

FDA STAFF MANUAL GUIDES, VOLUME III - GENERAL ADMINISTRATION

PERSONNEL

GENERAL PERSONNEL PROVISIONS

RESTORATION OF FORFEITED ANNUAL LEAVE

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1. PURPOSE

This Guide provides information on the restoration of forfeited annual leave and procedures for initiating and processing requests for restoration.

2. REFERENCES

HHS Personnel Instruction 630-1, Absence and Leave, Paragraph 630-1-40G, Restoration of Annual Leave.

Staff Manual Guide FDA 1131.15, Authority to Restore Annual Leave.

3. CONDITIONS

As a general rule, annual leave in excess of an employee's maximum carryover balance (usually 240 hours) is forfeited if not used by the end of the leave year. This excess annual leave is sometimes called "use or lose" leave. Excess annual leave which is forfeited may be considered for restoration only under one of the following conditions:

- a. To correct an administrative error, when the error causes the loss of annual leave otherwise accruable after June 30, 1960.
- b. When annual leave is scheduled in writing in advance but its use is denied because of an exigency of the public business. The determination that an exigency exists can be made only by the officials identified in Staff Manual Guide FDA 1431.15.
- c. When use of scheduled annual leave is prevented by illness or injury, provided the annual leave was scheduled in writing in advance and its use could not be rescheduled between the termination of the illness or injury and the end of the leave year, either because of an exigency or because the termination of the illness or injury occurred too late in the leave year to permit rescheduling of the leave.
 - (1) The requirement to schedule the excess annual leave "in writing in advance" in b. and c. above means the employee must submit a written request for the "use or lose" leave before the start of the third biweekly pay period prior to the end of the leave year. When employees choose not to request or not to use annual leave to avoid forfeiture, they cannot have the leave restored, so they must request the leave in writing in advance, even if they suspect that its use will be cancelled.
 - (2) The leave-approving official must approve the employee's request for "use or lose" annual leave for use at the time requested by the employee or, if that is not possible, must reschedule it for use at some other mutually agreeable time before the end of the leave year.
 - (3) If an exigency arises which may necessitate cancellation of the approval of the employee's "use or lose" annual leave, the situation must be presented to the official with authority to make an exigency determination (see Staff Manual Guide FDA 1431.15). That official must determine:
 - (a) Whether or not an exigency exists which is of such importance that employees cannot be released from duty; and
 - (b) Whether or not there is any reasonable alternative to the cancellation of an employee's "use or lose" annual leave, or to the assignment of that employee to the work generated by the exigency.

The determination must be documented, and the specific beginning and ending dates of the exigency must be fixed. The

determination of the exigency should be made before the cancellation of the employee's scheduled leave and not after the fact.

(4) If the requirements in (2) or (3) above are not met (i.e., the employee's request was submitted but not approved, or the exigency determination was not made before the employee's leave was cancelled), this may be considered an administrative error and the forfeited annual leave may be considered for restoration. However, if the requirement in (1) above is not met (i.e., the employee did not request the leave in writing in advance), this cannot be considered as an administrative error and the forfeited annual leave cannot be restored. (The only exception is for a prolonged illness preceding the end of a leave year, where the employee may be presumed to have requested proper scheduling of the annual leave.)

(5) If an exigency or illness that caused cancellation of an employee's "use or lose" annual leave terminates before the end of the leave year, efforts must be made to reschedule the annual leave before the end of the leave year to avoid forfeiture.

4. PROCEDURES

a. Requests for restoration of annual leave may be initiated by the employee or by any level of management in the employee's organizational line below the approving official.

b. Requests for restoration of leave should follow the appropriate guidelines as listed below. The requests should follow the format shown in Attachment A.

(1) A request for restoration of leave lost because of administrative error must include:

(a) A detailed description of the events which caused the error; and

(b) The date(s) of the events; and

(c) The amount of leave forfeited; and

(d) Official supporting statements attesting to the events in question and the amount of forfeited leave.

(2) A request for restoration of leave lost because of an exigency of the public business must be documented as follows:

- (a) A complete description of the nature of the exigency.
 - (b) The date of determination that an exigency existed. (Include a copy of exigency determination.)
 - (c) The beginning and ending dates of the exigency.
 - (d) The date(s) on which leave was scheduled and approved. Include a copy of SF-71, Application for Leave, or other approval document showing date of employee's application for leave, calendar dates and amount of annual leave scheduled, date of approval, and signature of the leave approving official.)
 - (e) The reason for the determination that the exigency was of major significance requiring that the employee could not be released from duty during the period of the exigency.
 - (f) The reason there was no alternative to the cancellation of leave.
 - (g) The reason that the employee who forfeited leave was affected by the work requirements generated by the exigency.
 - (h) If the exigency ended before the end of the leave year, efforts made, if any, to reschedule the canceled annual leave, including:
 - ❖ The date of the rescheduling of the cancelled leave;
 - ❖ The date(s) on which the leave was rescheduled for use and the amount of leave that was rescheduled; and
 - ❖ The reason why all of the cancelled leave was not rescheduled or used.
 - (i) Describe any other factors which support the action taken.
- (3) A claim for restoration of leave lost because of illness or injury must be documented as follows:
- (a) The date on which leave was scheduled and approved. (Include copy of SF-71, Application for Leave, or other approval document showing the date of employee's application for leave, the calendar dates and amount of annual leave scheduled, the date of approval and signature of the leave approving official.)

- (b) The beginning date of the illness or injury and the date the employee was determined to be recovered and able to return to duty. (Include a copy of medical documentation.)
 - (c) The type of leave taken and the number of hours charged.
 - (d) If the illness or injury terminated before the end of the leave year, efforts made, if any, to reschedule the cancelled annual leave, including:
 - ❖ The date of the rescheduling of the cancelled leave;
 - ❖ The date(s) on which the leave was rescheduled for use and the amount of leave that was rescheduled; and
 - ❖ The reason why all of the cancelled leave was not rescheduled or used.
 - (e) Describe any other factors pertaining to the individual situation which support the action taken.
 - (f) If an exigency precluded the rescheduling and use of the cancelled annual leave following the illness or injury, the claim must also include the information required in paragraph 4.b.(2)(a) through (i) above.
- c. Routing of Claims. Claims should be forwarded by the initiator, through the employee's supervisory chain and servicing personnel office, to the approving official.
- d. Approving Officials. The approving officials listed in Staff Manual Guide FDA 1431.15 shall review each case on its merits, make a decision, and process them as follows:
- (1) Disapproved claims will be returned through the organizational channels through which received.
 - (2) When restoration is approved, copies of the approval document showing the number of hours to be restored, the date of restoration, and the signature of the approving official are to be forwarded to the affected employee, the employee's supervisor and timekeeper, and also to the FDA Division of Financial Management (HFA-100) which will forward it to the Pay Systems Division, Employee Systems Center. The original of the approval document (along with all supporting papers) will be retained by the approving official until the restored leave has been used, until the expiration of the time limit for the use of

restored leave (see paragraphs 5. and 6. below), or separation, whichever is sooner.

- e. The Pay Systems Division restores annual leave to a separate leave account where it will be available for use in accordance with paragraphs 5. and 6. below.

5. TIME LIMITS FOR USE OF RESTORED ANNUAL LEAVE -- EXCEPT FOR EXTENDED EXIGENCY

- a. The maximum time limit for use of restored leave is the end of the leave year in which the two-year anniversary date of restoration occurs.

Example:

Date of Restoration	Time Limit for Use of Restored Leave
February 11, 1986	End of 1988 leave year

- b. The date of restoration is determined as follows:
 - (1) The date the annual leave was restored in correcting an administrative error; or
 - (2) The date fixed by management as the end of the exigency that resulted in the forfeiture of the annual leave; or
 - (3) The date the supervisor, after considering the medical documentation, ascertains that the employee is able to return to duty, if the leave was forfeited because of illness or injury.
- c. Employees with a restored annual leave accounts must use their regular annual leave first and their restored leave second, to the extent that they will not exceed the maximum carryover amount (usually, 240 hours) of regular annual leave at the end of the leave year. Thus, employees who start the leave year with the maximum carryover amount of regular annual leave must use an amount of regular annual leave equal to that which they will accrue during the remainder of the leave year, before they can use their restored leave. (Example: Annual leave taken by an employee with a carry-over amount of 240 hours, a restored leave account of 80 hours, and current year leave earnings of 160 hours, will be charged against the 160 hours. Leave will not be charged against the restored leave account until the 160 hours of leave have been used.) Leave approving officials are responsible for ensuring that timekeepers charge approved annual leave accordingly (see HHS Guide for Timekeepers, Chapter 23).

- d. Members of the Senior Executive Service (SES) are not required to use their regular annual leave accruals before using their restored leave, since they do not have a maximum carryover limitation.

6. TIME LIMIT FOR USE OF RESTORED ANNUAL LEAVE -- EXTENDED EXIGENCY

- a. An extended exigency is defined as significant circumstances that meet all of the following conditions:
 - (1) Threaten the national security, safety, or welfare;
 - (2) Last more than three calendar years;
 - (3) Affect a segment of an agency or occupational class; and
 - (4) Preclude subsequent use of both restored and accrued annual leave within the time limit specified in paragraph 5. above.
- b. The maximum time limit for use of annual leave restored because of an extended exigency is two years for each calendar year, or part thereof, that the exigency existed, regardless of the number of years during the exigency in which the employee forfeited leave.

Example:

Beginning Date of Extended Exigency ---- September 11, 1985

Ending Date of Extended Exigency ----- November 18, 1988

Time Limit for Use of Restored Leave -- and of 1996 leave year

- c. The provisions of paragraph 5.c. and d. above also apply to employees with a restored leave account due to an extended exigency.

7. LUMP-SUM PAYMENT FOR ANNUAL LEAVE

An employee with accumulated annual leave, including unused restored leave in a separate account, who is separated is paid a lump-sum at his/her current hourly rate for all unused annual leave at the time of separation. The lump-sum payment may be adjusted to collect the amount of any debt owed to the Government. (Certain employees, such as those entering active duty in the military, may elect to have their leave remain to their credit until they return. See FPM Supplement 990-2, Book 550, Subchapter S2-2a[2].)

8. TRANSFER AND RECREDIT OF ANNUAL LEAVE

- a. When an employee transfers to another agency, unused restored annual leave in a separate account which has not expired is transferred in accordance with the standard regulatory provisions governing leave transfers (see FPM Chapter 630, Subchapter 5-1a).
- b. When an employee separates, receives a lump-sum annual leave payment, and then is reemployed in the Federal service before the end of the period covered by the lump-sum payment, the recrediting of regular and restored annual leave and reimbursement of the lump-sum payment are required (see FPM Supplement 990-2, Book 550, Subchapter S2-4).

Attachment A - FORMAT FOR REQUESTING RESTORATION OF FORFEITED ANNUAL LEAVE

Use regular memorandum paper and additional sheets of plain bond as necessary. The information in parentheses describes the data to be entered.

MEMORANDUM

Date: (Current)
From: (Requestor)
Subject: Request for Restoration of Annual Leave
To: (Official with Authority to Restore Annual Leave)
THROUGH: (Employee's Supervisors) _____
(Employee's Servicing Personnel Office) _____

Employee's Name:

Employee's Social Security Number:

Employee's Timekeeper Number

Number of Hours to be Restored

Justification: (Enter all the information required by paragraph 4.b.(1), (2), or (3), as appropriate.)

(Requestor's Signature)

Date

Signature of Approving Official

Title of Approving Official

Approved____ Disapproved____ Date annual leave restored* _____