

GAO

Fact Sheet for the Chairman, Committee
on Post Office and Civil Service, House of
Representatives

September 1988

FEDERAL
WORKFORCE

Information on Leave-
Without-Pay at the
Department of Justice



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General Government Division

B-226924

September 12, 1988

The Honorable William D. Ford
Chairman, Committee on Post Office
and Civil Service
House of Representatives

Dear Mr. Chairman:

Your June 9, 1988, letter asked that we review matters raised by the Chairwoman, Subcommittee on Civil Service, about practices followed by the Department of Justice in granting leave-without-pay (LWOP) to its employees. On August 10, 1988, the Chairwoman requested a report on our findings to date. This fact sheet responds to that request.

OBJECTIVES, SCOPE, AND METHODOLOGY

As requested by the Chairwoman, our objectives were to determine Justice's policies governing the granting of LWOP and assess the consistency with which these policies were applied, with particular attention to LWOP requests for maternity, paternity, and health reasons. In discussions with the Subcommittee, we agreed to review instances of extended LWOP (more than 30 consecutive calendar days) granted in Justice's headquarters components.

We reviewed the law and regulations governing leave for federal employees in title 5, United States Code, and title 5, Code of Federal Regulations, respectively. We then interviewed Office of Personnel Management (OPM) officials to determine governmentwide policies on LWOP administration. We also interviewed officials at Justice to determine that agency's LWOP policies and practices.

To determine the number of extended LWOP cases at Justice, we asked Justice to identify all extended LWOP requests approved during 1986, 1987, and 1988 (through mid-July) for employees in the 27 offices, boards, and divisions comprising Justice headquarters. As of April 1988, these units ranged in size from 6 to 1,157 full-time equivalent employees. In total, they employed 6,203 full-time equivalent employees. Justice provided a computer-generated report showing that the 27 components approved a total of 166 extended LWOP requests

during the 2-1/2 year period. As agreed with the Subcommittee, we eliminated 28 of these reported approvals from our review because they were for student trainees employed by Justice and carried in LWOP status while in school, leaving 138 cases to be reviewed.

We will interview administrative and leave-approving officials and review employee leave and personnel records in all 27 components to determine the reasons for the LWOP requests and to evaluate the consistency with which Justice LWOP policies were applied throughout headquarters. At the time we prepared this fact sheet, we had interviewed officials in 7 of the 27 components and reviewed leave records in these officials' possession. According to Justice's computer-generated report, these seven components had 31 of the 138 extended LWOP cases.

In the course of our interviews in the seven components, we identified three additional extended LWOP cases that did not appear in the Justice report because official personnel actions had not been prepared and recorded in Justice's automated personnel records system. Justice officials have told us that other components may also have more cases than were reflected in the Justice report for the same reason. Therefore, the actual number of cases to be examined is unknown at this time.

Table I.1 in the appendix shows the number of approved extended LWOP cases reported by Justice for each of the 27 components, adjusted by the additional three cases we identified.

As agreed with the Subcommittee, we are also attempting to identify any instances where the Justice components denied employee requests for extended LWOP during the period. We found that Justice has not established a centralized system of records on LWOP requests that were denied. Since official personnel actions are not prepared for LWOP denials, denials are not recorded in Justice's automated personnel records system. Therefore, we must rely on information gathered through our interviews to identify any instances where extended LWOP was denied.

Because our review is still in progress, what follows are our preliminary results, based on work done through August 1988.

LWOP POLICIES

The basic statutory authority under which leave for most federal civilian employees (including Justice's employees) is administered is in Chapter 63 of Title 5, United States Code. These statutes authorize the annual and sick leave programs for federal employees as well as the more specialized categories of paid leave, including military leave, home leave, shore leave, funeral leave, and court leave.

Pursuant to 5 U.S.C. section 6311, OPM is authorized to prescribe regulations necessary to administer the government's leave program. Its regulations governing the administration of paid leave appear in Part 630 of Title 5, Code of Federal Regulations. OPM officials advised us, however, that because the leave statutes in 5 U.S.C. Chapter 63 do not address unpaid leave, OPM believes that it lacks authority to issue regulations governing LWOP. Accordingly, OPM has not issued regulations establishing LWOP as a separate category of leave.

OPM has issued guidance to federal agencies on LWOP administration. This guidance is contained in Chapter 630 of the Federal Personnel Manual (FPM) and in bulletins and letters issued in conjunction with the FPM. OPM officials told us that, except where the FPM restates requirements of executive orders, law, and regulations issued pursuant to law, the FPM's guidance is advisory.

Subchapter 12 of FPM Chapter 630, entitled "Leave Without Pay," specifies two situations where there is a right to LWOP: (1) disabled veterans undergoing medical treatment pursuant to Executive Order 5396 and (2) military reservists and members of the National Guard involved in military training pursuant to section 2024(d) of Title 38, United States Code.¹

¹The FPM also says that persons receiving injury compensation under 5 U.S.C. Chapter 81 are entitled to LWOP for limited periods as a matter of right. However, 5 C.F.R. section 353.105 says that LWOP "should" be granted in such circumstances, indicating that agencies have some discretion in granting LWOP. In discussing this issue with OPM, we were told that the regulation, rather than the FPM, correctly states OPM's position, and that the FPM will be revised to conform with the regulation.

In its advisory guidance in the FPM on other uses of LWOP, OPM suggests that leave-approving officials balance the interests of the government with the legitimate personal needs of its employees. According to the FPM, the leave-approving official should weigh factors such as the loss of the employee's services and the costs of the employee's continuing participation in the government's retirement and insurance programs² against the benefits that would derive from granting the LWOP, such as protection or improvement of the employee's health or allowing the employee to meet parental or family responsibilities. However, the FPM says that the granting of LWOP in these circumstances is a matter of administrative discretion and employees are not entitled to LWOP as a matter of right.

Justice's department-wide leave policies are contained in its Order 1630.1A, entitled "Leave Administration." The current version of this order, which was issued in September 1978, has been updated over the years through occasional supplemental guidance. The Justice policies on LWOP closely parallel the LWOP guidance contained in FPM Chapter 630. The order goes beyond the FPM only in that it sets limits on the

²While in a nonpay status, employees receive (1) up to 6 months of service credit for retirement purposes each calendar year without any employee contributions required; (2) basic and optional group life insurance coverages (if the employees had these coverages before entering nonpay status) at no cost to the employees for up to 12 months after pay ceases; (3) continuing health insurance coverage, with employees and the government continuing to pay their shares of the premiums; and (4) up to 6 months of service credit each calendar year for purposes of determining severance pay and annual leave benefits. See Federal Workforce: Benefits Provided to Employees in Nonpay Status (GAO/GGD-87-92, June 26, 1987).

amount of extended LWOP that can be approved in certain specific types of situations.³

In a July 8, 1986, memorandum to heads of departments and agencies, OPM's Director urged them to develop policies on leave for parental and family responsibilities that were compassionate and flexible for the employee.⁴ The Director cautioned against policies that would unduly hinder the accomplishment of organizational goals, but said that the needs of families and efficient government operations could be balanced through the application of judicious policies. On August 18, 1986, the Assistant Attorney General for Administration forwarded OPM's memorandum to Justice's components, adding in a covering memorandum that "no substantive changes to the Department's existing leave policies are required at this time because they are flexible enough to allow managers to grant the proper type of leave for the specific types of parental and family responsibilities described in the [OPM] guidance."

LWOP USAGE

The Justice report on extended LWOP requests approved on or after January 1, 1986, and our interviews in the seven components identified the length of the LWOP taken in 120 cases. Of these 120 cases, 105 were for 180 days or less. In 13 instances, LWOP of from 181 days to 1 year was approved and used, and in two instances, LWOP of more than 1 year was approved and used. These data are summarized in table I.2 of the appendix.

³Maximum LWOP time frames specified in section 31, chapter 6, of Order 1630.1A apply to (1) illness or disability (1 year), (2) certain educational purposes (1 year), (3) service with certain nonfederal organizations (6 months), and (4) caring for family members during illness (3 months). Extensions of LWOP may, however, be granted "in extraordinary or unusual circumstances."

⁴This memorandum transmitted a new Subchapter 13 to FPM Chapter 630, entitled "Leave for Parental and Family Responsibilities," providing general guidelines for agencies in granting annual leave, sick leave, and LWOP in various parental and family situations.

Of the 32 cases we reviewed in the seven headquarters components,⁵ 11 approvals were for various health reasons. LWOP for maternity reasons accounted for 10 approvals. Among the reasons extended LWOP was approved in the remaining 11 instances were (1) accompanying a spouse to another geographical area, (2) serving temporarily with a non-federal public or private organization, (3) attending school full-time, and (4) caring for a family member. These data are summarized in table I.3 of the appendix.

Of the 10 cases where extended LWOP was requested and used for maternity reasons, 3 involved absences of 31 to 60 days, 2 involved absences of 61 to 90 days, and 3 involved absences of 91 to 180 days. In one case, LWOP of from 181 days to 1 year was approved. In the remaining case, the employee had just begun using her LWOP and, of the slightly more than 3 months of LWOP that had been approved, she had used only 11 days at the time Justice's computer-generated printout was prepared. These data are summarized in table I.4 of the appendix.

The employees in the 32 cases we have reviewed were in salary grades ranging from GS-4 to GS-15 at the time their LWOP was approved. Table I.5 of the appendix shows the grade distribution of these 32 employees and the amount of LWOP that each took through July 16, 1988.

We identified one instance in the seven components where an employee's request for additional LWOP was denied after she had been on extended LWOP for over 7 months. This case involved a GS-7 secretary who, following 6 months of LWOP for maternity reasons, sought extensions of her LWOP because she said she was having problems finding a babysitter and was also experiencing vision problems. Justice granted a 1-month extension to give her time to make babysitting arrangements and to obtain medical documentation of her vision problems. When the leave-approving official deemed the medical documentation submitted by the employee to be insufficient, he granted her an additional 2 weeks of LWOP to obtain and submit acceptable documentation. When that extension passed

⁵At the time we prepared this fact sheet, we had not developed information on 2 of the 34 cases of extended LWOP in the seven components.

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without a response, the employee was placed in an absent-without-leave status, and she resigned about 2 weeks later.

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As requested by the Subcommittee, we did not obtain comments from Justice officials on this fact sheet. Also, as arranged with the Subcommittee, unless you publicly announce its contents earlier, we plan no further distribution of the fact sheet for 10 days. At that time, we will send copies to the Attorney General, the Director of OPM, and others who may have an interest in this subject. Please contact me at 275-6204 should you or your staff have any questions concerning this fact sheet.

Sincerely yours,

Roslyn S. Kleeman
Roslyn S. Kleeman
Senior Associate Director

EXTENDED LWOP IN JUSTICE HEADQUARTERS**Table I.1: Extended LWOP Approvals by Employing Component at Department of Justice Headquarters**

(No. of full-time equivalent employees as of 4/88)

Employing component	Calendar year			Total
	1986	1987	1988 ^a	
Antitrust Division (516)	11	11	5	27
Civil Division (804)	3	3	3	9
Civil Rights Division (402) ^b	10	4	0	14
Community Relations Service (117)	0	2	0	2
Criminal Division (726)	1	2	1	4
Executive Office for Immigration Review (357)	2	5	2	9
Executive Office for U.S. Trustees (489)	2	5	3	10
Foreign Claims Settlement Commission (6)	0	0	0	0
Justice Management Division (1,157) ^b	5	2	1	8
Land and Natural Resources Division (482)	1	0	0	1
Office of Associate Attorney General (8)	0	0	0	0
Office of Attorney General (22)	0	0	0	0
Office of Deputy Attorney General (14)	0	0	0	0
Office of Information and Privacy (37)	0	0	0	0
Office of Intelligence Policy and Review (15)	0	0	0	0
Office of Legal Counsel (40) ^b	0	0	0	0
Office of Legal Policy (41) ^b	4	1	0	5
Office of Legislative Affairs (31) ^b	0	1	0	1
Office of Liaison Services (6)	1	0	0	1
Office of Professional Responsibility (9)	0	0	0	0
Office of Public Affairs (27)	0	0	0	0
Office of Solicitor General (51) ^b	0	0	1	1
Office of Special Counsel for Immigration-Related Unfair Employment Practices (24)	0	0	0	0
Office of the Pardon Attorney (11)	0	0	0	0
U.S. National Central Bureau, Interpol (56)	0	0	0	0
U.S. Parole Commission (169) ^b	3	2	0	5
Tax Division (586)	26	14	4	44
Totals (6,203)	69	52	20	141

^aThrough July 16, 1988.^bDenotes the components in which interviews with officials have been done.

Table I.2: Duration of Instances of Extended LWOP in Department of Justice Headquarters (January 1986 Through July 16, 1988)

Employing component	Days of approved LWOP used							Total
	1-30	31-60	61-90	91-180	181-365	Over 365	Not Stated ^a	
Antitrust Division	2	4	5	10	0	0	6	27
Civil Division	0	1	3	1	1	0	3	9
Civil Rights Division	1	4	5	3	1	0	0	14
Community Relations Service	1	0	0	0	0	0	1	2
Criminal Division	0	1	2	0	1	0	0	4
Executive Office for Immigration Review	2	2	1	1	1	0	2	9
Executive Office for U.S. Trustees	2	3	2	2	0	0	1	10
Foreign Claims Settlement Commission	0	0	0	0	0	0	0	0
Justice Management Division	0	2	0	2	2	0	2	8
Land and Natural Resources Division	0	0	1	0	0	0	0	1
Office of Associate Attorney General	0	0	0	0	0	0	0	0
Office of Attorney General	0	0	0	0	0	0	0	0
Office of Deputy Attorney General	0	0	0	0	0	0	0	0
Office of Information and Privacy	0	0	0	0	0	0	0	0
Office of Intelligence Policy and Review	0	0	0	0	0	0	0	0
Office of Legal Counsel	0	0	0	0	0	0	0	0
Office of Legal Policy	0	0	2	1	1	1	0	5
Office of Legislative Affairs	0	0	0	1	0	0	0	1
Office of Liaison Services	0	1	0	0	0	0	0	1
Office of Professional Responsibility	0	0	0	0	0	0	0	0
Office of Public Affairs	0	0	0	0	0	0	0	0
Office of Solicitor General	1	0	0	0	0	0	0	1
Office of Special Counsel for Immigration-Related Unfair Employment Practices	0	0	0	0	0	0	0	0
Office of the Pardon Attorney	0	0	0	0	0	0	0	0
U.S. National Central Bureau, Interpol	0	0	0	0	0	0	0	0
U.S. Parole Commission	0	1	0	2	1	1	0	5
Tax Division	3	9	7	14	5	0	6	44
Totals	12	28	28	37	13	2	21^b	141

^aIn these cases, extended LWOP was approved but the actual duration of the absence was not stated in the Justice Report

^bIn nine cases where the period of LWOP was not stated in the Justice Report, we developed this information during our interviews and included those nine cases in the applicable length-of-LWOP category.

Table I.3: Duration of Extended LWOP by Reason for Request in Seven Department of Justice Headquarters Components
(January 1986 Through July 16, 1988)

Reason for extended LWOP	Days of approved LWOP used						Total
	1-30	31-60	61-90	91-180	181-365	Over 365	
Accompany spouse	0	0	0	1	1	0	2
Attend school	0	0	1	0	0	0	1
Care for family member	0	0	0	0	1	0	1
Health-related							
Pending disability retirement	0	1	0	0	0	0	1
On-the-job illness/injury	0	0	0	2	0	1	3
Other	1 ^a	1	2	2	1	0	7
Maternity	1 ^b	3	2	3	1	0	10
Personal reasons	0	1	1	1	0	0	3
Reason not indicated	0	0	0	1	0	0	1
Requested by agency	0	0	1	0	0	0	1
Temporary service to non-federal public or private organization	0	0	0	0	1	1	2
Totals	2	6	7	10	5	2	32

^aOne month of extended LWOP was approved but the employee returned to duty after 2 weeks of LWOP.

^bExtended LWOP of just over 3 months was approved but the employee had used only 11 days as of July 16, 1988.

Table I.4: Duration of Extended LWOP Taken for Maternity Reasons in Seven Department of Justice Headquarters Components
(January 1986 Through July 16, 1988)

Employing component	Days of approved LWOP used						Total
	1-30	31-60	61-90	91-180	181-365	Over 365	
Civil Rights Division	0	3	2	1	1	0	7
Justice Management Division	0	0	0	0	0	0	0
Office of Legal Counsel	0	0	0	0	0	0	0
Office of Legal Policy	0	0	0	0	0	0	0
Office of Legislative Affairs	0	0	0	0	0	0	0
Office of Solicitor General	1 ^a	0	0	0	0	0	1
U.S. Parole Commission	0	0	0	2	0	0	2
Totals	1	3	2	3	1	0	10

^aExtended LWOP of just over 3 months was approved but the employee had used only 11 days as of July 16, 1988.

Table I.5: Grade Levels of Employees Taking Extended LWOP in Seven Department of Justice Headquarters Components
(January 1986 Through July 16, 1988)

Employee grade	Days of approved LWOP used						Total
	1-30	31-60	61-90	91-180	181-365	Over 365	
01	0	0	0	0	0	0	0
02	0	0	0	0	0	0	0
03	0	0	0	0	0	0	0
04	0	0	0	2	0	0	2
05	0	0	0	0	0	0	0
06	0	1	1	1	1	0	4
07	0	2	0	2	2	0	6
08	1 ^a	0	0	0	0	0	1
09	0	1	2	3	1	1	8
10	0	0	0	0	0	0	0
11	1 ^b	1	0	0	0	0	2
12	0	1	1	2	0	0	4
13	0	0	1	0	0	0	1
14	0	0	0	0	1	0	1
15	0	0	2	0	0	1	3
SES (all levels)	0	0	0	0	0	0	0
Totals	2	6	7	10	5	2	32

^aExtended LWOP of just over 3 months was approved but the employee had used only 11 days as of July 16, 1988.

^bOne month of extended LWOP was approved but the employee returned to duty after 2 weeks of LWOP.

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