



UNITED STATES OFFICE OF PERSONNEL MANAGEMENT
Washington, DC 20415

The Director

Friday, November 13, 1998
CPM 98-05

MEMORANDUM FOR: Human Resources Directors

FROM: Henry Romero Associate Director

Subject: Recent Legislative Changes

This is to inform you of several changes related to pay and leave administration as a result of recent legislation.

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I. Public Law 105-261, the Strom Thurmond National Defense Authorization Act, 1999, October 17, 1998

Back Pay

Section 1104 amends the back pay law (5 U.S.C. 5596(b)) by adding a new provision to clarify that back pay awards are subject to a 6-year statute of limitations unless a shorter limitation period applies. This amendment clarifies that the 6-year limitation period in the Tucker Act (28 U.S.C. 2402 et seq.) and the Barring Act (31 U.S.C. 3702) applies to cases under the back pay law. Section 1104 also adds a new provision to 5 U.S.C. 7121 to clarify that settlements of grievances and arbitration awards under 5 U.S.C. 7121 are subject to the same 6-year statute of limitations. Note that this amendment does not modify the current 2-year statute of limitations (3 years for willful violations) provided by the Portal-to-Portal Act of 1947 for claims under the Fair Labor Standards Act of 1938, as amended, that are filed on or after June 30, 1994. These changes became effective on October 17, 1998.

Restoration of Annual Leave for Employees in Panama

Section 1105 amends 5 U.S.C. 6304(d)(3)(A) to provide for automatic restoration of annual leave subject to forfeiture under 5 U.S.C. 6304(c) for Federal employees working to close installations in the Republic of Panama under the implementation plan for the Panama Canal Treaty of 1977. This provision is parallel to the authority for automatic restoration of forfeited annual leave for Department of Defense employees at bases subject to the Defense Base Closure and Realignment Act of 1990. This change became effective on October 17, 1998.

Holidays at Duty Posts Outside the United States

Section 1107 adds a new provision to 5 U.S.C. 6103(b) to provide that whenever Monday is designated as a holiday under 5 U.S.C. 6103(a), the first regularly scheduled workday in the week is the holiday for a Federal employee working overseas whose basic workweek includes Monday, but is not the typical Monday through Friday work schedule that is found in the United States. This will have the effect of providing 3-day weekends (Friday, Saturday, and Sunday) for employees working overseas whose basic workweek is Sunday through Thursday. This change became effective on October 17, 1998.

II. Public Law 105-277, the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999, October 21, 1998

Federal Wage System Schedule Adjustments

Section 614 of the Treasury and General Government Appropriations Act, 1999, as contained in section 101(h) of Public Law 105-277, the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999, places a limitation on pay increases for prevailing rate (wage) employees for fiscal year 1999. Wage schedules for wage employees are issued at various times during the year depending on the date a new wage survey begins in each individual wage area. Pay increases for wage employees in fiscal year 1999 may not exceed the sum of the General Schedule across-the-board percentage adjustment under 5 U.S.C. 5303 and the difference between the overall average percentage locality payments for General Schedule employees in

fiscal year 1998 and fiscal year 1999. The General Schedule percentage adjustment for 1999 and the average percentage locality adjustment for General Schedule employees in fiscal year 1999 are not known at this time. (See p. 4, below.) Therefore, the issuance of wage schedules with effective dates after September 30, 1998, must be delayed until the maximum wage adjustment for fiscal year 1999 can be calculated. Any wage increases on such delayed schedules will be paid retroactively to the normal adjustment date for the wage areas affected. Section 614 is effective for fiscal year 1999.

Pay for the Executive Schedule, SES Members, SL/ST Employees, Administrative Law Judges, and Contract Appeals Board Members

Section 621 of the Treasury and General Government Appropriations Act, 1999, provides that there will be no increase in rates of basic pay for the Executive Schedule in fiscal year 1999. Consistent with 5 U.S.C. 5382(b), the maximum rate of basic pay for members of the Senior Executive Service (SES) (i.e., the rate for ES-6 before a locality adjustment) will remain unchanged in 1999 at \$118,400, the rate of basic pay for level IV of the Executive Schedule. Likewise, consistent with 5 U.S.C. 5376(b)(1)(B), the maximum rate of basic pay (before a locality adjustment) for senior-level (SL) and scientific or professional (ST) positions will remain unchanged at \$118,400. In addition, the rates of basic pay for administrative law judges (ALJs) and members of Boards of Contract Appeals will remain unchanged. Finally, 5 U.S.C. 5304(g)(2) provides that a locality pay adjustment may not cause total basic pay and locality pay for SES members, SL/ST employees, ALJs, and Contract Appeals Board members to exceed the rate for level III of the Executive Schedule (\$125,900), which will remain unchanged in 1999. Decisions about increases in basic pay for SES members and the extension of locality payments to non-General Schedule employees will be made later this year.

Sunday Premium Pay

Section 624 of the Treasury and General Government Appropriations Act, 1999, provides that notwithstanding any other provision of law, no part of any funds provided by this Act or any other Act beginning in fiscal year 1999 and thereafter shall be available for paying Sunday premium pay to any employee unless such employee actually performed work during the time corresponding to such premium pay. This expands the permanent restriction on the payment of Sunday premium pay under section 636 of the Treasury and General Government Appropriations Act, 1998, for employees Governmentwide who do not actually perform work on Sunday, including General Schedule and prevailing rate (wage) employees. The restriction is no longer limited to funding from appropriations Acts, but applies to funding from any Act. This also has the effect of extending the restriction on payment of Sunday premium pay to payments from any revolving fund that has received any funding under the provisions of any law. This change restricts the payment of Sunday premium pay beginning on October 1, 1998.

Firefighter Pay

Section 628 of the Treasury and General Government Appropriations Act, 1999, amends 5 U.S.C. 5542 and adds 5 U.S.C. 5545b to provide new basic pay and overtime pay provisions for GS-081 Federal firefighters whose normal work schedule consists of regular and recurring tours of duty which average at least 106 hours per biweekly pay period. These firefighters will no longer receive annual premium pay for regularly scheduled standby duty under 5 U.S.C. 5545(c)(1).

Under the new provisions, overtime hours are hours of work in excess of 106 hours in a biweekly pay period (or in excess of 53 hours in a week if pay is computed on a weekly basis) for all covered firefighters, whether they are exempt or nonexempt from the Fair Labor Standards Act of 1938, as amended. The overtime hourly rate is one and one-half times the firefighter's hourly rate of basic pay. The firefighter's hourly rate of basic pay is derived by dividing the applicable GS annual rate of pay by 2756, which represents 52 weeks times 53 hours per week. In applying the title 5 GS-10, step 1, hourly overtime pay limitation, a firefighter's hourly overtime pay rate may not fall below the firefighter's hourly rate of basic pay. Under the new pay computation formula, the typical FLSA nonexempt (i.e., covered) firefighter with a 72-hour workweek will receive a pay increase of about 9 percent. Special pay provisions are designed to address those situations in which the new pay formula would otherwise reduce a firefighter's pay for regularly scheduled work.

The training law (5 U.S.C. 4109) is also amended to provide that a covered firefighter's basic pay and overtime pay for his or her regular tour of duty will continue to be paid during agency-sanctioned training. Finally, 5 U.S.C. 8331(3) is amended to state that basic pay for retirement purposes includes a firefighter's basic hourly rate (as computed under this law) for all hours in the firefighter's regular tour of duty. The new firefighter pay provisions take effect on the first day of the first applicable pay period beginning on or after October 1, 1998.

General Schedule Pay Adjustments

Section 647 of the Treasury and General Government Appropriations Act, 1999, sets the overall General Schedule pay increase for January 1999 at 3.6 percent. The conference report accompanying this provision states that the conferees anticipate that the President will issue an Executive order later this year allocating the 3.6 percent overall increase between an across-the-board increase and increases in locality payments. In addition, the conferees anticipate that the President will exercise his discretion to distribute any amount allocated for locality payments in the most appropriate fashion among the pay localities established by the President's Pay Agent. The Office of Personnel Management will issue salary tables showing the 1999 basic and locality pay rates as soon as possible after these determinations are made.

Use of Annual Leave to Qualify for Retirement or Health Benefits Coverage

Section 653 of the Treasury and General Government Appropriations Act, 1999, extends entitlements under 5 U.S.C. 6302(g) to members of the Senior Executive Service (SES). As amended, 5 U.S.C. 6302(g) provides that an employee or member of the SES who is being involuntarily separated from an agency due to a reduction in force or transfer of function may elect to use annual leave to his or her credit to remain on the agency's rolls after the date the employee would otherwise have been separated if, and only to the extent that, such additional time in a pay status will enable the employee to qualify for an immediate annuity or carry health benefits coverage into retirement. This change became effective on October 21, 1998.

Availability Pay for Special Agents in the Diplomatic Security Service

Section 407 of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1999, as contained in section 101(b) of Public Law 105-277, the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999, amended 5 U.S.C. 5545a to extend the coverage of law enforcement availability pay to special agents in the Diplomatic Security Service of the Department of State.

Section 407 also provides that special agents must have an annual average of 2 unscheduled duty hours (in excess of 8 regularly scheduled hours) for each regular workday without taking into account any hours of availability. This means that all unscheduled duty hours for both Foreign Service and General Schedule special agents must be hours of actual work. Section 407 provides that these changes will become effective no sooner than 90 days after enactment and after the Director of the Office of Personnel Management and the Secretary of State agree that all regulations necessary to implement availability pay for special agents are in effect.

III. Public Law 105-266, the Federal Employees Health Care Protection Act of 1998, October 19, 1998

Maximum Physicians' Comparability Allowance

Section 7 of Public Law 105-266 amends 5 U.S.C. 5948(a) to increase the maximum physicians' comparability allowance (PCA) from \$20,000 to \$30,000 per year for an employee who has served as a Government physician for more than 24 months. Section 7 also provides that any PCA service agreement in effect on the effective date of the Act may be modified to increase the PCA for a physician up to the new maximum amount during the time remaining under the service agreement. However, section 7 provides that any modification of an existing service agreement to increase a PCA cannot cause the total PCA paid to the employee during the calendar year to exceed the new \$30,000 maximum or any other applicable limitation (e.g., the aggregate limitation on pay under 5 U.S.C. 5307). These changes became effective on October 19, 1998. However, the Office of Management and Budget advises that agencies may authorize a PCA in excess of \$20,000 only after revising their existing PCA plan and obtaining OMB approval of the changes.

Questions

Questions about the changes described in this memorandum may be directed to the Office of Personnel Management's Pay and Leave Administration Division at (202) 606-2858; FAX: (202) 606-0824; or email: payleave@opm.gov.

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