



## UNITED STATES OFFICE OF PERSONNEL MANAGEMENT

Washington, DC 20415

The Director

Friday, January 16, 2009

CPM 2009-03

### MEMORANDUM FOR: Heads Of Executive Departments And Agencies

FROM: Michael W. Hager, Acting Director

Subject: Rate of Accrual of Annual Leave for Civilian Employees Hired While on Terminal Leave Pending Retirement from the Uniformed Services

The Department of Justice, Office of Legal Counsel (OLC), issued an opinion on October 16, 2007, on determining creditable service for annual leave accrual rates for individuals who were appointed to a Federal civilian position **before October 17, 2006, while on terminal leave pending military retirement.** (See Attachment 1)

#### *Highlights of OLC Opinion*

A member of a uniformed service who was appointed to a Federal civilian position **before October 17, 2006**, while on terminal leave pending retirement from the uniformed service was entitled to credit for his or her years of active military service for the purpose of determining his or her leave accrual rate, **but only during that period of terminal leave.** After the member retires from the uniformed service, his or her annual leave accrual rate must be recalculated to reflect his or her reduced years of creditable service. That is, after retirement from the uniformed service, he or she is no longer entitled to receive credit for prior active military service, except under certain limited conditions as provided in 5 U.S.C. 6303(a)(A)-(C) or (e).

#### *Impact of OLC Opinion*

Any current or former employee who was a member of the uniformed services and appointed to a Federal civilian position **before October 17, 2006**, while on terminal leave pending retirement from the uniformed service was entitled to credit for all of his or her years of active military service for the purpose of determining his or her annual leave accrual rate, **but only during that period of terminal leave.** Because of differing agency practices, there are two categories of employees requiring different corrective actions.

- (1) **Employees Entitled to Additional Annual Leave.** If such active military service was not taken into account, the employee is entitled to additional hours of annual leave for each full pay period the employee worked while on terminal leave pending retirement. For example, if an individual with 20 years of military service was on terminal leave pending retirement for 30 days and worked in a Federal civilian position for two complete pay periods (i.e., 4 weeks, Sunday through Saturday) during that terminal leave, the employee would be entitled to 4 additional hours of annual leave per pay period (i.e.,

8 hours total), assuming the employee originally had accrued annual leave in that Federal civilian position at the rate of 4 hours per pay period. (See Attachment 2 for additional information and instructions.)

- (2) **Employees Who Received Excess Annual Leave Accrual.** If such active military service was taken into account during the period of terminal leave pending retirement, but the annual leave accrual rate for the Federal civilian position was not reduced after retirement from the military (except as appropriate under certain limited conditions as provided in 5 U.S.C. 6303(a)(A)-(C) or (e)), the agency must determine the employee's proper leave accrual rate and current balance. With regard to the reconstruction of leave records and the collection of erroneously accrued leave from current leave balances consistent with the requirements of the OLC opinion, an agency's decision to waive recovery of excess leave pursuant to the waiver authority under 5 U.S.C. 5584, as delegated to agencies by the Office of Management and Budget (OMB), is an appropriate use of the waiver authority. See OMB Memo "Determination with Respect to Transfer of Functions Pursuant to Public Law 104-316" (December 17, 1996). Under 5 U.S.C. 5584, a waiver decision is based on a finding that collection would be against equity and good conscience and not in the best interests of the United States.

Pursuant to OMB's delegation of the waiver authority, the head of each executive agency is responsible for establishing waiver policies and standards and determining levels of approval. An agency that determines that waiver is appropriate for claims generated by compliance with the requirements of the OLC opinion will not have to reconstruct each employee's leave record on a leave year-by-leave year basis, as would typically be required in order to correct leave records and collect erroneously accrued leave. In addition, an agency exercising the waiver authority in this instance will not have to reduce an employee's current leave balance, as would usually be required to collect erroneously accrued leave.

Based on the unique set of circumstances surrounding military terminal leave practices and the onerous and costly implementation requirements, it is appropriate as a matter of policy for each agency to consider using its delegated waiver authority to waive the recovery of all excess leave resulting from implementation of the OLC opinion, including leave from employees' positive leave balances, should the agency determine that the standards for waiver are met. Under these circumstances and terms, waiver of recovery of excess leave from employees' positive leave balances would be a special exception to the usual requirements and would not become standard practice for future corrective actions (i.e., for waiver of claims for erroneously accrued leave which are unrelated to recovery of excess leave generated by compliance with the requirements of the OLC opinion). (See Attachment 2 for additional information and instructions.)

### ***Additional Information***

For additional information, agency Chief Human Capital Officers and/or Human Resources Directors should contact their assigned OPM Human Capital Officer. Employees should contact their agency human resources office for assistance.

### **Attachments:**

- Attachment 1: Memorandum Opinion for the General Counsel Department of Defense

- Attachment 2: [U.S. Office of Personnel Management Guidance on Implementing Office of Legal Counsel Opinion](#)