsidized leave shall be considered as continuous employment, except that employees while on educational leave shall not accrue sick leave or annual leave, nor are the employees eligible for salary advancements.

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