

Administrative Leave Act of 2016

The purpose of this bill is to limit the extended use of administrative leave, encourage federal agencies to keep employees on regular duty or take other actions, such as temporary reassignment, when an employee should be out of the workplace, and require better accounting for all types of excused absence.

Administrative Leave

- *Definition of Administration Leave*: Codifies a definition of administrative leave that is separate from other forms of paid leave or excused absence already legislatively authorized. Agencies had been granting this type of leave as an exercise of agency discretion.
- *Recording and OPM Regulations*: Requires agencies to record other forms of legislatively authorized excused absence **separately** from administrative leave. Agencies will have two years from enactment to prepare for any necessary changes to recording practices. Provides for OPM to issue guidance on administrative leave and proper recording practices.
- *OPM Study*: Provides for OPM to conduct an initial study to identify existing agency practices to grant administrative leave for more than five days where such leave is not already authorized in law. This will ensure that Congress is aware of circumstances in which administrative leave has been granted in excess of five days in order to legislatively authorize such leave, if warranted.

Paid Leave for Personnel Matters

- *Investigative Leave & Notice Leave*: Creates new categories of leave, separate from administrative leave, for extended excused absences due to personnel matters. Allows agencies to use investigative or notice leave through a multiple step process that involves escalating controls over its use. Agencies may use “notice leave” during a legally required notice period, if an adverse action is proposed.
 - *Agencies must make a determination on threat*: In all cases, agencies cannot use investigative or notice leave unless established criteria are met—the continued presence of the employee may pose a threat to the employee or others, result in the destruction of evidence relevant to an investigation, result in loss of or damage to government property, or otherwise jeopardize legitimate government interests. **These criteria codify existing OPM regulations.**¹ This “threat determination” is a personnel action under section 2302, which means that employees can challenge it if made for retaliatory, discriminatory, or other enumerated improper purposes.
 - *Agencies must consider other options*: In all cases, agencies must consider options prior to use of investigative leave and notice leave, such as assigning the employee to duties in which the employee is no longer a threat, allowing the employee to voluntarily take another type of leave, and requiring the employee to telework. **Agencies would be required to consider these options, which generally come from OPM regulations, before using investigative or notice leave.**² Authority is provided to require an employee with a telework agreement to telework instead of placing the employee on investigative or notice leave.
 - *Initial ten days of investigative leave*: Agencies may use up to ten days of investigative leave (i.e., two weeks of time) if the above conditions are met, but further extensions are subject to higher approval. The Department of Justice has had such an approval requirement at ten work days since 2002 and the EPA adopted one following an EPA-OIG review of its administrative leave decisions.
 - *Extensions of 30 days for a total of up to 120 days of investigative leave*: Provides for additional investigative leave to be approved by the Chief Human Capital Officer, or designee, with input

¹ 5 C.F.R. § 752.404(b)(3).

² See *id.*

from the investigator conducting the relevant investigation. This 120 days of leave comprises approximately six months of time for an agency to conduct an investigation before further approval requirements are mandated. Requires guidance on designations by the Chief Human Capital Officer and on best practices for consultations with IG investigators.

- *Further extensions of investigative leave*: Allows agencies to seek approval for additional periods of 60 days each (i.e., approximately three months), with review by OPM and notice by the agency head to appropriate congressional committees. There is no limit to the number of extensions under this provision.
- *Sunset of further extensions and GAO report*: The above unlimited extension authority is authorized for a period of six years after enactment (four years after agencies are required to implement this Act); however, prior to this sunset, GAO must study the use of these further extensions and make recommendations to Congress as to the necessity of such extensions. GAO must also study the extent to which agencies may have abused their authority by placing employees on leave because their continued presence in the workplace may “jeopardize legitimate Government interests.” After the sunset, unless Congress decides to authorize further extensions, investigative leave would be limited to 120 leave days (i.e., approximately six months).
- *Agency Action*: At the conclusion of authorized use of investigative leave an agency must either return the employee to working status in some capacity or, if warranted, take an adverse action to keep an employee out of the work place. While agencies may continue to investigate, agencies are not permitted to keep employees in an extended indeterminate status—they must make a decision to return the employee to work status or take an adverse action, thus providing a forum with due process protections where an employee can challenge the agency. Agencies may use notice leave in order to effectuate a removal or suspension action if such an action has been proposed.
- *Explanations, Records, Regulations, and Reports*: Requires agencies to provide employees with explanations of why they are being placed on investigative leave or notice leave and keep records of these new forms of leave. Requires OPM to issue guidance on these topics and to issue a report on agency implementation of new provisions.

Leave for Weather and Safety Issues

- *Weather and Safety Leave*: As has been agency practice, allows agencies to use excused absence for an employee or group of employees who cannot safely travel to or work in an approved location. This covers circumstances such as inclement weather, communicable disease exposure, and chemical spills, among others. Consistent with OPM guidance and the Telework Enhancement Act of 2010, the use of telework is encouraged to support continuity of operations and continued productivity even where federal offices may be closed.

What the Administrative Leave Act of 2015 DOES NOT DO

- DOES NOT affect agencies’ and employees’ use of excused absence already authorized in law (e.g., court time, organ donation, official time, etc.)
- DOES NOT change the standards or levels of due process required for an agency to take an adverse action
- DOES NOT enable agencies to force employees to take their own leave
- DOES NOT affect MSPB jurisdiction, the standard of review, or available remedies for adverse actions