



UNITED STATES OFFICE OF PERSONNEL MANAGEMENT

Washington, DC 20415

The Director

Tuesday, November 26, 2013

CPM 2013-15

MEMORANDUM FOR: Chief Human Capital Officers

FROM: Katherine Archuleta
Director

Subject: Restoration of Forfeited Annual Leave and 2013 Government Shutdown and Sequestration

The U.S. Office of Personnel Management (OPM) has received numerous questions from agencies and employees regarding the effect of the 2013 Government shutdown and sequestration on the procedures for restoration of annual leave and the time limit for using restored annual leave. Although the Government shutdown and sequestration do not change the normal annual leave restoration procedures, OPM is using this opportunity to remind agencies of the standard procedures for the scheduling, use, and restoration of annual leave.

Scheduling and Use of Excess Annual Leave

Employees should make every effort to schedule excess annual leave (i.e., “use or lose” leave) and supervisors should make every effort to approve such leave requests. It is important for agencies to remind their employees to properly schedule any “use or lose” annual leave (i.e., schedule it in writing before the start of the third biweekly pay period prior to the end of the leave year, which is Saturday, November 30, 2013, for most employees) and use it before the end of the current leave year, which is January 11, 2014, for most employees. Please see our [Leave Year Beginning and Ending Dates](#) fact sheet for more information. Excess annual leave that is not scheduled and used before these dates will be forfeited.

Requests for the Restoration of Forfeited Annual Leave

Employees may request the restoration of forfeited annual leave that was lost because of exigency of the public business, sickness of the employee, or administrative error. In order for an agency to consider the restoration of annual leave that was forfeited due to an exigency of the public business or sickness of the employee, the annual leave must have been properly scheduled (see above for scheduling requirements).

- **Exigency of the Public Business.** In order for leave to be restored because of an exigency of the public business, the head of the agency or his/her designee must determine that an exigency—i.e., an urgent need for the employee to be at work—is of major importance and that excess annual leave cannot be used before the end of the current leave year. The agency head or designee must also fix a specific end date for the exigency affecting the employee. This is the date used to determine when the employee’s

restored annual leave expires. If the end date of the exigency is not clear (e.g., a project ends sometime in late December but not on a specific date), the agency may designate the final day of the leave year as the end of the exigency (e.g., January 11, 2014).

- **Sickness of the Employee.** In order for leave to be restored because of sickness of the employee, the employing agency must determine that an employee's annual leave (1) was forfeited because of a period of absence due to the employee's sickness or injury that occurred late in the leave year or (2) was of such duration that the excess annual leave could not be rescheduled for use before the end of the leave year. The agency must also determine the date the employee recovers from the illness or injury and is able to return to duty, since this date is used to determine when the restored annual leave expires.
- **Administrative Error.** The employing agency must determine that an error was made that resulted in the employee forfeiting annual leave. The employing agency determines what constitutes an administrative error.

Time Limits for the Use of Restored Annual Leave

There are three different procedures for determining the time limits for the use of restored annual leave, which vary according to the reason for which the annual leave was restored.

- **Exigency of the Public Business.** An employee must schedule and use restored annual leave not later than the end of the leave year ending 2 years after the date fixed by the head of the agency or designee as the date of termination of the exigency of the public business.
- **Sickness of the Employee.** An employee must schedule and use restored annual leave not later than the end of the leave year ending 2 years after the date the employee is determined to be recovered from illness or injury and able to return to duty.
- **Administrative Error.** An employee must schedule and use restored annual leave not later than the end of the leave year ending 2 years after the date of restoration of the annual leave forfeited because of an administrative error.

Restoration of Restored Annual Leave

Restored annual leave that expires may not be restored again. There is nothing in existing law or regulation that allows restored annual leave to be restored a second time. The Government shutdown and sequestration do not extend the time limit for the use of restored annual leave. Please see our [Restoration of Annual Leave](#) fact sheet for more information.

Donation of Annual Leave

Agencies may also encourage employees who are concerned about not being able to use all of their "use or lose" annual leave to donate annual leave under the [Voluntary Leave Transfer](#) or [Voluntary Leave Bank](#) programs to benefit colleagues who are experiencing a medical emergency.

Contact Information

Agency headquarters-level human resources offices may contact OPM at pay-leave-policy@opm.gov. Employees should contact their agency human resources office for further information on this memo.

cc: Human Resources Directors

Attachment: **Examples of How to Calculate Time Limits for Use of Restored Annual Leave**

This attachment provides examples of how to calculate time limits for the use of restored annual leave under 5 U.S.C. 6304(d). In the following examples, the employees have requested the use of “use or lose” annual leave, have scheduled their annual leave before the start of the third biweekly pay period prior to the end of the leave year, and work in an agency where the leave year ends on January 11, 2014. Please see our [Leave Year Beginning and Ending Dates](#) , [Restoration of Annual Leave](#), and [Annual Leave \(General Information\)](#) fact sheets for more information, including the full statutory and regulatory references.

Exigency of the Public Business – 5 CFR 630.306(a)(2)

Scenario 1

An employee puts in a written request for 72 hours of annual leave to be taken in the last two pay periods of the 2013 leave year. However, he is called to jury duty on January 6, and performs 3 days of jury duty from January 6-8. Since 5 U.S.C. 6322 prohibits the loss of or reduction in annual leave where an employee is summoned to perform jury service, the head of the agency determines that the jury duty constitutes an exigency of the public business (5 CFR 630.305). The employee forfeits 24 hours of annual leave. Since his annual leave was cancelled because of an exigency of the public business, the requirements for the restoration of forfeited annual leave are met. The agency restores his forfeited annual leave.

Since the employee’s jury duty is over on January 8, 2014, the head of the agency determines this date to be the end of the exigency of the public business. In order to avoid its forfeiture, the employee must schedule and use the restored annual *leave no later than the end of the leave year ending 2 years after the termination date of the exigency*. Two years after the exigency of the public business terminates is January 8, 2016. January 8, 2016, occurs in the 2015 leave year, which ends January 9, 2016. Thus, the employee must schedule and use the restored annual leave no later than January 9, 2016.

Scenario 2

An employee puts in a written request for 72 hours of annual leave to be taken in the last two pay periods of the 2013 leave year. However, due to an unexpected project, the employee’s scheduled annual leave request is cancelled, and she is required to work to complete the project. The head of the agency determines that the project constitutes an exigency of the public business (5 CFR 630.305). The employee forfeits the 72 hours of annual leave. Since her annual leave was cancelled because of an exigency of the public business, the requirements for the restoration of forfeited annual leave are met. The agency restores her forfeited annual leave.

The project is completed on January 15, 2014, and the head of the agency determines this date to be the end of the exigency of the public business. In order to avoid its forfeiture, the employee must schedule and use the restored annual *leave no later than the end of the leave year ending 2 years after the termination date of the exigency*. Two years after the exigency of the public business terminates is January 15, 2016. January 15, 2016, occurs in the 2016 leave year, which ends January 7, 2017. Thus, the employee must schedule and use the restored annual leave no later than January 7, 2017.

Sickness of the Employee – 5 CFR 630.306(a)(3)

Scenario 1

An employee puts in a written request for 40 hours of annual leave for the week of January 6, 2014, to go on a family ski vacation. However, at the end of December, he is involved in a serious car accident and is hospitalized through the end of January. He forfeits the 40 hours of annual leave. He is then released to an inpatient rehabilitation center for further care. He returns to work on March 10, 2014. Since his annual leave was cancelled because of his injury and could not be rescheduled before the end of the leave year, the requirements for the restoration of forfeited annual leave are met. The agency restores the 40 hours of forfeited annual leave to the employee.

In order to avoid the forfeiture of his restored annual leave, the employee must schedule and use it *no later than the end of the leave year ending 2 years after the date that he is determined to be recovered and able to return to duty*. He is determined able to return to duty on March 10, 2014. Two years after March 10, 2014, is March 10, 2016. March 10, 2016, occurs in the 2016 leave year, which ends January 7, 2017. Thus, the employee must schedule and use the restored annual leave no later than January 7, 2017.

Scenario 2

An employee puts in a written request to take annual leave during the last 3 weeks of the leave year. However, the employee has influenza during the week of December 22, so she requests to substitute sick leave for her scheduled annual leave while she has the flu. On December 30, she informs her agency that she has recovered from the flu and doesn't need any more sick leave, but she would like to use her already-scheduled annual leave. She returns to work on January 13 after she uses her remaining scheduled annual leave to learn that the 32 hours of annual leave that she did not take during the week of December 22 was forfeited. Since her annual leave was cancelled because of her own illness and could not be rescheduled before the end of the leave year, the requirements for the restoration of forfeited annual leave are met. The agency restores her forfeited annual leave.

In order to avoid the forfeiture of her restored annual leave, the employee must schedule and use it *no later than the end of the leave year ending 2 years after the date that she is determined to be recovered and able to return to duty*. Since she informed her agency she was recovered on December 30, the agency sets December 30, 2013, as the date she is determined to be recovered from her illness. Two years after December 30, 2013, is December 30, 2015. December 30, 2015, falls in the 2015 leave year, which ends January 9, 2016. Thus, the employee must schedule and use the restored annual leave no later than January 9, 2016.

Administrative Error – 5 CFR 630.306(a)(1)

Scenario

In response to internal agency audit conducted in August 2014, the human resources office of an agency finds that an administrative error resulted in an employee forfeiting 16 hours of annual

leave that he should not have forfeited. The agency restores the employee's forfeited annual leave on August 11, 2014.

In order to avoid the forfeiture of the restored annual leave, the employee must schedule and use it *no later than end of the leave year ending 2 years after the date of restoration of the annual leave*. The date of restoration of the annual leave is August 11, 2014. Two years after August 11, 2014, is August 11, 2016. August 11, 2016, occurs in the 2016 leave year, which ends January 7, 2017. Thus, the employee must schedule and use the restored annual leave no later than January 7, 2017.