



UNITED STATES OFFICE OF PERSONNEL MANAGEMENT  
Washington, DC 20415

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Memorandum for Chief Human Capital Officers

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**Subject: Recent Pay and Leave-Related Legislative Changes**

This memorandum is to inform agencies of several important legislative changes and extensions affecting Federal employee pay, leave, and certain benefits. The changes result from the enactment of the Servicemember Quality of Life Improvement and National Defense Authorization Act for Fiscal Year 2025 (Public Law 118-159, December 23, 2024) (FY25 NDAA). The guidance in this annual memorandum is intended to assist agencies in implementing new and revised pay and leave entitlements and flexibilities, consistent with applicable related provisions of title 5, United States Code, administered by the U.S. Office of Personnel Management (OPM).

## **I. Authority Extensions**

### **Section 1104 – 1-Year Extension of Authority to Waive Annual Limitation on Premium Pay and Aggregate Limitation on Pay for Certain Federal Civilian Employees Working Overseas**

Section 1104 extends through calendar year (CY) 2025 the authority provided in section 1101 of the Duncan Hunter NDAA for FY 2009 (Public Law 110-417, October 14, 2008), as amended, for the head of an agency to waive the normally applicable premium pay cap established in [5 U.S.C. 5547](#) for certain Federal civilian employees working overseas. The annual limitation on basic pay and premium pay allowed under the waiver authority in CY 2025 is the officially established annual salary rate for the Vice President under [3 U.S.C. 104](#) (\$289,400 in 2025). In addition, when an employee is granted a section 1104 waiver, any pay in addition to basic pay received for service during the waiver period is not counted as compensation in applying the aggregate limitation on pay under [5 U.S.C. 5307](#).

Section 1101(d) of Public Law 110-417 continues to provide the OPM Director with the discretion to issue regulations for this waiver authority. OPM does not currently plan to

issue regulations. However, each agency with covered employees should establish policies for using this waiver authority. To ensure agencies apply this discretionary authority consistently, OPM coordinated with the Department of Defense and the Department of State to update the attached summary of key elements OPM issues each year that agencies should include in their policies implementing the waiver authority (Attachment 1). The attached summary includes additional information on employee coverage, approval criteria, and special instructions on applying the waiver authority to employees working in Iraq.

### **Section 1105 – 1-Year Extension of Temporary Authority to Grant Allowances, Benefits, and Gratuities to Civilian Personnel on Official Duty in a Combat Zone**

Section 1105 amends section 1603(a)(2) of Public Law 109-234 (June 15, 2006), as added by Public Law 110-417 (October 14, 2008) and amended by subsequent laws, to grant the head of an agency discretionary authority until the end of **FY 2026** (September 30, 2026), to provide an individual employed by or assigned or detailed to the agency allowances, benefits, and gratuities comparable to those provided by the Secretary of State to members of the Foreign Service under section 413 and chapter 9 of title I of the Foreign Service Act of 1980. The employee must be on official duty in Pakistan or a combat zone, as defined by section 112(c) of the Internal Revenue Code of 1986.

### **Section 7812 – Overseas Comparability Pay Adjustment**

Section 7812(b) extends through December 31, 2034, the authority established by section 1113 of the Supplemental Appropriations Act, 2009 to provide Foreign Service employees with a locality-based comparability payment up to two thirds of the rate of locality pay provided to employees who are covered by [5 U.S.C. 5304](#) and have a duty station in the District of Columbia.

### **Section 611 – Reserve Income Replacement Program**

Section 611(a) amends [37 U.S.C. 910\(g\)](#) to extend the expiration date for the Reserve Income Replacement Program from December 31, 2024, to December 31, 2025. The Reserve Income Replacement Program is administered by the Department of Defense and provides income replacement payments for certain reserve component members experiencing extended and frequent mobilization for active-duty service. This amendment does not affect the reservist differential authority under [5 U.S.C. 5538](#), which is a separate program for Federal employees administered by OPM in consultation with the Department of Defense. However, a Federal employee who is

entitled to a reservist differential may not receive payments under [37 U.S.C. 910](#) for the same period. (See OPM's [reservist differential](#) guidance for additional information.)

## II. Revised and New Leave Authorities

### Sections 1109 – Increase in Military Leave Accrual and Accumulation for Federal Employees

Section 1109 increases military leave accrual and maximum carryover amounts under [5 U.S.C. 6323\(a\)\(1\)](#) from 15 to 20 days to be used for active duty, active duty training, and inactive duty training. This amendment to section 6323(a) took effect on the date of enactment of the FY25 NDAA, December 23, 2024, which was during the course of FY 2025 (October 1, 2024, through September 30, 2025).

Since section 1109 took effect during the course of the fiscal year, OPM considers the increased accrual of 20 days of military leave to be effective on December 23, 2024. Before December 23, 2024, employees were limited to an accrual of 15 days of military leave in FY 2025, but once the amendments took effect on December 23, 2024, the fiscal year accrual was increased, and an additional 5 days of military leave became available for use during FY 2025. The maximum carryover amount of military leave into the next fiscal year under [5 U.S.C. 6323\(a\)\(1\)](#) also increased from 15 to 20 days on December 23, 2024. Section 6323(a) military leave that is carried over into the next fiscal year will be forfeited if not used in that succeeding fiscal year.

This means the following:

- On October 1, 2024, prior to the enactment of section 1109, employees accrued 15 days of section 6323(a) military leave and were entitled to carry over up to 15 days of unused military leave for use in the next fiscal year.
- As of December 23, 2024, pursuant to section 1109, employees are entitled to accrue 20 days of section 6323(a) military leave per fiscal year. Since employees already accrued 15 days of section 6323(a) military leave at the beginning of FY 2025, they became entitled to special accrual of an additional 5 days of section 6323(a) military leave as of December 23, 2024, that is available for use during the portion of FY 2025 after that date. If an employee used another type of paid or unpaid leave during duty that qualified under section 6323(a) on or after December 23, 2024, but before the employing agency informed its employees of the additional 5 days of military leave for FY 2025, OPM believes it would be

appropriate for an agency to approve an employee's request to retroactively substitute up to 5 days of available section 6323(a) military leave for such paid or unpaid leave.

- For FY 2025 (October 1, 2024, through September 30, 2025) employees can potentially have as many as 35 days of section 6323(a) military leave due to the 15 days that were previously authorized to be carried over from the previous FY 2024 in addition to the new authority for accrual and accumulation of 20 days of military leave for FY 2025.
- For FY 2026 (October 1, 2025, through September 30, 2026), and subsequent fiscal years, employees accrue 20 days of section 6323(a) military leave and may carry over up to 20 days of unused military leave for use in the next fiscal year; thus, they could potentially have as many as 40 days of section 6323(a) military leave during a fiscal year.

### **Section 1114 – Extension of Military Leave to Members of the Space Force in an Active Status**

Section 1114 provides members of the Space Force in space force active status (as defined in [10 U.S.C. 101\(e\)\(1\)](#), i.e., “a member of the Space Force who is not in a space force inactive status and is not retired”) are eligible for military leave under [5 U.S.C. 6323\(a\)\(1\) and \(b\)\(1\)](#). Members of the Space Force on sustained duty under [10 U.S.C. 20105](#) are not eligible for military leave. These amendments to section 6323(a) and (b) took effect on the date of enactment of the FY25 NDAA, December 23, 2024, which was during the course of FY 2025 (October 1, 2024, through September 30, 2025).

Attachment 2 provides the updated military leave fact sheet, related updated FAQs, and the FY25 NDAA statutory amendment.

### **Section 7215 – Rest and Recuperation and Overseas Operations Leave**

Section 7215 grants executive branch agencies the discretionary authority to provide qualifying employees with two new forms of leave via amendments to chapter 9 of the Foreign Service Act of 1980 ([22 U.S.C. 4081 et seq.](#)). Section 903a of the Act permits agencies to provide up to 20 days of paid leave per leave year for the purposes of rest and recuperation to qualifying employees who are serving in a combat zone, any other high risk, high threat post, or any other location presenting significant security or operational challenges. “High risk, high threat posts” are those described in [22 U.S.C. 4803](#).

Section 903b of the Act permits agencies to provide qualifying employees serving abroad with up to 10 days of paid leave per leave year for the purpose of local holidays. Use of either the section 903a authority or the section 903b authority is at the sole and exclusive discretion of the head of the employing agency.

For the purpose of sections 903a and 903b, the definition of the term “employee” relies on three conditions parallel to those found in the commonly used definition of “employee” in [5 U.S.C. 2105\(a\)](#). To be considered an employee, an individual must be—

- appointed in the civil service, in the Foreign Service, or using any appointment authority other than the uniformed services (as that term is defined in 37 U.S.C. 101) by the President, a member of Congress, the head of a Government-controlled corporation, or other individual who qualifies as an employee under this definition;
- engaged in the performance of a Federal function under authority of law or an Executive act; and
- subject to the supervision of an individual described in the first bulleted paragraph while engaged in the performance of the duties of his or her position.

### **Additional Information**

Agency headquarters-level human resources offices may contact OPM at [paypolicy@opm.gov](mailto:paypolicy@opm.gov) (for the pay authorities discussed in this memorandum) or [leavepolicy@opm.gov](mailto:leavepolicy@opm.gov) (for the leave authorities discussed in this memorandum). Employees should contact their agency human resources office for further information on this memorandum.

### **Attachments**

Attachment 1: Summary of Key Necessary Elements in Agency Policies Implementing Authority to Waive Annual Limitation on Premium Pay and Aggregate Limitation on Pay for Certain Federal Civilian Employees Working Overseas (Section 1101 of Public Law 110-417, as Amended, for Calendar Year 2025)

Attachment 2: Military Leave Fact Sheet and Frequently Asked Questions

cc: Deputy Chief Human Capital Officers and Human Resources Directors

## **Summary of Key Necessary Elements in Agency Policies Implementing Authority to Waive Annual Limitation on Premium Pay and Aggregate Limitation on Pay for Certain Federal Civilian Employees Working Overseas (Section 1101 of Public Law 110-417, as Amended, for Calendar Year 2025)**

Section 1101 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (Public Law 110-417, October 14, 2008), as amended, provides a special authority for the head of an agency to waive the normally applicable premium pay cap established in 5 U.S.C. 5547 for certain employees in calendar year 2025. Each agency with covered employees should establish policies for using this waiver authority. To ensure agencies apply this discretionary authority consistently, we are providing a summary of key elements agencies should include in their policies implementing the waiver authority. The summary below includes additional information on employee coverage, approval criteria, and special instructions on applying the waiver authority to employees working in Iraq.

### **Authority**

Section 1104 of Public Law 118-159, December 23, 2024, amends and extends to calendar year 2025 the authority of section 1101 of Public Law 110-417, October 14, 2008, as amended. See list of previous amendments to section 1101 below. Hereafter, all references to “section 1101” in this attachment refer to section 1101 of Public Law 110-417, as amended.

### **Summary of Key Elements**

- Section 1101(a) authorizes the waiver of the normal biweekly or annual premium pay cap under 5 U.S.C. 5547 and establishes a higher annual cap linked to the Vice President’s salary rate established under 3 U.S.C. 104, as explained below.
- The premium pay cap waiver authority under section 1101(a) may be applied in calendar year 2025 to a civilian employee who meets all of the following conditions for coverage eligibility:

- The employee is covered by 5 U.S.C. 5547 (dealing with limitations on premium pay) or a limitation on premium pay similar to one set forth in 5 U.S.C. 5547 (as determined by the head of the Executive agency in which such employees are employed).
- The employee is assigned to work in an overseas location and remains in that location for at least 30 consecutive calendar days (unless an authorized agency official grants a waiver of the 30-day requirement in very limited and extraordinary circumstances – for example, where an employee’s 30 consecutive days are interrupted by an unplanned short trip outside the area required by the agency in an emergency situation). (If the employee meets the 30-day requirement, the section 1101 limitation may be applied to days before that requirement was satisfied if the employee was performing work in a covered and approved category on those days. Although section 1101 applies only to payments payable in calendar year 2025, the 30-day period may begin in 2024 and end in 2025 or begin in 2025 and end in 2026.)
- The employee is assigned to work in an overseas location. An “overseas location” is defined as a location in a foreign area and excludes a location in the contiguous United States or a nonforeign area described in 5 CFR 591.205.
- At the overseas location described in the bullet above, the employee performs work in direct support of or directly related to (1) a military operation (including a contingency operation, as defined in 10 U.S.C. 101(a)(13)) or (2) an operation in response to a national emergency declared by the President. (“Military operation” 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 1101 on the basis of a military operation, an agency must confirm any DOD operation in countries in which such a waiver is being considered meets the DOD definition.
- The employee is in a category of employees for whom coverage under section 1101 has been approved by an authorized agency official. (Note: Section 1101 establishes a discretionary authority that agencies may exercise, not an entitlement.)

- Employees who are granted a waiver under section 1101(a) in calendar year 2025 will be covered by a higher annual premium pay cap in lieu of the normal biweekly and annual premium pay caps under 5 U.S.C. 5547. The employee will be entitled to premium payments identified in 5 U.S.C. 5547(a), or similar limitation, to the extent it does not cause the employee's combined payable amount of basic pay and premium pay for calendar year 2025 to exceed the annual rate of salary established for the Vice President under 3 U.S.C. 104 (\$289,400 in 2025). (Note: Under section 5547(b), the normally applicable annual limitation is based on certain annual pay rates in effect at the end of the calendar year. Accordingly, the 2025 limitation is based on the Vice President's rate under 3 U.S.C. 104 in effect on December 31, 2025.)
- The higher annual limitation on premium pay established under section 1101(a) applies during calendar year 2025 to an employee's annual aggregate basic pay plus premium pay even after the employee has stopped performing work covered by section 1101. 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, or similar limitation, and the employee could receive payments up to the biweekly premium pay limitation each pay period until the section 1101(a) annual limitation is reached.

**Note:** If such an employee's aggregate projected basic pay plus premium pay payable for 2025 is less than the annual limit established under 5 U.S.C. 5547, an agency may invoke that annual limit, if appropriate, and pay premium pay in excess of the biweekly limit. (See 5 U.S.C. 5547(b) and 5 CFR 550.106–550.107.) Once the section 5547 annual limit is reached, the employee would be again subject to the section 5547 biweekly limit and simultaneously subject to the section 1101(a) annual limit. If the employee's projected basic pay plus premium pay payable for 2025 already exceeds the section 5547 annual limit, the waiver of the biweekly limit and invoking of the section 5547 annual limit would not provide additional premium pay in any biweekly pay period. Therefore, the normal section 5547 biweekly limit would apply to any premium pay earned for each successive pay period, as long as the employee does not reach the section 1101(a) annual limit. If the employee reaches the section 1101(a) annual limit, the employee may not earn any additional premium pay during calendar year 2025.



- Under section 1101(b), when an employee is granted a section 1101(a) waiver, the aggregate limitation on pay under 5 U.S.C. 5307 will still apply during calendar year 2025, but any pay in addition to basic pay received for service during the waiver period is not counted as compensation in applying the aggregate limitation. Under the aggregate limitation on pay, payments (other than basic pay) in excess of the aggregate limitation must be deferred and are generally paid as a lump-sum payment at the beginning of the following calendar year. Employees granted a section 1101(a) waiver will be subject to the aggregate limitation in calendar year 2025, but any pay in addition to basic pay during the section 1101(a) waiver period will be exempted in applying the aggregate limitation. In other words, pay in addition to basic pay received for service **outside** of the section 1101(a) waiver period is covered by the aggregate limitation under 5 U.S.C. 5307. However, pay received in addition to basic pay for service **within** the section 1101(a) waiver period is excluded in applying the aggregate limitation under 5 U.S.C. 5307. That is, an employee is able to receive pay in addition to basic pay during the section 1101(a) waiver period that otherwise would have been deferred due to the aggregate limitation on pay.
- Under section 1101(c), any additional premium pay that results from application of the higher premium pay cap under section 1101(a), 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. 5551. 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 1101(a), an agency should consider any premium pay of a type that is normally 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 creditable for retirement and other purposes. In other words, section 1101(a) 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 1101(a) and therefore would not be treated as basic pay for retirement or other purposes. Similarly, for premium payments that are normally used in computing an

annual leave lump-sum payment, only the portion below the biweekly limit may be used in the computation.

- *Special Information Related to Employees Working in Iraq:* As noted above, the United States has a contingency operation in Iraq (Operation Inherent Resolve), so the higher premium pay cap can be applied to eligible employees performing qualifying service connected to that operation through **December 31, 2025**. To be eligible while working in Iraq, employees must be performing work in direct support of, or directly related to, either Operation Inherent Resolve or an operation in response to the current national emergency declared by the President, as described in the Presidential notice of May 20, 2024. *Background:* The President issued a notice on May 20, 2024, that continues the declared national emergency in Iraq for 1 year (through May 22, 2025) to support stabilization efforts. (See the President's [notice](#).) The President modified the scope of the national emergency declared in Executive Order 13303, May 22, 2003, and took additional steps in response to this national emergency through the issuances of additional Executive Orders. Please refer to these orders— Executive Order 13315, August 28, 2003, Executive Order 13350, July 29, 2004, Executive Order 13364, November 29, 2004, Executive Order 13438, July 17, 2007, and Executive Order 13668 of May 27, 2014. Based on this notice, agencies may continue to apply the section 1101(a) waiver authority **through May 22, 2025**, for eligible employees in Iraq based on qualifying service connected to the national emergency. However, since the United States currently has a contingency operation in Iraq (Operation Inherent Resolve), the higher premium pay cap may also be applied to eligible employees working in Iraq in support of that operation on that basis through **December 31, 2025**.

### **Section 1101 of Public Law 110-417, as Amended, for Calendar Year 2025**

**Section 1101 of Public Law 110-417, October 14, 2008, as amended** by section 1106 of Public Law 111-84, October 28, 2009; section 1103 of Public Law 111-383, January 7, 2011; section 1104 of Public Law 112-81, December 31, 2011; section 1101 of Public Law 112-239, January 2, 2013; section 1101 of Public Law 113-66, December 26, 2013; section 1101 of Public Law 113-291, December 19, 2014; Section 1108 of Public Law 114-92,

November 25, 2015; section 1137 of Public Law 114-328, December 23, 2016; section 1105 of Public Law 115-91, December 12, 2017; section 1104 of Public Law 115-232, August 13, 2018; section 1105 of Public Law 116-92, December 20, 2019; section 1105 of Public Law 116-283, January 1, 2021; section 1112 of Public Law 117-81, December 27, 2021; section 1102 of Public Law 117-263, December 23, 2022; section 1105 of Public Law 118-31, December 22, 2023; and section 1104 of Public Law 118-159, December 23, 2024.

**SEC. 1101. AUTHORITY TO WAIVE ANNUAL LIMITATION ON PREMIUM PAY AND AGGREGATE LIMITATION ON PAY FOR FEDERAL CIVILIAN EMPLOYEES WORKING OVERSEAS.**

(a) **WAIVER AUTHORITY.** — During the calendar years 2009 through 2025, and notwithstanding section 5547 of title 5, United States Code, the head of an executive agency may waive the premium pay limitations established in that section up to the annual rate of the salary payable to the Vice President under section 104 of title 3, United States Code, for an employee who performs work while in an overseas location, in direct support of or directly related to—

- (1) a military operation, including a contingency operation; or
- (2) an operation in response to a national emergency declared by the President.

(b) **APPLICABILITY OF AGGREGATE LIMITATION ON PAY.** — In applying section 5307 of title 5, United States Code, any payment in addition to basic pay for a period of time during which a waiver under subsection (a) is in effect shall not be counted as part of an employee's aggregate compensation for the given calendar year.

(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 shall not be considered to be basic pay for any purpose, nor shall it be used in computing a lump-sum payment for accumulated and accrued annual leave under section 5551 of title 5, United States Code.

(d) **REGULATIONS.** — The Director of the U.S. Office of Personnel Management may issue regulations to ensure appropriate consistency among heads of executive agencies in the exercise of the authority granted by this section.

## **Military Leave Fact Sheet and Frequently Asked Questions**

An employee is entitled to time off at full pay for certain types of active or inactive duty in the National Guard or as a Reserve of the Armed Forces. A member of the Space Force in space force active status (as defined in 10 U.S.C. 101(e)(1)) is eligible for military leave under 5 U.S.C. 6323(a) and (b). A member of the Space Force on sustained duty under 10 U.S.C. 20105 is not eligible for military leave. The appropriate use of military leave will depend on the type of military duty being performed and the section of law cited on the order for the military activation.

### **Coverage**

Any full-time Federal civilian employee whose appointment is not limited to 1 year is entitled to military leave. Military leave under 5 U.S.C. 6323(a) is proportionally adjusted for part-time career employees and employees on an uncommon tour of duty.

### **Types of Military Leave**

5 U.S.C. 6323(a) provides 20 days per fiscal year for active duty, active duty training, inactive duty training, or other duty or training listed in section 6323(a). An employee can carry over a maximum of 20 days for use in the next fiscal year.\*

Note: Inactive Duty Training is authorized training performed by members of a Reserve component not on active duty and performed in connection with the prescribed activities of the Reserve component. It consists of regularly scheduled unit training periods, additional training periods, and equivalent training. For further information, see Department of Defense Instruction Number 1215.6, March 14, 1997.

\* Section 1109 of Public Law 118-159 amended 5 U.S.C. 6323(a)(1) by increasing the number of days of military leave accrual and maximum carryover amount from 15 to 20, effective December 23, 2024. See CPM 2025-09 for information about implementation of the new law, including guidance for FY 2025 which limits the maximum amount of military leave an employee can use in FY 2025 to a total of 35 days (15 days carried over from FY2024 plus 20 days accrued in FY2025).

5 U.S.C. 6323(b) provides 22 workdays per calendar year for emergency duty as ordered by the President, the Secretary of Defense, or a State Governor. This leave is provided for employees who perform military aid to enforce the law or assist civil authorities in the protection or saving of life or property or the prevention of injury, or who perform full-time military service as a result of a call or order to active duty in support of a contingency operation\*\* as defined in 10 U.S.C. 101(a)(13).

\*\* The term “contingency operation” means a military operation that—

(A) is designated by the Secretary of Defense as an operation in which members of the armed forces are or may become involved in military actions, operations, or hostilities against an enemy of the United States or against an opposing military force; or

(B) results in the call or order to, or retention on, active duty of members of the uniformed services under section 688, 12301(a), 12302, 12304, 12304a, 12305, or 12406 of title 10, United States Code; chapter 13 of title 10, United States Code; section 3713 of title 14, United States Code; or any other provision of law during a war or during a national emergency declared by the President or Congress.

5 U.S.C. 6323(c) provides unlimited military leave to members of the National Guard of the District of Columbia for certain types of duty ordered or authorized under title 49 of the District of Columbia Code.

5 U.S.C. 6323(d) provides that **Reserve and National Guard Technicians** *only* are entitled to 44 workdays of military leave for duties overseas under certain conditions.

## **Days of Leave**

Military leave should be credited to a full-time employee on the basis of an 8-hour workday. The minimum charge to leave is 1 hour. **An employee may be charged military leave only for hours that the employee would otherwise have worked and received pay.**

Employees who request military leave for inactive duty training (which generally is 2, 4, or 6 hours in length) are charged only the amount of military leave necessary to cover the period of training and necessary travel. Members of the Reserves, National Guard, and members of the Space Force in space force active status are not charged

military leave for weekends and holidays that occur within the period of military service.

A full-time employee working a 40-hour workweek will accrue 160 hours (20 days x 8 hours) of military leave under section 6323(a) in a fiscal year, or the equivalent of two 80-hour biweekly pay periods. Military leave under section 6323(a) will be proportionally adjusted for part-time employees and for employees on uncommon tours of duty based proportionally on the number of hours in the employee's regularly scheduled biweekly pay period.

### Examples

<b>Hours in the regularly scheduled biweekly pay period</b>	<b>Ratio of hours in the regularly scheduled pay period to an 80-hour pay period (the number of hours in the pay period /80)</b>	<b>Hours of military leave accrued each fiscal year</b>	<b>Pay Periods of military leave accrued each fiscal year</b>
40	.5 (40/80)	.5 x 160 = 80 hours	2 40-hour pay periods
106	1.325 (106/80)	1.325 x 160 = 212 hours	2 106-hour pay periods
120	1.5 (120/80)	1.5 x 160 = 240 hours	2 120-hour pay periods
144	1.8 (144/80)	1.8 x 160 = 288 hours	2 144-hour pay periods

### Effect on Civilian Pay

An employee's civilian pay remains the same for periods of military leave under 5 U.S.C. 6323(a) and (c), including any premium pay (except Sunday premium pay) an employee would have received if not on military leave. For military leave under 5 U.S.C. 6323(b), an employee's civilian pay is reduced by the amount of military pay for the days of military leave. Employees benefit from taking military leave because they continue to accrue annual and sick leave while in a pay status. Even when there may not be a monetary advantage to using military leave under 5 U.S.C. 6323(b), employees should consider taking it to continue to accrue annual and sick leave. However, an employee may choose not to take military leave and instead take annual leave,

compensatory time off for travel, or sick leave, if appropriate, in order to retain both civilian and military pay.

## **References**

- 5 U.S.C. 5519 and 5 U.S.C. 6323
- 5 CFR 353.208
- Public Law 106-554, December 21, 2000
- Public Law 108-136, November 24, 2003
- Public Law 118-159, December 23, 2024
- Comptroller General opinions:
  - B-227222 (11/05/78)-entitlement
  - B-211249 (09/20/83)-incompatible with civilian service
  - B-241272 (02/15/91)-duty into new leave year

## **Related Information**

### **Military Leave FAQs**

**Note:** Agencies should refer to these new military leave FAQs which reflect the changes in law and disregard any military leave FAQs that may be posted on OPM's website. OPM will post these new military leave FAQs on its website as soon as possible.

### **Questions and Answers**

**Q1. What kinds of personnel actions should an agency process when an employee is using annual leave, military leave, earned compensatory time off for travel, sick leave, and/or leave without pay while performing duties with the uniformed services?**

Agencies do not need to process any personnel actions (SF 50s) for periods of annual leave, military leave, earned compensatory time off for travel, or sick leave since the payroll system documents an employee's use of paid leave. Agencies should document an employee's use of leave without pay (LWOP) to perform duty with the uniformed services by processing a personnel action (SF 50) using nature of action "LWOP-US" (nature of action code 473). The effective date is the first day the employee begins to use leave without pay for duty with the uniformed services.

Employees may use annual leave, military leave, compensatory time off for travel, or sick leave (consistent with the statutory and regulatory criteria for using sick leave), intermittently with leave without pay while performing duty with the uniformed services. OPM does not require that agencies process return-to-duty actions for each period of paid leave. Periods of “LWOP-US” may be interrupted by periods of annual leave or military leave without the need to process any additional personnel actions.

**Q2. May a Federal civilian employee who has been called to active duty continue to work as a civilian at his or her Federal agency?**

No. The Comptroller General has ruled that an individual on active duty military service may not be employed in a civilian capacity with the Government. The Comptroller General has held that the rendition of services to the Government in a civilian capacity by a member of the armed services on active duty is incompatible with the member’s actual or potential military duties and payment for such services is not authorized in the absence of specific statutory authority. This is the case even though the civilian services are rendered during the military member’s hours of relaxation or time provided to attend to personal affairs. (See 64 Comp. Gen. 395, 399-400 (1985), and 47 Comp. Gen. 505-506 (1968).)

**Q3. May an employee on active duty or active/inactive duty training choose to use annual leave, military leave, earned compensatory time off for travel, or sick leave intermittently with leave without pay (LWOP) each period?**

Yes. OPM’s regulations at 5 CFR 353.208 implementing the Uniformed Service Employment and Reemployment Rights Act (USERRA) state that an employee performing service with the uniformed services must be permitted, upon request, to use any accrued annual leave, military leave, earned compensatory time off for travel, or accrued sick leave (consistent with the statutory and regulatory criteria for using sick leave), during such service. An employee is entitled to use annual leave, military leave, earned compensatory time off for travel, or sick leave intermittently with leave without pay while on active duty or active/inactive duty training.

**Q4. Are employees entitled to both their military and civilian pay during periods of military leave taken under 5 U.S.C. 6323(b) in support of civil authorities or a national emergency?**

No. An employee is entitled to the greater of his civilian or military pay, not both. Under 5 U.S.C. 5519, the military pay received by an individual who has been activated



in support of civil authorities or a contingency operation must be credited (less any travel, transportation, or other per diem allowances) against any Federal civilian pay the employee received during the 22 workdays of military leave. An agency may calculate the amount of military pay (less any travel, transportation, or per diem allowances) an employee will receive for the time period that corresponds to the 22 workdays of military leave and reduce the employee's civilian pay by that amount during the 22 workdays of military leave. In contrast, many agencies choose to continue to pay the employee his or her full civilian pay during the 22 workdays of military leave. At the end of the 22-day period of military leave, the agency requires the employee to refund to the agency an amount equal to the amount of military pay received (less any travel, transportation, or per diem allowances) up to the amount of his or her civilian pay for the time period that corresponds to the 22 workdays of military leave.

**Q5. Under what conditions is a Federal employee who is called to active duty as a member of the National Guard, Reserves, or Space Force in space force active status entitled to military leave?**

Employees who are called to active duty in support of an ongoing national emergency may be entitled to military leave under two separate provisions.

A Federal employee who is a member of the National Guard, Reserves, or Space Force in space force active status (as defined in 10 U.S.C. 101(e)(1) and not on sustained duty under 10 U.S.C. 20105) is entitled to 20 days of paid military leave under 5 U.S.C. 6323(a) each fiscal year for active duty, active duty training inactive duty training, or other duty or training listed in section 6323(a). An employee on military leave under section 6323(a) receives his or her full civilian salary, as well as military pay. This leave accrues at the beginning of each fiscal year, and all members of the National Guard, Reserves, or Space Force in space force active status (as defined in 10 U.S.C. 101(e)(1) and not on sustained duty under 10 U.S.C. 20105) should be credited with 20 days of paid military leave on October 1 of each year.

A Federal employee who is a member of the National Guard, Reserves, or Space Force in space force active status (as defined in 10 U.S.C. 101(e)(1) and not on sustained duty under 10 U.S.C. 20105) is also entitled to 22 workdays of military leave each calendar year under 5 U.S.C. 6323(b) for certain service in support of an ongoing national emergency such as full-time military service as a result of a call or order to active duty in support of a contingency operation as defined in section 101(a)(13) of title 10, United

States Code. (See Question 7 for the definition of the term “contingency operation”). Under this provision the employee is entitled to the greater of his military or civilian pay. (See Question 4.)

Employees also are entitled to use any accrued annual leave for periods of active military duty. Employees using annual leave will receive their full civilian pay, as well as compensation for their military service.

**Q6. I have an employee who is a military policeman in the Reserves. He is being activated to perform base security at Andrews AFB. Is he entitled to the additional 22 days of military leave?**

Yes. Effective November 24, 2003, all employees who have been activated in support of a national emergency declared by the President are entitled to the 22 days of military leave under 5 U.S.C. 6323(b).

**Q7. When are employees eligible for an additional 22 days of military leave?**

There are two conditions under which employees may be eligible for an additional 22 days of military leave under the provisions of 5 U.S.C. 6323(b). Members of the Reserves, National Guard, or Space Force in space force active status (as defined in 10 U.S.C. 101(e)(1) and not on sustained duty under 10 U.S.C. 20105) who perform military aid to enforce the law or assist civil authorities in the protection or saving of life or property or the prevention of injury are entitled to an additional 22 workdays of military leave. In addition, employees who perform full-time military service as a result of a call or order to active duty in support of a contingency operation\* as defined in section 101(a)(13) of title 10, United States Code, are entitled to 22 days of military leave.

\* The term “contingency operation” means a military operation that–

(A) is designated by the Secretary of Defense as an operation in which members of the armed forces are or may become involved in military actions, operations, or hostilities against an enemy of the United States or against an opposing military force; or

(B) results in the call or order to, or retention on, active duty of members of the uniformed services under section 688, 12301(a), 12302, 12304, 12304a, 12305, or 12406 of title 10, United States Code, chapter 13 of title 10, United States Code,

section 3713 of title 14, or any other provision of law during a war or during a national emergency declared by the President or Congress.

**Q8. I have an employee who is a member of the National Guard. His unit has been activated, at the request of the Governor of his State, to provide additional security at local airports. Is he entitled to the additional 22 days of military leave?**

Yes. The President has authorized the Governors of several States and territories to use National Guard forces to provide supplemental security personnel for airport operations. Guard members ordered to such duty under 32 U.S.C. 502(f) are clearly assisting civil authorities in the protection of life and property. Therefore, in addition to the 20 days of military leave available for active duty, active and inactive duty training, or other duty or training under 5 U.S.C. 6323(a), a member of the National Guard also may be authorized military leave under 5 U.S.C. 6323(b) to perform military aid to enforce the law or assist civil authorities in the protection or saving of life or property or the prevention of injury, or to perform full-time military service as a result of a call or order to active duty in support of a contingency operation.

**Q9. Is a member of the National Guard of the District of Columbia eligible for additional military leave under 5 U.S.C. 6323(c)?**

Yes. However, military leave under 5 U.S.C. 6323(c) may be used only for limited purposes. A Federal civilian employee who is also a member of the DC National Guard is entitled to additional military leave as provided in 5 U.S.C. 6323(c) to participate in a “parade or encampment.” The law provides that this type of duty must be authorized under title 49 of the District of Columbia Code. Generally, this category of military leave is limited to drills and training under the authority of the Commanding General of the DC National Guard and is not appropriate for extended active duty in connection with the current national emergency.

## **Legislative Amendments of Statutory Provisions**

Sections 1109 and 1114 of the National Defense Authorization Act for Fiscal Year 2025 (Public Law 118-159, December 23, 2024) amended section [6323\(a\) and \(b\) of title 5](#), United States Code.

### **SEC. 1109. INCREASE IN MILITARY LEAVE ACCRUAL AND ACCUMULATION FOR FEDERAL EMPLOYEES.**

Section 6323(a)(1) of title 5, United States Code, is amended by striking “15 days” each place it appears and inserting “20 days”.

### **SEC. 1114. CONTINUITY OF COVERAGE UNDER CERTAIN PROVISIONS OF TITLE 5, UNITED STATES CODE.**

(a) Military Leave for Federal Civilian Employees.—Section 6323 of title 5, United States Code, is amended—

(1) in subsection (a)(1), by striking “as a Reserve of the armed forces or member of the National Guard” and inserting “as a Reserve of the armed forces, a member of the National Guard, or a member of the Space Force in space force active status (as defined in section 101(e)(1) of title 10) and not on sustained duty under section 20105 of title 10”; and

(2) in subsection (b)(1), by inserting before the semicolon at the end the following: “or is a member of the Space Force in space force active status (as defined in section 101(e)(1) of title 10) and not on sustained duty under section 20105 of title 10”.

(b) Clerical Amendments.—

(1) Section heading.—The heading of such section is amended to read as follows:

**“Sec. 6323. Military leave: Reserves, National Guard members, and certain members of the Space Force”.**

(2) Table of sections.—The item relating to such section in the table of sections at the beginning of chapter 63 of such title is amended to read as follows:

“6323. Military leave: Reserves, National Guard members, and certain members of the Space Force.”.