



DEPARTMENT OF DEFENSE
CIVILIAN PERSONNEL MANAGEMENT SERVICE
1400 KEY BOULEVARD
ARLINGTON, VA 22209-5144

NOV 05 2010

MEMORANDUM FOR: SEE DISTRIBUTION

SUBJECT: Guidance Regarding the Rate of Accrual of Annual Leave by a Civilian Employee Appointed While on Terminal Leave Pending Retirement from Uniformed Service

The purpose of this memorandum is to inform you of Department of Defense (DoD) guidance regarding issues that occur when a civilian employee is appointed while on terminal leave pending retirement from uniformed service.

On October 17, 2006, Congress amended 5 United States Code (U.S.C.) § 5534a to provide that a member of a uniformed service who is appointed to a civilian position while on terminal leave pending military retirement is entitled to accrue annual leave with pay in the manner specified in section 5 U.S.C. 6303(a) for a retired member of the uniformed service. The Office of Personnel Management (OPM) provided guidance on November 2, 2006.

Under the law in effect prior to October 17, 2006, OPM advised that an employee appointed while on terminal leave pending military retirement was not a retired member of the uniformed services and was entitled to credit for annual leave accrual purposes for all of his or her military service performed up to the date of appointment. OPM took the position that once an employee received this service credit, it could not be taken away; that is, it remained creditable unless he or she separated from civilian service.

DoD informally requested that the Office of Legal Counsel in the Department of Justice (DOJ) provide a legal opinion regarding annual leave entitlements of individuals appointed to Federal civilian positions while on terminal leave retirement under the law in effect prior to October 17, 2006.

Civilian Personnel Management Service has issued two memoranda regarding terminal leave issues. The September 6, 2006, memorandum required Components to hold all individual compensation claims and requests for recalculation of Service Computation Dates (SCD) until DOJ issued its opinion; the December 19, 2007, memorandum indicated that DoD would not recalculate SCDs until applicable policy guidance and procedures were issued by OPM.

On April 9, 2009, OPM published guidance addressing what corrective actions agencies must take to adjudicate claims for employees who are either entitled to additional leave or who received excess annual leave accrual and recalculated SCDs.

The attached guidance is to be used in processing personnel actions to reflect the proper SCD for leave (SCD-Leave); requesting waivers of overpayment of excess leave; adjudicating administrative claims for additional leave as a result of an adjustment to SCD-Leave; and computing the SCD-Leave for retirees who were appointed while on terminal leave from the uniformed services. Specifically, Attachment 1 provides guidance for Category 1 individuals; that is, current DoD employees who are owed leave. Attachment 2 provides the procedures for requesting a waiver of overpayment for Category 2 employees; that is, current DoD employees with excess leave credit. Current DoD employees may contact their servicing human resources office for assistance with procedures. DoD employees who have separated from Federal service may contact their former servicing human resources office for assistance.

Should you have any questions regarding the use of this guidance, please contact Ms. Romaine Barclay at (703) 696-1236 or by e-mail at romayne.barclay@cpms.osd.mil.



Rhonda K. Diaz
Acting Director

Attachments:
As stated

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SCIENCES

CATEGORY 1
Current DoD Employees
Who Are Owed Leave

This guidance applies to claimants who are current Department of Defense (DoD) employees. It does not apply to DoD employees who are now employed with a non-DoD Federal Agency; they will file claims with their current employer.

All claims will be subject to a six-year statute of limitation (SoL). Thus, additional pay or leave may not be authorized for any time period of more than six years before the date the employee files a proper claim. The Director, Civilian Personnel Management Service, issued a memorandum dated September 6, 2006, stating in part, "Components shall hold all individual compensation claims and applications/requests for recalculation of service computation dates for leave accrual purposes until further DoD guidance is disseminated." Any and all such claims and applications/requests shall, for purpose of the six-year SoL, be considered to be filed when originally received. Questions regarding the six-year SoL should be referred to your Component Office of General Counsel, or other appropriate legal office. (For the purpose of this Attachment "Component" includes the Military Departments and Fourth Estate agencies and activities.) Also note, effective October 17, 2006, 5 United States Code (U.S.C.) § 5534a was amended to provide that a uniformed service member who is appointed to a civilian position while on terminal leave is entitled to accrue annual leave with pay in a manner specified in section 6303(a) of title 5 for a retired member of a uniformed service. Thus, any claims for leave or money based on terminal leave on or after October 17, 2006, should be denied.

The burden of proof lies with the employee/claimant to show that he or she was not credited with sufficient leave during their period of terminal leave pending uniformed service retirement. The documentation requirements for claims for additional leave depend on the status of the claimant. Claimants who are current DoD Federal civil service employees should contact their servicing personnel office and provide the following documents: the appointment Notification of Personnel Action (SF-50), documentation showing the date of retirement from uniformed service, and the Service Computation Date (SCD)-Leave computed at the time of appointment.

If a Component determines that a current employee is entitled to additional hours of annual leave for each full pay period the employee worked while on terminal leave pending retirement, the employee's current leave balance must be adjusted to reflect the additional annual leave hours the individual should have earned during the terminal leave period. If this additional leave credit results in an employee's leave balance being in excess of the applicable annual leave ceiling at the end of the year, the additional leave must be placed in a restored-leave account. The Component must document the

correction of the employee's service computation date using an SF-50 as described below.

For any employee entitled to additional annual leave (because he or she was not credited with military service in determining the accrual rate during the period of terminal leave pending military retirement), Components must process two Nature of Actions "882/Chg in SCD" SF-50s as explained below.

The effective date of the first SF-50 is the date the employee was appointed to the position with the Component, and the corrected service credit computation date shown in Block 31 will be inclusive of all active duty military service prior to the date of the appointment. The corrected date shown in Block 31 will be the basis for higher leave accrual from the date of appointment at the Component through the end of the pay period in which the employee separated from military service, thus becoming a retired member of a uniformed service. Additionally, existing remark code B35 must be shown on the SF-50.

The effective date of the second SF-50 is the first day of the first pay period occurring after the day on which the employee separated from military service thus becoming a retired member of a uniformed service. Since we are dealing with employees in terminal leave status, the military separation date is the last day of the employee's terminal leave. In regard to credit for active duty military service, the corrected date shown in Block 31 will reflect the fact that military service is not creditable except as allowed under 5 U.S.C. 6303(a)(A)-(C) or (e). If an employee had no other prior creditable service, the corrected date in Block 31 will be the effective date of the employee's civilian appointment made while the employee was in terminal leave status. This second SF-50 will be the basis for reducing the temporarily enhanced leave accrual rate which was provided under the first SF-50. Additionally, new remark code B30 must be shown on the SF-50. Remark B30 states: "Changes SCD-Leave from (date) upon employee's retirement from the uniformed service."

**CATEGORY 2
Waiver
DoD Employees With Excess Leave Credit**

This guidance applies to individuals who are current Department of Defense (DoD) employees, who began their civilian employment while on military terminal leave and have received continuous credit for their military service for leave accrual purposes beyond the date of their military retirement. These individuals were only entitled to credit for their military service from the first day of civilian service until the first day of the first pay period following military retirement. DoD will process and approve a group waiver of the recoupment of any monies and any leave on the books of the employee that might, except for the waivers, otherwise subject the employee to recoupment.

In order to provide sufficient information to process the group waiver, the Component human resources offices must identify Category 2 employees and estimate the cost of the group waiver. For DoD to process the waivers, the Components must provide the following information on each identified employee:

- a) Full name of the employee and SSN;
- b) Date of appointment;
- c) Date of military retirement;
- d) Estimated amount of overpayment; and
- e) Initial date of notification to the employee of the overpayment (or over credit of leave in this case), by SF-50, memorandum, or otherwise.

The list of Category 2 employees with the required information should be compiled by the servicing human resources office, forwarded to the component Point of Contact (POC), and sent to Defense Finance and Accounting Service (DFAS). DFAS will process the waivers and, in turn, forward the request for group waivers to the Defense Office of Hearings and Appeals for those waivers above the DFAS authority to adjudicate.

After the group waiver has been approved, the following corrective action is required. The servicing human resources office will process an SF-50 on each Category 2 employee with an effective date of the first day of the first pay period following military retirement. The corrected service computation date (SCD) shown in Block 31 will reflect the fact that military service is not creditable except as allowed under 5 United States Code (U.S.C.) § 6303(a) (A)-(C) or (e). As a result of the group waiver, the SF-50 shall contain a new remark code B37, "Changes SCD-Leave from (date) upon employee's retirement from the uniformed service. Recovery of excess annual leave accrued in the past based on erroneous SCD-Leave has been waived. If required by the

corrected SCD-Leave, employee's current annual leave accrual rate will be corrected prospectively."