



**DEFENSE HEALTH AGENCY
NATIONAL CAPITAL REGION MEDICAL DIRECTORATE**
8955 WOOD ROAD, BUILDING 1, FLOOR 9
BETHESDA, MARYLAND 20889-5628

AUG 28 2019

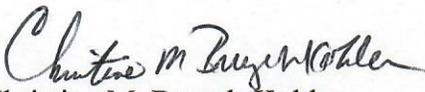
MEMORANDUM FOR DIRECTOR, WALTER REED NATIONAL MILITARY MEDICAL
CENTER
DIRECTOR, FORT BELVOIR COMMUNITY HOSPITAL
DIRECTOR, JOINT PATHOLOGY CENTER

SUBJECT: Delegated Authority for Granting Administrative Leave

References: (a) Office of Personnel Management, Pay & Leave, Administrative Leave Fact
Sheet
(b) Administrative Leave Act of 2016

In accordance with references (a) and (b), the authority to grant an excused absence derives from the inherent authority for heads of agencies to prescribe regulations for the government employees of their organizations (5 U.S.C. 301-302). The Office of Personnel Management issued new regulations on the granting and recording of administrative leave, investigative leave and notice leave. The Administrative Leave Act of 2016 created these new categories of statutorily authorized paid leave and established parameters for their use by Federal agencies. The regulations provide a framework for agency compliance with the new statutory requirements.

The Directors of Walter Reed National Military Medical Center, Fort Belvoir Community Hospital, and the Joint Pathology Center are hereby delegated authority to approve administrative leave in accordance with the attached guidance. Hereafter, these facilities are collectively referred to as Military Treatment Facilities (MTFs) and Center. This authority can be further delegated to "Director for" in coordination with the Labor Management Employee Relations Branch. Administrative leave in excess of 10 work days may only be approved by the Director, National Capital Region Medical Directorate (NCR MD) or his or her designee. Investigative leave in excess of 10 work days up to 30 work days may be approved by the MTFs and Center Directors. Notice leave is restricted to the duration of the notice and can only be authorized by the Director, NCR MD. Extensions beyond 30 work days of notice leave will be approved only in exceptional cases when the interests of the NCR MD mission and responsibilities will be clearly served.


Christine M. Bruzek-Kohler
Acting Director

Attachment:
Guidance for Granting Administrative Leave

Guidance for Granting Administrative Leave

1. DEFINITION. Administrative Leave (also referred to as "Excused Absence") is an administratively authorized absence from duty without loss of pay or charge to leave. The Administrative Leave Act of 2016 (Public Law No: 114-328) amended Subchapter II of Chapter 63 of Title 5 including language regarding administrative leave and new forms of excused absence that are now in effect. Administrative leave is not an entitlement and the Director, NCR MD or delegated authorities are not required to grant it. However, in special circumstances covered by Government-wide directives or in reaction to emergencies, the NCR MD may have policies and practices in place that provide for automatic application of administrative leave.

The Administrative Leave Act of 2016, 5 U.S. Code, Chapter 63, created two new forms of leave, Investigative Leave and Notice Leave:

a. "During any calendar year, an agency may place an employee in administrative leave for a period of not more than a total of 10 work days."

b. "An agency shall record administrative leave separately from leave authorized under any other provision of law."

(1) Investigative Leave: When the initial 10 work day period expires, an agency may place the employee on Investigative Leave for not more than 30 work days. Following the investigation, an employee can be placed in "Notice Leave."

(2) Notice Leave: Notice Leave is restricted to the duration of the notice period. It can be used when an agency proposes or initiates an adverse action. This form of leave is restricted. It would be used when the agency is concerned about problems if the employee continues to work there as outlined below.

The Administrative Leave Act of 2016 also created new leave restrictions:

a. Administrative Leave that is separate from other forms of paid leave or excused absence already legislatively authorized.

b. Requires NCR MD to document other forms of legislatively authorized excused absence separately from Administrative Leave.

c. Creates Investigative or Notice Leave separate from Administrative Leave. These two categories could be used for extended excused absences due to personnel matters. Extended absences would presumably be for rare instances. These leave categories are for completing an investigation or when an adverse action is proposed. In both cases, the requesting official must include the employee needs to be out of the office. Approval for Investigative Leave can only be authorized by the Director, NCR MD or Director, MTF and must be routed through the Labor Management Employee Relations Branch (LMER) and Civilian Human Resource Center (CHRC). Approval for the Notice Leave can only be authorized by the Director, NCR MD and must be routed through the LMER, CHRC and the Personnel Division.

d. Allows NCR MD to use investigative or notice leave through a multiple step process that involves escalating controls over its use.

e. NCR MD cannot use investigative or notice leave unless established criteria are met.

f. Notice leave would be used when government interests are jeopardized. This includes continued presence of the employee posing a threat, possible destruction of evidence, or loss/damage to government property.

g. The MTF with counsel from CHRC will consider options prior to use of investigative leave and notice leave. Options include assigning duties in which the employee is no longer a threat or allowing the employee to telework.

h. The LMER/CHRC will provide employees with an explanation of why they are being placed on investigative leave or notice leave. Documentation for investigative leave and notice leave will be kept by the requesting official, LMER, and the Personnel Division, NCR MD.

2. APPROVAL PROCESS. The President or the Office of Personnel Management (OPM) may issue Government-wide policies or guidance from time to time regarding a specific use of administrative leave. To promote equity and consistency across the Government, OPM advises that administrative leave be limited to those situations not specifically prohibited by law and satisfying one or more of the following criteria:

a. The absence is directly related to the NCR MD's mission;

b. The absence is officially sponsored or sanctioned by the Director, NCR MD;

c. The absence will clearly enhance the professional development or skills of the employee in his or her current position; or

d. The absence is as brief as possible under the circumstances and is determined to be in the interest of the NCR MD. As a general rule, administrative leave should not be used for an extended or indefinite period or on a recurring basis. The MTFs/Center Directors are granted the authority to approve Administrative Leave up to 10 workdays. Periods beyond 10 workdays must be approved by the Director, NCR MD. Examples of appropriate use of administrative leave are:

(1) Employee Assistance Program (EAP). The MTFs/Center Directors may grant up to 3 hours of administrative leave for counselling to an employee for participation in the Employee Assistance Program for problem identification and referral to an outside resource and for general employee orientation or education activities.

(2) The MTFs/Center Directors approved volunteer activities. OPM advises that the granting of administrative leave for volunteer activities should be limited to those situations in which the employee's absence, in the MTFs/Center Directors' determination, is not specifically

prohibited by law and satisfies one or more of the administrative leave criteria. The MTFs/Center Directors will ensure balance support for employees' volunteer activities with the need to ensure that employees' work requirements are fulfilled and that the MTFs/Center operations are conducted efficiently and effectively.

(3) Emergency Policies. During severe weather (e.g., hurricanes, floods, tornadoes, snow, ice) or other emergencies (e.g., fires, earthquakes, power outages), MTFs/Center Directors have the authority to grant employees administrative leave consistent with OPM guidance. Examples are:

(a) Dismissal or closure due to severe weather or other emergencies.

Administrative leave may be granted to employees who are prevented from reporting for work or faced with a personal emergency because of a weather emergency and its aftermath and who can be spared from their usual responsibilities.

(b) Relief and recovery efforts after severe weather or other emergencies. To assist those organizations of the Federal Government that are mobilized to respond to severe weather conditions (and their aftermath) or other emergency situations, and to assist in any relief and recovery efforts, MTFs/Center Directors may grant administrative leave to employees who are requested to assist in emergency law enforcement, relief, or clean-up efforts in affected communities, as authorized by Federal, State, or other officials having jurisdiction, and whose participation in such activities has been approved by their employing MTFs/Center. This policy does not apply to Federal employee members of the National Guard or Reserves who are called up to assist in disaster relief and recovery efforts, since they are entitled to military leave under 5 USC 6323(b).

Administrative Leave Related to Unacceptable Performance and Misconduct:

OPM does not regulate the use of administrative leave. This authority rests with the Director, NCR MD. However, with regard to performance deficiencies and misconduct, Comptroller General's decisions are instructive. These decisions suggest that approval for administrative leave should generally be limited to situations involving brief absences (less than 2 weeks).

Administrative Leave Prior to Proposing Performance-Based or Adverse Actions:

a. Placing an employee in a paid, non-duty status is an immediate, temporary solution to the problem of an employee who should be kept away from the worksite. For example, NCR MD may place an employee in a paid, non-duty status during an investigation and when the NCR MD believes the employee poses a threat to his own safety or the safety of others, the mission or Government systems/property. The NCR MD, LMER, and CHRC should monitor the situation and move towards longer-term actions when it is possible, appropriate, and prudent to do so. A longer-term solution could include assigning the employee to duties where he or she is no longer a threat to safety, mission, or Government property, if feasible.

b. OPM advises limiting the approval of administrative leave for this purpose. Where absences are for longer than brief periods, administrative leave is generally inappropriate.

Approving officials should also ensure that the granting of administrative leave is not specifically prohibited by law.

Administrative Leave after Proposing Performance-Based or Adverse Actions:

a. In rare circumstances, administrative leave may be used for an employee while suspension or removal adverse action procedures have been proposed. OPM adverse action regulations set forth authorities and options available to the NCR MD to address concerns that may arise once leadership elects to pursue an adverse action against an employee. Specifically, the employee may be placed in a paid, non-duty status for the time necessary to effect the adverse action if the organization determines that the employee's continued presence on the job during the notice period may:

- (1) Pose a threat to the employee or others;
- (2) Result in loss or damage to Government property; or
- (3) Jeopardize legitimate Government interests.

The NCR MD strongly recommends considering other options prior to use of administrative leave in this scenario. Other options include:

- b. Assigning the employee to duties where he or she is no longer a threat to safety, the mission, or Government property;
- c. Allowing the employee to take leave, or placing him or her in an appropriate leave status (annual, sick, leave without pay) or absence without leave (if the employee has absented himself or herself from the worksite without requesting leave); or
- d. Curtailing the advance notice period for the proposed adverse action when the NCR MD managers can invoke the "crime provisions" under title 5, United States Code, because it has reasonable cause to believe the employee has committed a crime for which a sentence of imprisonment may be imposed and is proposing a removal or suspension.

Guidance on Use of Administrative Leave Related to Performance-Based or Adverse Actions:

a. While administrative leave may be appropriate under various circumstances, supervisors often place employees on administrative leave rather than utilizing other options that may be more appropriate, as discussed above. In reviewing policies, OPM recommends taking steps to ensure that NCR MD policies on administrative leave related to performance deficiencies and misconduct address the following:

- (1) Consideration of paid duty status options, such as reassignment to alternative duties, before placing an employee on administrative leave;

(2) Consideration of other non-duty status options, such as indefinite suspensions, if appropriate, before placing an employee on administrative leave for extended periods of time; and

(3) Whether supervisors and managers should provide justification and obtain prior approval from leadership at higher organizational levels before placing an employee on administrative leave for an extended period of time.

(4) In all cases involving administrative leave, supervisors and managers should consult with LMER, CHRC for guidance on the use of administrative leave related to performance-based or adverse actions.