



UNITED STATES OFFICE OF PERSONNEL MANAGEMENT
Washington, DC 20415

The Director

March 24, 2022
CPM 2022-06

MEMORANDUM FOR HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

**FROM: KIRAN A. AHUJA
DIRECTOR**

**Subject: Recent Pay and Leave-Related Legislative Changes in the National
Defense Authorization Act for Fiscal Year 2022**

This is to inform you of several legislative changes and extensions affecting Federal employee pay and certain benefits. The changes resulting from the enactment of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2022 (Public Law 117-81, December 27, 2021) are summarized below.

Section 611 – Reserve Income Replacement Program

Section 611(a) amends 37 U.S.C. 910(g) to extend the expiration date for the Reserve Income Replacement Program from December 31, 2021, to December 31, 2022.

The Reserve Income Replacement Program is administered by the Department of Defense and provides income replacement payments for certain reserve component members experiencing extended and frequent mobilization for active-duty service. (This amendment does not affect the reservist differential authority under 5 U.S.C. 5538, which is a separate program for Federal employees. A Federal employee who is entitled to a reservist differential may not receive payments under 37 U.S.C. 910 for the same period. Additional information on reservist differential is found at <http://www.opm.gov/policy-data-oversight/pay-leave/pay-administration/#url=Reservist-Differential>.)

Section 1108 – Expansion of Rate of Overtime Pay Authority for Department of the Navy Employees Performing Work Overseas on Naval Vessels

Section 1108 expands the special overtime pay authority originally provided under section 1105 of the NDAA, FY 2011 (Public Law 111-383, January 7, 2011) which amended 5 U.S.C. 5542(a) by adding a new paragraph (6)(A). For further information on section 1105 of the NDAA, FY 2011, please see [CPM 2011-03](#). Section 1108 expands the scope of eligibility to allow additional Department of the Navy employees to qualify under the 5 U.S.C. 5542(a)(6)(A) overtime pay authority. Sections 1108(1), (2), and (3) amend 5 U.S.C. 5542(a)(6)(A) by making the overtime pay authority applicable to any Department of the Navy employee who (1) is assigned to temporary duty outside the United States to perform work aboard, or dockside in direct support of, naval vessels and (2) would be nonexempt under the Fair Labor Standards Act

(FLSA) but for the application of the foreign area exemption in 29 U.S.C. 213(f). Section 1108(4) amends 5 U.S.C. 5542(a)(6)(A) by requiring any qualifying employee be coded and paid overtime as if the employee's exemption status under the FLSA is the same as it is at the employee's permanent duty station. The amendments in section 1108 are effective on December 27, 2021.

Section 1109 – Repeal of Crediting Amounts Received Against Pay of Federal Employee or DC Employee Serving as a Member of the National Guard of the District of Columbia

Section 1109 amends 5 U.S.C. 5519 so that the offset to an employee's civilian pay equal to military pay no longer applies to military leave under 5 U.S.C. 6323(c) taken by civilian employees who are members of the National Guard of the District of Columbia called up for parades and encampments. Section 1109 was effective as of December 27, 2021.

Section 1110 – Treatment of Hours Worked Under a Qualified Trade-of-Time Arrangement

Section 1110 amends 5 U.S.C. 5542 by adding a new subsection (h) allowing any overtime hours worked by a covered firefighter under a qualified trade-of-time arrangement to be excluded for purposes of any determination related to eligibility for, or the amount of, any overtime pay, including FLSA overtime pay. Subsection 5542(h)(1)(B)(i) requires the Director of the Office of Personnel Management (OPM) to identify situations in which a firefighter is deemed to have worked hours actually worked by a substituting firefighter under a qualified trade-of-time arrangement. Subsection 5542(h)(1)(B)(ii) allows the OPM Director to establish policies that supersede otherwise applicable laws and regulations concerning both the substituting and substituted firefighter under a qualified trade-of-time arrangement.

Section 1111 – Parental Bereavement Leave

Section 1111 adds a new section 5 U.S.C. 6329d which provides an employee up to 2 administrative workweeks of paid leave during any 12-month period due to the death of a son or daughter, as defined by 5 U.S.C. 6381. Section 1111 was effective as of December 27, 2021. OPM plans to issue guidance on parental bereavement leave in the future.

Section 1112 – One-Year Extension of Authority to Waive Annual Limitation on Premium Pay and Aggregate Limitation on Pay for Certain Federal Civilian Employees Working Overseas

Section 1112 extends to **calendar year 2022** the authority provided in section 1101 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (Public Law 110-417, October 14, 2008), as amended, for the head of an agency to waive the normally applicable premium pay cap established in 5 U.S.C. 5547. This waiver authority in 2022 applies to certain civilian employees who perform qualifying work while in an overseas location that (1) is in the area of responsibility of the United States Central Command (CENTCOM) or (2) was formerly in the CENTCOM area of responsibility but has been moved to the area of responsibility of the Commander of the United States Africa Command (AFRICOM). Based on the operation of

current law, the annual limitation on basic pay and premium pay allowed under the waiver authority in calendar year 2022 is the officially established annual salary rate for the Vice President in 2022 under 3 U.S.C. 104 (\$261,400 in 2022). In addition, when an employee is granted a section 1101(a) waiver, any pay in addition to basic pay received for service during the waiver period is not counted as compensation in applying the aggregate limitation on pay under 5 U.S.C. 5307.

Section 1101(d) of Public Law 110-417 continues to provide the OPM Director with the discretion to issue regulations for this waiver authority. OPM does not currently plan to issue regulations. However, each agency should establish policies for using this waiver authority if it has covered employees. To ensure agencies apply this discretionary authority consistently, we have developed the attached summary of key elements agencies should include in their policies implementing the waiver authority. The attached summary includes additional information on employee coverage, approval criteria, and special instructions on applying the waiver authority to employees working in Iraq.

Section 1114 – One-Year Extension of Temporary Authority to Grant Allowances, Benefits, and Gratuities to Personnel on Official Duty in a Combat Zone

Section 1114 grants the head of an agency the discretionary authority until the end of **fiscal year 2023** (i.e., September 30, 2023), to provide an individual employed by, or assigned or detailed to, the agency, allowances, benefits, and gratuities comparable to those provided by the Secretary of State to members of the Foreign Service under section 413 and chapter 9 of title I of the Foreign Service Act of 1980. The employee must be on official duty in Pakistan or a combat zone, as defined by section 112(c) of the Internal Revenue Code of 1986.

Section 1114 amends section 1603(a)(2) of the Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Hurricane Recovery, 2006 (Public Law 109-234, June 15, 2006), as added by section 1102 of the NDAA for FY 2009 (Public Law 110-417, October 14, 2008) and amended by section 1112 of the NDAA for FY 2012 (Public Law 112-81, December 31, 2011), section 1104 of the NDAA for FY 2013 (Public Law 112-239, January 2, 2013), section 1102 of the NDAA for FY 2014 (Public Law 113-66, December 26, 2013), section 1102 of the NDAA for FY 2015 (Public Law 113-291, December 19, 2014), section 1102 of the NDAA for FY 2016 (Public Law 114-92, November 25, 2015), section 1133 of the NDAA for FY 2017 (Public Law 114-328, December 23, 2016), section 1108 of the NDAA for FY 2018 (Public Law 115-91, December 12, 2017), section 1115 of the NDAA for FY 2019 (Public Law 115-232, August 13, 2018), section 1104 of the NDAA for FY 2020 (Public Law 116-92, December 20, 2019), and section 1106 of the NDAA for FY 2021 (Public Law 116-283, January 1, 2021).

Section 1116 – Increase in Allowance Based on Duty at Remote Worksites

Section 1116 requires the OPM Director to (1) complete an assessment of the remote worksite allowance found at 5 U.S.C. 5942, (2) propose a new remote worksite allowance rate adjusted for inflation, and (3) submit the assessment and new allowance rate to the President and Congress by no later than March 31, 2022. Beginning on the first day of the first pay period

after the Director submits the assessment and new rate adjusted for inflation to the President and Congress, that submitted rate is the remote worksite allowance rate notwithstanding 5 U.S.C. 5942(a). OPM will provide additional information to agencies at a later date.

Additional Information

Agency headquarters-level human resources offices may contact OPM at pay-leave-policy@opm.gov. Employees should contact their agency human resources office for further information on this memorandum.

Attachment

cc: Chief Human Capital Officers (CHCOs), Deputy CHCOs, and Human Resources Directors