U.S. Merit Systems Protection Board
Information Sheet: Enforced Leave

Updated 9/3/2026

Purpose

The purpose of this information sheet is to provide general guidance and background information. It does not represent an official statement approved by the Board itself and is not intended to provide legal counsel or to be cited as legal authority. Instead, it is intended only to help the public become familiar with the MSPB and its procedures. In all instances, however, the MSPB's regulations and current case law control with respect to the matters discussed here.

What is enforced leave?

Enforced leave occurs when, against an employee's will, an agency places him or her in a non-duty and non-pay status. The determinative factor is who initiated the absence? If an employee voluntarily chooses not to come to work, that person is not considered to be in an enforced leave status. If, however, it is the agency that prevents the employee from coming to work, the employee is in an enforced leave status. Thus, enforced leave is a type of constructive suspension. For purposes of this discussion, it does not include situations in which an employee is receiving benefits for a work-related injury from the Office of Workers' Compensation Programs.

If an agency places me in an enforced leave status, may I appeal to the Board?

If an agency places an employee in an enforced leave status for more than 14 days, the employee may appeal the agency's action to the Board.

Under what circumstances might an agency place me in an enforced leave status?

The placement of an employee in an enforced leave status usually occurs in one of two ways:

- When an agency places an employee in a non-duty non-pay status pending an inquiry into his/her medical ability to perform, or
- When an employee who is absent form work for medical reasons asks to return to work with altered duties, and the agency denies the request

What if the agency places me on sick or annual leave instead of allowing me to come to work?

If an agency forces an employee to use sick leave, annual leave, or leave without pay for a period exceeding 14 days, that employee may have been subjected to a constructive suspension appealable to the Board.

What if I am voluntarily absent from work because of illness or an injury, then I recover, but my agency will not let me return to work?

If an agency refuses to let an employee, who has not been removed, come back to work after recovering from a medical condition, and the employee's absence after requesting to return to duty exceeds 14 days, then the employee may have been subjected to a constructive suspension appealable to the Board.

What if I voluntarily absent myself from work due to a medical condition, then I request to come back to work with altered duties so that I can work?

Whether the Board has jurisdiction over such a situation depends upon the agency's own rules and regulations or its contractual or legal obligations. If the agency is obligated by its own policy, regulation, or contract to offer light duty work to an employee and fails to do so, the employee's continued absence may constitute a constructive suspension triggering an appeal right to the Board. Additionally, an agency may have a duty under the Rehabilitation Act or the Americans with Disabilities Act to modify an employee's non-essential job duties so that the employee can return to work. If an agency fails to return an employee to work under these circumstances, an employee's continued absence could constitute a constructive suspension appealable to the Board.

What if I have a medical condition which makes my job too difficult to perform, but because the agency refuses to modify my duties, I can't come to work anymore?

In certain situations, including cases where an agency has a legal obligation to accommodate an employee, where an employee has put an agency on notice of objectionable working conditions and requested assistance or remediation from the agency, and the agency fails to offer assistance, that employee may be able to establish that absence from the work place was involuntary, and therefore, equivalent to a constructive suspension, over which the Board has jurisdiction.

What if my agency places me on administrative leave while it conducts an investigation of me, and refuses to let me come to work? Is that enforced leave that can be appealed to the Board?

The Board has consistently held that the placement of an employee in an administrative leave status, without loss of basic pay, even for a period longer than 14 days, is not a suspension within the Board's jurisdiction.

What if my work situation is so unpleasant because of harassment or illegal discrimination that I can't come to work? Is that enforced leave that I can appeal to the Board?

Proof of intolerable working conditions compelling an employee to be absent may support a finding of a constructive suspension, over which the Board has jurisdiction. It is the employee's burden, however, to establish that working conditions are intolerable. Intolerable working conditions cannot be established by providing evidence of usual, run-of-the-mill work annoyances or slights. An employee must convince an administrative judge and/or the Board that working conditions were so severe or unpleasant that any reasonable person subjected to the same conditions would not have come to work. It is a fairly high standard to meet.

What if the agency places me in a non-pay, non-duty status, but did not mention any appeal rights I might have? Does this mean that I don't have appeal rights to the Board?

Not necessarily. If you have been involuntarily placed in a non-pay non-duty status for more than days, you may very well have appeal rights to the Board, even though your agency neglected to inform you of such. If you are unsure, you may file an appeal with the Board for a definitive answer. The Board has held that in cases involving constructive suspensions, the time in which an appellant may file a timely appeal begins to run once the absence reaches 15 days.

What if I have other procedural questions?

- Call or email the regional office in which your appeal is pending or should be filed.
- Send an email to the Clerk of the Board at mspb@mspb.gov.