

POLICY AND PROCEDURES

**OFFICE OF MANAGEMENT
Administrative Leave Requests
Related to Performance and
Misconduct**

Table of Contents

BACKGROUND1
POLICY1
PROCEDURES2
REFERENCES.....4
EFFECTIVE DATE.....5
CHANGE CONTROL TABLE.....5

BACKGROUND

This MAPP describes policies and procedures governing the use of administrative leave (excused absence) related to an employee who is the subject of an investigation involving allegations of serious misconduct wherein the workplace safety could be compromised, or whose workplace behavior or presence represents a potential threat to themselves or others. This MAPP outlines when administrative leave is also appropriate in proposed performance-based actions and adverse action cases. These policies and procedures are necessary to establish a standard practice, avoid misuse, and ensure appropriate handling of employee relations matters.

POLICY

1. Administrative leave is not an entitlement and will be approved in rare circumstances not specifically prohibited by law.
2. The Director of the Office of Management (OM) or designee has the authority to grant administrative leave pertaining to employee relations matters (e.g., administrative investigation, performance- based actions, and adverse actions).
3. Administrative leave requests will be reviewed and considered for approval when one of the following circumstances exists within the Center: a) related to employee misconduct when an employee is the subject of an investigation involving allegations of serious misconduct and the workplace safety of employees could be compromised; or b) an employee’s workplace behavior represents a potential threat to themselves, others, or agency property.
4. Administrative leave will only be considered if the Office of Internal Affairs (OIA), Federal Occupational Health Provider (FOH), Labor and Employee Relations (LER) Specialist, or other Agency entity has determined through interview/evaluation that a CDER employee

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- poses a threat to himself/herself, others, or CDER's mission or property. The circumstances are to be fully explained in a written report that describes the potential threat and course of action. This information must be submitted to the CDER Employee and Labor Relations Liaison for review and approval with concurrence from the OM Director or designee.
5. The first level supervisor or higher level office manager can authorize administrative leave up to one (1) day (or 8 hours of official duty time) for subordinate employees when they are believed to pose a threat to his/her own safety or the safety of others.
 6. Administrative leave in excess of one (1) day related to an Employee Relations (ER) matter can only be approved by the OM Director or designee.
 7. All ER-related administrative leave will be monitored and tracked by the Office of Management (OM), Division of Management Services, Employee and Labor Relations Liaison.
 8. The Office of Personnel Management (OPM) states that administrative leave that extends longer than a "brief" period is generally considered inappropriate; and such leave will not be used for an extended or indefinite period or on a recurring basis. Absent extenuating circumstances approved by CDER's OM Director, administrative leave **at no time may exceed 10 work days for full-time (e.g., 80 hours) or part-time (e.g., 40 hours) employees.**
 9. Alternative solutions should be considered by the supervisor/manager and servicing employee relations specialist where feasible (e.g. temporarily assign employees to other duties to limit risk to agency mission or property).
 10. OPM does not regulate the use of administrative leave. **This authority rests with each agency head.** 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.
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PROCEDURES

1. **The employee will:**
 - a. Comply with the procedures outlined in the administrative leave notification letter from his/her supervisor.
 - b. Contact the first level supervisor with any questions about the procedures outlined in the administrative leave notification letter.
 - c. Request accrued leave (e.g., annual, sick, FMLA, VLTP, etc.) in accordance with applicable guidelines.
2. **The timekeeper will:**
 - a. Follow time and attendance procedures outlined in the *HHS Guide for Timekeepers* for recording and filing administrative leave requests.
 - b. Consult and coordinate with the immediate supervisor and employee to ensure the administrative leave and any annual leave, sick leave, etc., are accurately recorded into ITAS and at no time exceed the maximum allowable.

3. The immediate supervisor will:

- a. Where appropriate, determine whether administrative leave is appropriate and necessary in the best interest of the Center and Agency.
- b. Work in collaboration with the servicing Labor and Employee Relations Specialist to gain approval for administrative leave requests in excess of one day.
- c. Consult with the FDA/Office of Human Resources, Workforce Relations Division, Labor and Employee Relations (OHR/WRD/LER) regarding the necessity for placing an employee on administrative leave related to a threat or concern related to the destruction of Center records and property. If administrative leave is appropriate, work with OHR/WRD/LER to draft an administrative leave notice for immediate delivery to the employee.
- d. Ensure requests for administrative leave that exceed ten (10) work days are submitted to CDER/OM and supported by a written justification from the requestor. The request for administrative leave should also include a written recommendation (i.e., advice/guidance) from OHR/WRD/LER. Requests are submitted via email to the OM LER Liaison and OM Director.
- e. When administrative leave in excess of 8 hours is approved by CDER/OM, consult and coordinate with the timekeeper to ensure approved administrative leave is appropriately entered into ITAS, and coordinate with OHR/WRD/LER to issue the employee a revised administrative leave letter outlining the supervisor's expectations during the approved administrative leave period.
- f. Jointly with the timekeeper, ensure that the employee's administrative leave does not exceed maximum limitation approved by the OM Director.
- g. Retain a copy of the administrative leave letter in the employee file.

4. CDER/Office of Management Director will:

- a. Approve all administrative leave requests in excess of 8 hours on a case-by-case basis.
- b. Review and consider each request for administrative leave and respond in writing to inform the requestor and OHR/LER of the decision to either approve or deny the request. Prior to making its final decision, CDER/OM reserves the right to request additional written information from the requestor and/or OHR/LER for clarification purposes or to better understand the overall justification for the administrative leave.
- c. Contact the OHR/WRD for assistance in considering the consequences of denying administrative leave requests.
- d. Notify the immediate supervisor of CDER/OM's approval or denial for the requested administrative leave beyond the initial 8 hours approved by the immediate supervisor.
- e. Ensure the procedures outlined in this MAPP fully comply with applicable

guidance to include the Collective Bargaining Agreement (CBA) between the Department of Health and Human Services (HHS) and the National Treasury Employees Union (NTEU).

- f. Provide concurrence or non-concurrence based upon the best interest of CDER, FDA, and the Federal government.

5. Labor and Employee Relations Specialist will:

- a. Obtain all relevant materials that form the basis for the supervisor/manager determination, if available.
- b. Prepare written communications in collaboration with the supervisor/manager requesting administrative leave for submission to the OM Director. The summary should include the following:
- A synopsis of the reason for administrative leave
 - Proposed action pending, if any
 - Amount of leave requested
 - What proposed steps are being taken to resolve the matter
 - A copy of all documentation should accompany the memorandum with exception to privacy act concerns
 - A statement regarding LER support/non-support related to the administrative leave request.

6. CDER Labor and Employee Relations Liaisons will:

- a. Review, approve and disapprove requests for administrative leave; submit requests to the OM Director for concurrence or non-concurrence based upon the best interest of CDER, FDA, and the Federal government.
- b. Monitor approved administrative leave requests to ensure a pathway has been established to resolve expeditiously and limit/reduce the number of days required.
- c. Track administrative leave requests pertaining to personnel matters.
- d. Generate monthly reports for distribution to immediate supervisors and the OM Director.

REFERENCES

1. 5 U.S.C. 301-302
2. OPM Pay and Leave Administration, Fact Sheet: Administrative Leave
3. HHS Guide for Timekeepers
4. Collective Bargaining Agreement between the Food and Drug Administration and the National Treasury Employees Union, Section (October 1, 2010), Articles 15 (Annual

Leave), 16 (Sick Leave), 18 (Family Leave) and 20 (Excused Absence/Administrative Leave)

5. CDER Administrative Toolbox (Leave Administration): Advanced Annual and Sick Leave, Sick Leave to Care for a Family Member, Family Medical Leave Act, and Voluntary Leave Transfer Program

6. ITAS Manual

EFFECTIVE DATE

This MAPP is effective upon date of publication.

CHANGE CONTROL TABLE

Effective Date	Revision Number	Revisions