



UNITED STATES OFFICE OF PERSONNEL MANAGEMENT
Washington, DC 20415

The Director

Friday, February 1, 2008
CPM 2008-04

MEMORANDUM FOR: Heads Of Executive Departments And Agencies

FROM: Linda M. Springer, Director

Subject: Recent Pay and Leave Legislative Changes

This is to inform you of several changes in Federal employee pay and leave laws resulting from the enactment of the National Defense Authorization Act for Fiscal Year 2008 (hereafter referred to as "the Act"), which was signed into law by President George W. Bush on January 28, 2008 (Public Law 110-181).

All of the sections listed below are effective on the date of enactment, except for sections 1101 and 1111. (Section 1675 is effective on the date of enactment but has a special rule regarding application of a 5-year time limit. See below.) The U.S. Office of Personnel Management (OPM) will issue conforming regulations, except in connection with sections 1101 and 1110. Agencies are expected to follow the new statutory provisions upon the effective date provided in law. Pending issuance of regulations, OPM will provide additional guidance as necessary.

Section 585(b) – FMLA leave to care for injured members of the Armed Forces

Section 585(b) amends Family and Medical Leave Act (FMLA) provisions in 5 U.S.C. 6381-6383 (applicable to Federal employees) to provide military family leave entitlements for a Federal employee who (1) is the spouse, son, daughter, parent, or next of kin (defined as the nearest blood relative) of a covered servicemember with a serious injury or illness and (2) provides care for such servicemember.

- The serious illness or injury must have been incurred by the covered servicemember in the line of duty while on active duty in the Armed Forces.
- Covered family members are entitled to up to 26 weeks of FMLA leave during a single 12-month period to care for the servicemember (hereafter referred to as "military family leave").
- During the single 12-month period, the employee is entitled to a combined total of 26 weeks of regular FMLA leave and military family leave. For example, if during the single 12-month period an employee wants to take 6 weeks of regular FMLA leave for the birth of a child, as well as military family leave for care of a servicemember, the 6 weeks of regular FMLA leave would be subtracted from the combined entitlement of 26 weeks, leaving the employee with 20 weeks of military family leave for care of the servicemember.

- The use of this military family leave in a single 12-month period does not limit the use of regular FMLA leave during any other 12-month period. For example, if an employee uses 26 weeks of military family leave during a single 12-month period but has not used any regular FMLA leave during that period, the employee would be entitled to use up to 12 weeks of regular FMLA leave immediately following the single 12-month period.
- Similar to regular FMLA leave, military family leave is unpaid leave for which an employee may substitute any accumulated annual or sick leave. The normal leave year limitations on the use of sick leave to care for a family member do not apply.
- OPM will issue revised FMLA regulations to implement the new statutory provisions. In addition, OPM will post guidance on its Website prior to issuing the revised regulations to explain the provisions of the legislative changes in more detail.

Section 652 – Salary offset for NAFI employees

Section 652 provides that employees of a nonappropriated fund instrumentality (NAFI) of the Department of Defense (DOD) or United States Coast Guard (USCG) (as described in 5 U.S.C. 2105(c)) are covered by the salary offset law in 5 U.S.C. 5514. Section 5514 provides authority for collection of debts owed the Federal Government by offset of Federal employee salary payments. This amendment allows DOD and USCG NAFIs to collect debts owed to them by Federal employees via salary offset. It also allows Federal agencies to collect debts by offsetting salary payments of NAFI employees. OPM will issue revised salary offset regulations to conform with the new statutory provisions.

Section 1101 – Waiver of premium pay cap for certain overseas employees

Section 1101 extends the authority of agency heads to waive the premium pay limitations in 5 U.S.C. 5547 in calendar year 2008 for certain employees who perform work in an overseas location that is in the area of responsibility of the commander of the United States Central Command. Section 1101 amends the same law that applied in calendar year 2007 (i.e., section 1105 of Public Law 109-163, which was previously amended by section 1105 of Public Law 109-364). The annual limitation on basic pay and premium pay allowed under the waiver authority remains at \$212,100 in calendar year 2008. The overseas work in an area of responsibility of the commander of the United States Central Command must meet one of two additional qualifying conditions. As in 2007, the employee may qualify by performing work in direct support of or directly related to a military operation (including a contingency operation as defined in section 101(13) of title 10, United States Code). In addition, the amendment for 2008 provides that the employee may qualify by performing work in direct support of or directly related to an operation in response to an emergency declared by the President.

As provided by subsection (b) of section 1101 of the Act, the extension of the section 1105 waiver authority to calendar year 2008 is effective as of December 31, 2007. Therefore, an agency may apply the section retroactively to January 1, 2008, based on a determination that employees in a given category were performing qualifying work in connection with a military operation or other qualifying emergency. (For example, the State Department and DOD have approved the application of section 1105 retroactively to January 1, 2008, for all their employees who were serving in Iraq and Afghanistan and who meet the coverage eligibility conditions.)

OPM does not have regulatory responsibility for this waiver authority; however, as in past years, OPM has worked with DOD and the Department of State to develop a summary of the key common elements in DOD and State Department policies implementing the waiver authority. (See Attachment.) We strongly encourage all other agencies to adopt policies that are consistent with the attachment in their implementation of this waiver authority.

Section 1110 – Travel hours for Federal Wage System (FWS) employees

Section 1110 amends 5 U.S.C. 5544(a) to provide that FWS employees may be credited with compensable hours of work for return travel from an administratively uncontrollable event. This same treatment is already afforded white collar employees under existing law. Without this amendment, an FWS employee's return travel would be considered to be administratively controllable and thus would not be creditable as compensable hours of work unless otherwise qualifying.

Section 1111 – Compensatory time off for travel for FWS employees

Section 1111 covers FWS employees under the compensatory time off for travel provision in 5 U.S.C. 5550b. This amendment is effective on the earlier of (1) the effective date of any implementing regulations or (2) the 90th day after enactment. OPM will issue a regulatory revision to implement this statutory change. (See OPM's current regulations at 5 CFR part 550, subpart N.)

Section 1112 – 90-day annual leave ceiling for SL/ST and certain other employees

Section 1112 amends 5 U.S.C. 6304(f)(1) to provide that the annual leave carryover ceiling for employees in senior-level (SL) and scientific or professional (ST) positions compensated under 5 U.S.C. 5376, and for employees serving in positions designated under 10 U.S.C. 1607(a) as Intelligence Senior Level positions, is 90 days (720 hours)—the same 90-day ceiling that applies to members of the Senior Executive Service. OPM will issue revised regulations to conform with this statutory change.

Section 1114 – Pay-setting for NAFI employees who move to General Schedule (GS) positions

Section 1114 amends 5 U.S.C. 5334(f) to provide that a NAFI employee of DOD or USCG who moves voluntarily to a GS position in the same agency without a break in service of more than 3 days may (at the employing agency's discretion) have the GS rate set at the lowest step rate that equals or exceeds the former NAFI rate. Under previous law, the GS rate could not exceed the formerly applicable NAFI rate in such voluntary movements; thus, setting the rate at a GS step for these former NAFI employees generally resulted in a reduction in pay. The amendment permits an agency to set pay at the next higher step rate, avoiding a pay reduction. OPM will issue revised regulations to conform with this statutory change.

Section 1675 – Voluntary leave transfer to Federal employees who are wounded veterans

Section 1675 amends 5 U.S.C. 6333(b) to allow certain wounded veterans to participate in the Voluntary Leave Transfer Program without first having to exhaust their own available paid

leave. This provision will apply to an employee who sustains a combat-related disability while serving as a member of the Armed Forces (including a reserve component) and is undergoing medical treatment for that disability. A qualified leave recipient is eligible to receive donated annual leave for up to 5 years from the start of the employee's treatment, as long as the employee continues to undergo such medical treatment. The amendments made by section 1675 take effect on the date of enactment. For an employee who is already undergoing medical treatment on the date of enactment, the 5-year period begins on the date of enactment. OPM will revise the Voluntary Leave Transfer Program regulations to conform with this statutory change.

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.

cc: Chief Human Capital Officers
Human Resources Directors

Attachment

Summary of Key Common Elements in Department of Defense and State Department Policies Implementing Section 1105 of Public Law 109-163, as Amended by Section 1105 of Public Law 109-364, as Further Amended by Section 1101 of Public Law 110-181, for Calendar Year 2008

- Section 1105 may be applied to an employee who meets all of the following conditions for coverage eligibility:
 1. The employee is otherwise covered by 5 U.S.C. 5547 (dealing with limitations on premium pay).
 2. The employee is assigned to work in an overseas locations that is in the area of responsibility of the Commander of the U.S. Central Command and remains in that location for at least 42 consecutive calendar days (unless an authorized agency official grants a waiver in very limited circumstances). (If the employee meets the 42-day requirement, the section 1105 limitation may be applied to days before that requirement was satisfied, as long as the employee was performing work in a covered and approved category on those days. Although section 1105 applies only to payments payable in calendar year 2008, the 42-day period may overlap a calendar year-i.e., begin in 2007 and end in 2008, or begin in 2008 and end in 2009.)
 3. The employee performs work in direct support of, or directly related to, (1) a military operation (including a contingency operation, as defined in section 101(13) of title 10, United States Code) or (2) an operation in response to an emergency declared by the President. ("Military operations" is a Department of Defense (DOD) term of art, defined in the DOD *Dictionary of Military and Associated Terms*.) Prior to authorizing any premium pay cap waiver under section 1105 on the basis of a military operation, an agency must confirm that any DOD operation in countries in which such a waiver is being considered meets the DOD definition. The State Department and DOD have determined that all their employees serving in Iraq and Afghanistan are performing work in direct support of, or directly related to, a military operation. In other locations, they will make determinations on a case-by-base basis.
 4. The employee is in a category of employees for whom coverage under section 1105 has been approved by an authorized agency official. (Note: Section 1105 establishes a discretionary authority that agencies may exercise, not an entitlement.)
- For employees covered by section 1105 in calendar year 2008, an alternative annual limitation of \$212,100 will be used in lieu of the normal biweekly and annual limitations under 5 U.S.C. 5547. This means that an employee covered by section 1105 may receive premium pay in calendar year 2008 to the extent that such premium pay would not cause the employee's aggregate amount of basic pay and premium pay payable in the calendar year to exceed \$212,100. (Like the section 5547 limitation, the section 1105 limitation is

applied to premium payments that are “payable” during the calendar year—i.e., earned in a pay period for which the pay date falls in the calendar year.)

- The \$212,100 annual limitation will continue to apply to an employee’s annual aggregate basic pay plus premium pay even after the employee has stopped performing work covered by section 1105. After an employee stops performing covered work, the employee’s earnings will again be subject to the biweekly premium pay limitation under 5 U.S.C. 5547, and the employee could receive payments up to the section 5547 biweekly premium pay limitation each pay period until the section 1105 annual limitation is reached.
- As provided by subsection (b) of section 1101 of Public Law 110-181, the extension of the section 1105 waiver authority to calendar year 2008 is effective as of December 31, 2007. Therefore, an agency may apply the section retroactively to January 1, 2008, based on a determination that employees in a given category were performing qualifying work in connection with a military operation or other qualifying emergency. (For example, the State Department and DOD have approved the application of section 1105 retroactively to January 1, 2008, for all their employees who were stationed in Iraq and Afghanistan and who meet the coverage eligibility conditions.)
- Section 1105 does not provide authority to waive the aggregate compensation limitation in 5 U.S.C. 5307, which bars payment of compensation (including premium pay) under title 5 in addition to basic pay to the extent such payment would cause the employee’s aggregate annual compensation received in a calendar year to exceed a specified annual rate—for most employees, the rate for level I of the Executive Schedule (\$191,300 in 2008). Since the section 1105 annual limitation is \$212,100, which is greater than the rate for level I of the Executive Schedule, an employee may be entitled to premium pay under section 1105 that cannot be paid during calendar year 2008 due to the section 5307 limitation. As provided by section 5307, any such excess payments would be deferred until the beginning of calendar year 2009. (See 5 CFR 530.203(f) and 530.204.) Any such deferred payment would count toward the 2009 aggregate pay limitation under section 5307. (Such a deferred payment of premium pay is not considered in applying the applicable 2009 premium pay limitation under 5 U.S.C. 5547 or similar authority.)
- Under section 1105(c), any additional pay that results from this new premium pay cap may not be considered basic pay for retirement or any other purpose, nor may it be used in computing a lump-sum payment for accumulated and accrued annual leave. Under 5 U.S.C. 5547 and 5 CFR 550.107, various types of premium pay creditable for retirement and other purposes are always subject to a biweekly cap, even in emergencies that would normally trigger the annual premium pay limit. Thus, in applying section 1105, an agency should consider any premium pay that is basic pay for retirement or other purposes as being paid before any other premium payment and apply the biweekly cap to determine the amount of basic pay for retirement and other purposes. In other words, section 1105 would allow these types of premium payments to exceed the normally applicable biweekly limit, but any excess beyond the biweekly limit would be attributable to section 1105 and therefore would not be treated as basic pay for retirement or other purposes.

COUNTRIES IN CENTCOM OVERSEAS AREA OF RESPONSIBILITY

1. Djibouti
2. Egypt
3. Eritrea
4. Sudan
5. Kenya
6. Ethiopia
7. Somalia
8. Jordan
9. Saudi Arabia
10. Yemen
11. Oman
12. United Arab Emirates
13. Qatar
14. Bahrain
15. Kuwait
16. Pakistan
17. Iran
18. Iraq
19. Afghanistan
20. Tajikistan
21. Kyrgyzstan
22. Kazakhstan
23. Uzbekistan
24. Turkmenistan
25. Seychelles
26. Syria
27. Lebanon

Note: Djibouti, Eritrea, Sudan, Kenya, Ethiopia, and Somalia are scheduled to be assigned to the new U.S. African Command (AFRICOM) effective October 1, 2008. A final determination has not been made regarding whether Egypt also will be assigned to AFRICOM or will remain in the CENTCOM area of responsibility. Employees located in an area that shifts from CENTCOM to AFRICOM will be treated the same as employees who are moved to a different geographic area outside of the CENTCOM area of responsibility. (See guidance above concerning employees who have stopped performing work covered by section 1105.)

Section 1105 of Public Law 109-163, as Amended by Section 1105 of Public Law 109-364, as Further Amended by Section 1101 of Public Law 110-181

SEC. 1105. AUTHORITY TO WAIVE ANNUAL LIMITATION ON TOTAL COMPENSATION PAID TO FEDERAL CIVILIAN EMPLOYEES

- (a) WAIVER AUTHORITY.— During 2006, 2007, and 2008 and notwithstanding section 5547 of title 5, United States Code, the head of an executive agency may waive, subject to subsection (b), the limitation established in that section for total compensation

(including limitations on the aggregate of basic pay and premium pay payable in a calendar year) of an employee who performs work while in an overseas location that is in the area of responsibility of the commander of the United States Central Command, in direct support of or directly related to a military operation (including a contingency operation as defined in section 101(13) of title 10, United States Code) or, during 2008, a military operation (including a contingency operation, as so defined) or an operation in response to an emergency declared by the President.

(b) **MAXIMUM TOTAL COMPENSATION.**— The total compensation of an employee whose pay is covered by a waiver under subsection (a) may not exceed \$200,000 in 2006 and \$212,100 in 2007 or 2008.

(c) **ADDITIONAL PAY NOT CONSIDERED BASIC PAY.**— To the extent that a waiver under subsection (a) results in payment of additional premium pay of a type that is normally creditable as basic pay for retirement or any other purpose, such additional pay

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- (1) shall not be considered to be basic pay for any purpose; and*
(2) shall not be considered in computing a lump sum payment for accumulated and accrued annual leave under section 5551 of title 5, United States Code.