



## UNITED STATES OFFICE OF PERSONNEL MANAGEMENT

Washington, DC 20415

The Director

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CPM-2021-24

### Memorandum for Heads of Executive Departments and Agencies

From: Kiran A. Ahuja  
Director

Subject: Annual Leave Restoration Procedures for Leave Year 2021

This memorandum serves to remind agencies of the annual leave authorities and expiration dates for 2021 related to normal annual leave restoration procedures and special rules provided for the COVID-19 pandemic.

#### **Normal Annual Leave Restoration Rules**

Under 5 U.S.C. 6304, any accrued annual leave in excess of an employee's annual leave ceiling (30, 45, or 90 days for most employees) is forfeited if not used by the final day of the leave year. Agencies may restore annual leave that is forfeited because it is in excess of the applicable maximum leave ceiling because of an administrative error, exigency of the public business, or sickness of the employee. Under normal procedures, the annual leave must be scheduled in writing before the start of the third biweekly pay period prior to the end of the leave year (i.e., no later than November 20, 2021, for employees on the standard biweekly payroll cycle). (See [5 CFR 630.305-310](#) and the fact sheet on [Leave Year Beginning and Ending Dates](#) for dates for scheduling "use or lose" leave.) Any annual leave scheduled after that date will be forfeited if not used by the final day of the leave year. Annual leave that was not scheduled in advance may be restored only under very limited conditions such as when employees are affected by administrative error or have a prolonged sickness.

#### **Restoration of Annual Leave for Employees Impacted by the COVID-19 National Emergency**

On August 27, 2020, the OPM Director issued [CPM 2020-11](#), announcing the publication of interim regulations to streamline the annual leave restoration process for national emergencies and declaring the COVID-19 outbreak an emergency for annual leave restoration purposes. To avoid the cumbersome process for a large number of employees who have been required to work during this national emergency, the OPM Director took steps to issue interim regulations that allowed agencies to continue to meet their vital missions while streamlining the process for restoration of annual leave for employees whose services are essential to respond to the COVID-19 national emergency.

## **OPM Director Authorization**

I am notifying agencies that I am reaffirming the OPM Director determination under 5 CFR 630.310 that the COVID national emergency is a qualifying exigency of the public business for the purpose of restoring forfeited annual leave. Agencies may utilize the streamlined authority outlined in the interim regulation to restore annual leave to employees whose work the agency determines to be essential for the response to the COVID-19 national emergency. Agencies continue to be authorized to determine that employees who would forfeit annual leave in excess of their maximum allowable carryover rate due to their services being considered essential for the response to the COVID-19 national emergency are deemed to have scheduled the annual leave in advance, and such leave is subject to restoration.

## **Actions Required by Agencies to Use the COVID-19 National Emergency Authority**

Agencies must follow their internal policy and procedures to administer and implement this authority, as required by 5 CFR 630.310. As a reminder, agency heads or designees are required to perform the following actions:

- Determine the specific employees or groups of employees whose services are essential in response to the national emergency and who are qualified for coverage under the regulations;
- Inform designated employees in writing of such a determination;
- Continually monitor the agency's response to the national emergency and determine whether the services of the designated employees to respond to the national emergency are still required, preventing the employees from scheduling and using their annual leave; and
- Fix a termination date of the exigency of the public business for each employee or group of employees in accordance with the regulatory criteria, and inform both the affected employees and the agency payroll provider in writing of the termination date.

## **When to Terminate COVID-19 National Emergency Authority**

The regulations at 5 CFR 630.310(f) require the agency head or designee to continually monitor the agency's response to a national emergency deemed by OPM to be an exigency of the public business and fix a termination date of the exigency of the public business for each employee whom the agency covered under this authority. Assuming the exigency has not been terminated by action of the President or the OPM Director, the exigency must be terminated for each covered employee on the date one of the following events occurs, whichever is earliest—

- when the agency head (or designee) determines that the services of a covered employee is no longer essential to the response to the national emergency **or** that the employee is able to follow the normal leave scheduling procedures;
- on the day that is 12 months after the national emergency has been declared (however, the agency head (or designee), may extend this deadline annually by an additional 12 months, but an agency cannot grant more than two 12-month extensions); or

- when an employee whose services were determined to be essential during the national emergency moves to a position not involving services determined by the agency to be essential to the response to the national emergency.

### **Time Limit for Use of Restored Annual Leave**

Once the agency head (or designee) determines that the services of a covered employee is no longer essential to the response to the national emergency **or** that the employee is able to follow the normal leave scheduling procedures, the employee will have the following time periods to use the restored annual leave.

- Full-time employees must schedule and use restored annual leave of 416 hours or less by the end of the leave year in progress 2 years after the date fixed by the agency head (or designee) as the termination date of the exigency of the public business. This period is extended by 1 leave year for each additional 208 hours of excess annual leave or any portion thereof.
- Part-time employees must schedule and use restored annual leave in an amount equal to or less than 20 percent of the number of hours in the employee's scheduled annual tour of duty by the end of the leave year in progress 2 years after the date fixed by the agency head (or designee) as the termination date of the exigency of the public business. This period is extended by 1 leave year for each additional number of hours of excess annual leave, or any portion thereof, equal to 10 percent of the number of hours in the employee's scheduled annual tour of duty.
- The regulations contain special conversion rules for employees on an uncommon tour of duty.

### **Section 1111 of Public Law 116-283 (Higher Annual Leave Carryover Limit)**

On January 5, 2021, the OPM Director issued [CPM 2021-05](#), "Higher Annual Leave Carryover Limit under Section 1111 of the National Defense Authorization Act for Fiscal Year 2021" to establish a higher annual leave carryover limit to be applied at the beginning of the 2021 leave year.

The higher annual leave carryover limit established under section 1111 applied to an employee if the employee would otherwise have had annual leave forfeited and not restored under the annual leave carryover limit provisions that normally apply to the employee (5 U.S.C. 6304(a) and (b)).

- Employees subject to the 240-hour annual leave limit were provided a 300-hour annual leave limit at the beginning of the 2021 leave year, and
- Employees subject to the 360-hour annual leave limit were provided a 450-hour annual leave limit at the beginning of the 2021 leave year.

As a reminder, section 1111 excess annual leave **must be used** by the employee-recipient by taking the leave during leave year 2021. **This means it must be taken no later than January 1, 2022, or it will be forfeited at the beginning of leave year 2022** (January 2, 2022, for employees on the standard biweekly payroll cycle). (We note that OPM guidance attached to

CPM 2021-05 stated that an employee must use section 1111 excess annual leave before using any other annual leave available to the employee.) This section 1111 excess annual leave may not be restored, may not be included in a lump-sum annual leave payment under 5 U.S.C. 5551-5552 (see section 1111(b)), and may not be donated under a leave transfer program. An employee who wishes to donate annual leave must draw from his or her regular annual leave account.

### **Relevant Fact Sheets**

- [Annual Leave \(General Information\)](#)
- [Leave Year Beginning and Ending Dates](#)
- [Restoration of Annual Leave](#)

### **Additional Information**

For additional information, agency headquarters-level human resources offices may contact OPM at [pay-leave-policy@opm.gov](mailto:pay-leave-policy@opm.gov). Component-level human resources offices must contact their agency headquarters for assistance. Employees must contact their agency human resources offices for further information on this memorandum.

cc: Chief Human Capital Officers (CHCOs), Deputy CHCOs, Human Resources Directors, and Work-Life Coordinators