



UNITED STATES OFFICE OF PERSONNEL MANAGEMENT

Washington, DC 20415

The Director

Wednesday, June 18, 1997

CPM 97-06

MEMORANDUM FOR: Other Stakeholders

FROM: Donald J. Winstead, Assistant Director for Compensation Policy

Subject: Inclusion of FLSA Overtime Pay in Lump-Sum Payments for Annual Leave for Employees on Uncommon Tours of Duty

The Federal Government has reached an agreement to settle with plaintiffs in *James Calhoun, et al., v. The United States* (Fed. Cl. No. 95-840C, December 21, 1995) in which the Federal Government conceded that overtime pay under the Fair Labor Standards Act of 1938, as amended (FLSA), for regularly scheduled overtime hours that occur during an uncommon tour of duty must be included in an employee's lump-sum payment for accumulated and accrued annual leave under 5 U.S.C. 5551. The Federal Government also reached a settlement agreement with plaintiffs making a similar claim in *Theodore Abbott, et al., v. The United States* (Fed. Cl. No. 90-756C, January 31, 1994).

To prevent further lawsuits against the Federal Government, future lump-sum payments for accumulated and accrued annual leave should include all FLSA overtime pay for overtime hours that are regularly scheduled during an employee's established uncommon tour of duty (as defined in 5 CFR 630.201) if such uncommon tour of duty was in effect for the employee immediately prior to the date the employee became eligible for a lump-sum payment. (Note that the overtime standard established under section 7(k) of the FLSA for employees engaged in fire protection activities who receive annual premium pay for regularly scheduled standby duty is 106 hours biweekly. The additional overtime pay for regularly scheduled overtime hours is computed at one-half times the hourly regular rate, not one and one-half times the hourly regular rate.)

Under 5 U.S.C. 5553, the Office of Personnel Management is authorized to prescribe regulations necessary for the administration of lump-sum payments. OPM plans to issue proposed regulations in the near future on lump-sum payments for annual leave that will also address this matter.

For further information or assistance concerning the administration of lump-sum payments for annual leave, please contact OPM's Compensation Administration Division on (202) 606-2858, FAX: (202) 606-0824, or email at payleave@opm.gov.