



UNITED STATES OFFICE OF PERSONNEL MANAGEMENT
Washington, DC 20415

The Director

Thursday, January 25, 2001
CPM 2001-2

MEMORANDUM FOR: Human Resources Directors

FROM: Henry Romero, 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 recent legislation.

I. Public Law 106-554, the Consolidated Appropriations Act, 2001, December 21, 2000.

January 2001 Pay Adjustments for Statutory Pay Systems

Division B, section 140, of the Miscellaneous Appropriations Act, 2001, as incorporated in Public Law 106-554 by section 101(a)(4) of that public law, provides for an overall increase of 3.7 percent in the rates of pay of the statutory pay systems under 5 U.S.C. 5303 and 5304. Section 5303 authorizes increases tied to the change in the Employment Cost Index (ECI), and section 5304 provides for locality payments.

This law reinforces the alternative plan submitted by the President on November 30, 2000, which provided for locality pay increases equal to approximately 1 percent of payroll. When combined with the 2.7 percent ECI-based increase under 5 U.S.C. 5303, the locality rates in the President's alternative plan resulted in a 3.7 percent overall average increase. The 2001 Salary Tables are available at opm.gov/oca/payrates/index.htm.

Premium Pay for Protective Services

Section 118 of the Treasury and General Government Appropriations Act, 2001, as incorporated in Public Law 106-554 by section 101(a)(3) of that Public Law, increases funds available to pay premium pay for protective services authorized by section 3056(a) of title 18, United States Code. This authority is applicable primarily to Secret Service Agents. Section 118 provides that law enforcement officers providing protective services may be paid without regard to the biweekly limitation on premium pay for law enforcement officers in section 5547(c)(2) of title 5, United States Code. However, section 118 provides that these premium payments may not cause the aggregate of a law enforcement officer's basic pay and premium pay to exceed the annual equivalent of the limitation in section 5547(c)(2). Section 118 also provides that the additional premium pay authorized by this section may be made in a lump sum on the last pay day of the calendar year. Section 118 became effective on December 21, 2000.

Report to Congress on Possible Establishment of New Locality Pay Areas

Section 637 of the Treasury and General Government Appropriations Act, 2001, as incorporated in Public Law 106-554 by section 101(a)(3) of that Public Law, requires the President's Pay Agent to evaluate five areas to determine whether they should be separate locality pay areas in 2002. The Pay Agent consists of the Secretary of Labor and the Directors of the Office of Management and Budget (OMB) and the Office of Personnel Management (OPM). The Pay Agent may use salary survey data obtained from commercial salary surveys, the Bureau of Labor Statistics (BLS), or a combination of both for this purpose.

Section 637 requires the President's Pay Agent to evaluate five metropolitan statistical areas (MSAs) that have not already been considered for locality pay and that have at least 2,500 General Schedule (GS) employees and the largest numbers of non-farm workers. Based on data from OPM's Central Personnel Data File on GS employment and BLS data on non-farm workers, we have determined that the five MSAs are Austin, TX; Las Vegas, NV; Louisville, KY; Nashville, TN; and Raleigh, NC. The Pay Agent must submit a report to Congress with recommendations on whether any of these locations should be made separate locality pay areas in 2002 and, if so, the level of locality pay appropriate for each separate area. The Pay Agent must also evaluate the feasibility of using salary survey data from commercial salary surveys in the locality pay program.

Section 637 also allows the Pay Agent to use commercial salary surveys to set locality pay in other MSAs with 2,500 or more GS employees and large numbers of non-farm workers for locality payments in 2003 through 2006. Finally, section 637 requires the Pay Agent to submit a second report to Congress relating to the ongoing efforts of OPM, OMB, and BLS to revise and improve the current salary survey methodology used by BLS in its National Compensation Survey program.

Minimum Charge for Military Leave

Section 642 of the Treasury and General Government Appropriations Act, 2001, as incorporated in Public Law 106-554 by section 101(a)(3) of that Public Law, amends section 6323(a) of title 5, United States code, by adding a new paragraph (3). New section 6323(a)(3) states that the minimum charge for military leave is 1 hour. The new paragraph also provides that additional charges for military leave are in multiples of the minimum charge. New section 6323(a)(3) became effective on December 21, 2000.

Based on new section 6323(a)(3), it is clear that Congress recognizes an 8-hour civilian workday as the basis for accruing 1 day of military leave and that there is no intent to charge an employee military leave for the hours that he or she would not otherwise work. Therefore, a full-time employee working a 40-hour workweek will accrue 120 hours (15 days x 8 hours) of military leave in a fiscal year, or the equivalent of three 40-hour workweeks. Military leave under 6323(a) will be prorated for part-time employees and employees on uncommon tours of duty based proportionally on the number of hours in each employee's regularly scheduled biweekly pay period. For example:

Hours in the regularly scheduled biweekly pay period	Ratio of hours in the regularly scheduled PAY PERIOD to AN 80- hour PAY PERIOD (the number of hours in the PAY PERIOD ÷: 80)	Hours of military leave accrued each fiscal year	Pay Periods of military leave accrued each fiscal year
40	.5 (40 ÷: 80)	.5 x 120 = 60 hours	1.5 80-hour pay periods
106	1.325 (106 ÷: 80)	1.325 x 120 = 159 hours	1.5 106-hour pay periods
120	1.5 (120 ÷: 80)	1.5 x 120 = 180 hours	1.5 120-hour pay periods
144	1.8 (144 ÷: 80)	1.8 x 120 = 216 hours	1.5 144-hour pay periods

In addition, beginning December 21, 2000, an employee may be charged military leave only for hours during which the employee would otherwise have worked and received pay. Members of the Reserves and/or National Guard will no longer be charged military leave for non-duty days (typically weekends and holidays) that occur within the period of military service. Employees who request military leave for inactive duty training (which generally is 2, 4, or 6 hours in length) will be charged only the amount of military leave necessary to cover the period of training and necessary travel. Hours in the civilian workday that are not chargeable to military leave must be worked or charged to another leave category, as appropriate.

Pay for Administrative Appeals Judges

Section 645 of the Treasury and General Government Appropriations Act, 2001, as incorporated in Public Law 106-544 by section 101(a)(3) of that Public Law, adds section 5372b to title 5, United States Code. New section 5372b authorizes the heads of Executive agencies (not including the U.S. General Accounting Office) to fix the rates of basic pay for administrative appeals judges.

Section 5372b defines an *administrative appeals judge position* as a position the duties of which primarily involve reviewing decisions of administrative law judges appointed under section 3105 of title 5, United States Code. Section 5372b also authorizes OPM to issue regulations under which the head of an Executive agency must fix the rate of basic pay for each administrative appeals judge position within the agency that is not classified above GS-15. Rates of basic pay may not be less than the minimum rate of basic pay for level AL-3 under section 5372 of title 5, United States Code, and may not be greater than the maximum rate of basic pay for level AL-3 under section 5372. Section 5372b becomes effective for service performed on or after the first day of the first applicable pay period beginning on or after the 120th day after December 21, 2000 (April 20, 2001), or, if earlier, the effective date of OPM's regulations. OPM plans to issue interim regulations in the near future.

Report on Parental Leave

House Report 106-1033 for H.R. 5658 (Public Law 106-544), as printed in the *Congressional Record* on December 15, 2000, directs OPM to conduct a study to develop alternative means for providing Federal employees with at least 6 weeks of paid parental leave in connection with the birth or adoption of a child. OPM must submit a report to the Senate and House Committees on Appropriations containing its findings and recommendations by September 30, 2001.

The conference report requires OPM to report on the expected rates of utilization of parental leave and OPM's conclusions as to whether paid parental leave might be expected to curtail the rate at which Federal employees are being lost to the private sector. OPM's report must also include views on whether parental leave would help the Government in its recruitment and retention efforts generally, reduce turnover and replacement costs, and contribute to parental involvement during a child's formative years. We plan to request your assistance in developing this report in a separate memorandum.

II. Public Law 106-424, National Transportation Safety Board Amendments Act of 2000, November 1, 2000

Overtime Pay for Accident Investigators

Section 4 of the National Transportation Safety Board Amendments Act of 2000 authorizes the National Transportation Safety Board (NTSB) to establish hourly overtime pay rates equal to one and one-half times the rates of basic pay for accident investigators. Section 4 is applicable to accident investigators who are exempt from the overtime pay provisions of the Fair Labor Standards Act of 1938, as amended. Section 4 limits the authority to set higher overtime rates to overtime work at the scene of an accident, travel to and from an accident scene, and other work that is critical to the investigation of an accident. Section 4 also provides that NTSB may not pay overtime pay under this authority for work performed during any calendar year in a total amount that exceeds 15 percent of the annual rate of basic pay for the accident investigator for that calendar year. Section 4 became effective on November 1, 2000.

III. Public Law 106-558, An Act to Amend The National Forest and Public Lands of Nevada Enhancement Act of 1988 . . . , December 21, 2000

Overtime Pay for Wildland Firefighters

Section 2 of Public Law 106-558 amends section 5542(a) of title 5, United States Code, by adding a new paragraph (5), which authorizes an overtime hourly rate of pay equal to one and one-half times the hourly rate of basic pay for certain wildland firefighters. New section 5542(a)(5) is applicable only to wildland firefighters who are exempt from the overtime pay provisions of the Fair Labor Standards Act of 1938, as amended, and who are employees of the Department of the Interior or the United States Forest Service of the Department of Agriculture. The authority also is applicable to wildland firefighters only while they are engaged in wildland fire suppression activities.

Section 2 becomes effective on the first day of the first applicable pay period beginning on or after 30 days after December 21, 2000 (January 20, 2001), and applies only with respect to funds appropriated after December 21, 2000.

IV. Public Law 106-571, Federal Physicians Comparability Allowance Amendments of 2000, December 28, 2000

Physicians' Comparability Allowances

Public Law 106-571 permanently extends the authority to pay physicians comparability allowances. The Act also makes physicians' comparability allowances basic pay for retirement purposes if certain criteria are met. On the date of a physician's separation creating an entitlement to an annuity, he or she must have completed at least 15 years of service as a Government physician. The service may be performed before, on, or after the date of enactment of Public Law 106-571 (December 28, 2000). If that requirement is met, there is also a phased-in service requirement on or after December 28, 2000, for the purpose of determining the percentage amount of the allowance that may be used in computation of an annuity.

For example, a physician must have completed at least 8 years of service on or after December 28, 2000, in order for 100 percent of the allowance paid to the physician for service performed on or after December 28, 2000, to be creditable for retirement purposes. Neither the 15-year requirement nor the phased-in service requirement is applicable for disability annuities, or for survivor annuities if the physician dies before separating from Government service. The requirement for an annual report to Congress on physicians' comparability allowances continues.

Therefore, effective with pay periods beginning on and after December 28, 2000, under both the Civil Service Retirement System and the Federal Employees Retirement System, retirement deductions must be taken from physicians' comparability allowances. Effective on that same date, physicians' comparability allowances constitute basic pay for purposes of Thrift Savings Plan (TSP) contributions, and under the Federal Employees Retirement System only, for agency TSP contributions. However, physicians' comparability allowances do not constitute basic pay for the purpose of Federal Employees Group Life Insurance. OPM will issue additional guidance on retirement policies and procedures in the near future. Questions related to retirement should be directed through your agency Retirement Counselor to OPM's Benefits Officer Resource Center.

V. Public Law 106-398, Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001, October 30, 2000

Employment and Compensation of Employees for Temporary Organizations Established by Law or Executive Order

Section 1101 of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 adds a new subchapter IV to chapter 31 of title 5, United States Code. Subchapter IV provides that the head of a temporary organization may make excepted service appointments of up to 3 years to fill positions of the temporary organization. The appointments may be extended for an additional 2 years consistent with OPM regulations. This authority is available to executive and legislative branch agencies. In addition, subchapter IV provides that, upon request of the head of a temporary organization, the head of any department or agency of the Government may detail employees on a non-reimbursable basis to the temporary organization to assist the temporary organization in carrying out its duties.

Subchapter IV defines a temporary organization as a commission, committee, board, or other organization that is established for a specific period not in excess of 3 years for the purpose of performing a specific study or other project. Such a temporary organization is generally terminated upon completion of the study or project.

Subchapter IV provides OPM with authority to establish regulations to determine the rate of basic pay for employees of temporary organizations without regard to the provisions of chapter 51 and subchapter 53 of title 5, United States Code. Subchapter IV also provides that the rate of basic pay for the chairman, a member, an executive director, a staff director, or another executive level position of a temporary organization may not exceed the maximum rate of basic pay established for the Senior Executive Service under section 5382 of title 5, United States Code. Subchapter IV defines basic pay as including locality pay provided under section 5304 of title 5, United States Code.

Subchapter IV states that the rate of basic pay for other positions in a temporary organization may not exceed the maximum rate of basic pay for GS-15. However, the rate of basic pay for a senior staff position of a temporary organization may, in a case determined by the head of the agency to be exceptional, exceed the maximum rate of basic pay for GS-15, but may not exceed the maximum rate of basic pay for an executive level position.

Subchapter IV also provides criteria under which the head of a temporary organization may accept volunteer services without regard to section 1342 of title 31, United States Code. Finally, subchapter IV provides that, when appointed under its authority, an employee of a temporary organization is entitled to the same benefits provided to temporary employees under title 5, United States Code.

Questions

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