



UNITED STATES OFFICE OF PERSONNEL MANAGEMENT

Washington, DC 20415

The Director

Thursday, January 31, 2002

MSG-006

MEMORANDUM FOR: Human Resources Directors

FROM: Donald J. Windstead, Acting Associate Director for Workforce Compensation and Performance

Subject: Recent Legislative Changes

This is to inform you of several changes in pay and leave administration resulting from enactment of the National Defense Authorization Act for Fiscal Year 2002 (Public Law 107-107, December 28, 2001).

Health Benefits for Reservists Called to Active Duty in Support of Contingency Operations

Section 519 of Public Law 107-107 amends subsection (e) of section 8906 of title 5, United States Code, to provide agencies with discretionary authority to pay both the employee and Government health benefit contributions (and any additional administrative expenses related to health care coverage) for certain employees called to active duty and their families for a period not to exceed 18 months. The employee must (1) be enrolled in an approved health benefits plan, (2) be a member of a reserve component of the armed forces, (3) be called or ordered to active duty in support of a contingency operation, (4) be placed on leave without pay or separated from service to perform active duty, and (5) serve on active duty for a period of more than 30 consecutive days. This new authority applies to employees called to active duty on or after December 8, 1995, and agencies may make retroactive payments to covered employees for premiums paid on or after that date.

For additional information, please contact OPM's Insurance Policy and Information Division by calling (202) 606-0191 or sending an email message to fehb@opm.gov.

Military Leave for Funeral Honors Duty

Section 563 of Public Law 107-107 amends 5 U.S.C. 6323(a)(1) to permit employees to use the 15 days of military leave provided under that section for "funeral honors duty" as described in section 12503 of title 10 and section 115 of title 32, United States Code. This new entitlement to military leave became effective on December 28, 2001.

Each agency is responsible for administering the use of military leave for funeral honors duty for its employees. OPM has no authority to issue regulations governing this new provision.

Hostile Fire Pay

Section 1111 of Public Law 107-107 amends subchapter IV of chapter 59 of title 5, United States Code, by adding a new section 5949 that provides the head of an executive agency with discretionary authority to pay an employee hostile fire pay. The new law provides agencies with the authority to pay hostile fire pay at a rate of \$150 for any month in which the employee is—

- (1) subject to hostile fire or explosion of hostile mines;
- (2) on duty in an area in which the employee was in imminent danger of being exposed to hostile fire or explosion of hostile mines and in which, during the period of duty in that area, other employees were subject to hostile fire or explosion of hostile mines; or
- (3) killed, injured, or wounded by hostile fire, explosion of hostile mine, or any other hostile action.

Agencies may pay hostile fire pay to an employee hospitalized for the treatment of an injury or wound for not more than 3 additional months during which the employee is hospitalized. Section 5949 prohibits the payment of hostile fire pay for periods of time during which an employee receives post differentials under 5 U.S.C. 5925, because of exposure to political violence, or danger pay allowances under 5 U.S.C. 5928.

This provision is effective retroactive to September 11, 2001. The head of an executive agency may grant hostile fire pay for any hostile action that took place on or after that date. This new payment for civilian employees is similar to the hostile pay currently available to military personnel under 37 U.S.C. 310.

Each agency is responsible for administering hostile fire pay for its employees. OPM has no authority to issue regulations governing this new provision.

Payment of Expenses to Obtain Professional Credentials

Section 1112 of Public Law 107-107 amends chapter 57 of title 5, United States Code, by adding a new § 5757 that provides agencies with discretionary authority to use appropriated funds or funds otherwise available to the agency to pay for (1) expenses for employees to obtain professional credentials, including expenses for professional accreditation, State-imposed and professional licenses, and professional certification; and (2) examinations to obtain such credentials. Agencies may not use this authority on behalf of any employee occupying or seeking to qualify for appointment in any position that is excepted from the competitive service because of the confidential, policy-determining, policy-making, or policy-advocating character of the position.

For additional information, please contact LaVeen Ponds, Senior Policy Advisor, in OPM's Leadership and Policy Division on (202) 606-1394.

Monroney Amendment

Section 1113 of Public Law 107-107 reinstates a pay provision for the Department of Defense's (DOD's) blue-collar workforce commonly known as the Monroney Amendment. The Monroney Amendment requires the importation of out-of-area wage data for local wage surveys when large

numbers of Federal Wage System (FWS) employees are employed in specialized occupations (e.g. aircraft mechanic, electronics mechanic, etc.), but few comparable jobs in local private sector companies. This provision will apply in certain wage areas that meet specified employment threshold levels on the next normal effective date of each applicable wage schedule. OPM will issue guidance on the implementation of this change after receiving advice from the Federal Prevailing Rate Advisory Committee.

For additional information, please contact OPM's Salary and Wage Systems Division by calling (202) 606-2838 or sending an email message to maallen@opm.gov.

Biweekly and Annual Limitations on Premium Pay

Section 1114 of Public Law 107-107 modifies the biweekly and annual limitations on premium pay under 5 U.S.C. 5547, removes the separate premium pay limitation for law enforcement officers, and provides agencies with authority to waive the biweekly premium pay limitation for employees performing work critical to the mission of the agency. The new premium pay limitations will become effective on the first day of the first pay period beginning on or after April 27, 2002. OPM will issue interim regulations governing these new premium pay limitations on or before that date.

An amendment to 5 U.S.C. 5547(a) provides that an employee, including a law enforcement officer, may receive premium pay in a pay period only to the extent that the aggregate of basic pay and premium pay for the pay period does not exceed the **greater** of the **biweekly** rate for (1) GS-15, step 10 (including any applicable special salary rate or locality rate of pay), or (2) level V of the Executive Schedule.

An amendment to 5 U.S.C. 5547(b) provides that the biweekly premium pay cap in section 5547(a) does not apply in any pay period during which an employee, including a law enforcement officer, receives premium pay for work in connection with an emergency (including a wildfire emergency) that involves a direct threat to life or property. The amendment clarifies that work in connection with an emergency includes work performed in the aftermath of the emergency. Such employees may receive premium pay only to the extent that the aggregate of basic pay and premium pay for the calendar year does not exceed the **greater** of the **annual** rate for (1) GS-15, step 10 (including any applicable special salary rate or locality rate of pay), or (2) level V of the Executive Schedule.

Another amendment to 5 U.S.C. 5547(b) provides the head of an agency with discretionary authority to waive the biweekly premium pay limitation in § 5547(a) for an employee, including a law enforcement officer, who receives premium pay to perform work critical to the mission of the agency. Such employees may receive premium pay only to the extent that the aggregate of basic pay and premium pay for the calendar year does not exceed the **greater** of the **annual** rate for (1) GS-15, step 10 (including any applicable special salary rate or locality rate of pay), or (2) level V of the Executive Schedule.

An amendment to 5 U.S.C. 5547(c) authorizes OPM to prescribe regulations governing how the annual limitation provisions in § 5547(b) apply to employees receiving certain forms of regularly recurring premium payments (i.e., availability pay for criminal investigators under 5 U.S.C.

5545a, administratively uncontrollable overtime pay under 5 U.S.C. 5545(c)(2), standby duty premium pay under 5 U.S.C. 5545(c)(1), and regular overtime pay for firefighters covered by 5 U.S.C. 5545b.) The regulations may provide that these types of premium pay continue to be capped on a biweekly basis even though other types of premium pay are capped on an annual basis.

For additional information, please contact OPM's Pay and Leave Administration Division by calling (202) 606-2858 or sending an email message to payleave@opm.gov.