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## OFFICE OF PERSONNEL MANAGEMENT

### 5 CFR Parts 550, 595, and 610

RIN 3206-AI61

#### Pay Administration; Back Pay; Holidays; and Physicians' Comparability Allowances

**AGENCY:** Office of Personnel Management.

**ACTION:** Interim rule with request for comments.

**SUMMARY:** The Office of Personnel Management is issuing interim regulations to reflect changes in law which clarify that back pay awards are subject to a 6-year statute of limitations unless a shorter statute of limitations period applies, change the designation of holidays for certain Federal employees working overseas, and increase the maximum physicians' comparability allowance from \$20,000 to \$30,000 per year for employees who have served as a Government physician for more than 24 months. The changes in law are already effective.

**DATES:** *Effective Date:* The regulations are effective on December 28, 1999.

*Applicability Dates:* The regulations apply on the first day of the first pay period beginning on or after December 28, 1999.

*Comments Date:* Comments must be received on or before February 28, 2000.

**FOR FURTHER INFORMATION CONTACT:** James R. Weddel, (202) 606-2858, FAX: (202) 606-0824, or email: payleave@opm.gov.

**ADDRESSES:** Comments may be sent or delivered to Donald J. Winstead, Assistant Director for Compensation Administration, Workforce Compensation and Performance Service, Office of Personnel Management, Room 7H31, 1900 E Street NW., Washington, DC 20415, FAX: (202) 606-0824, or email: payleave@opm.gov.

**SUPPLEMENTARY INFORMATION:** These interim regulations reflect changes in law clarifying the statute of limitations for back pay, raising the maximum physicians' comparability allowance for employees with more than 24 months of service as Government physicians, and designating holidays for certain employees at duty posts outside the United States.

#### Statute of Limitations for Back Pay

Section 1104 of Public Law 105-261, the Strom Thurmond National Defense Authorization Act, 1999 (October 17, 1998), amended the back pay law (5 U.S.C. 5596(b)). Section 1104 added a new provision to clarify that back pay awards are subject to a 6-year statute of limitations unless a shorter statute of limitations 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, and are reflected in a new paragraph (e) in 5 CFR 550.804.

#### Maximum Physicians' Comparability Allowance

Section 7 of Public Law 105-266, the Federal Employees Health Care Protection Act of 1998 (October 19, 1998), amended 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. We are revising 5 CFR 595.105(b) to reflect the higher maximum allowance rate. We are also correcting references to title 38, United States Code, in § 595.105(c). In addition, we are making other changes to clarify the language in § 595.105 generally. As part of these clarifying changes, the last

sentence in § 595.105(c) has been edited and moved to § 595.102.

Section 7 also provides that agencies may modify any PCA service agreement in effect on the effective date of the Act 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 before agencies may authorize a PCA in excess of \$20,000, they must submit new or updated PCA plans and obtain OMB approval of the changes. See 5 CFR 595.107(a) and the criteria for revised Physicians' Comparability Allowance plans in OMB's Memorandum for the Heads of Departments and Agencies (M-99-04, December 11, 1998).

#### Holidays at Duty Posts Outside the United States

Section 1107 of Public Law 105-261, the Strom Thurmond National Defense Authorization Act, 1999 (October 17, 1998), adds a new provision to 5 U.S.C. 6103 which changes the designation of holidays for certain Federal employees who work at duty posts outside the United States. For this purpose, the Office of Personnel Management has determined that "outside the United States" refers to an employee's official duty station (or temporary duty station while traveling) that is not in (1) a State of the United States; (2) the District of Columbia; (3) Puerto Rico; (4) the U.S. Virgin Islands; (5) Outer Continental Shelf Lands, as defined in the Outer Continental Shelf Lands Act (67 Stat. 462); (6) American Samoa; (7) Guam; (8) Midway Atoll; (9) Wake Island; (10) Johnston Island; or (11) Palmyra. This is parallel to the definition of exempt area in 5 CFR 551.104 for the purpose of administering the foreign exemption from the minimum wage, overtime pay, and child labor provisions of the Fair Labor Standards Act of 1938, as amended.

Section 1107 provides 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 at a duty post outside the United States whose basic workweek includes Monday, but is not the typical Monday through Friday work schedule found in the United States. The intent of this new provision of law is to create a 3-day weekend with a holiday on Sunday for Federal employees who work Sunday through Thursday with nonworkdays on Friday and Saturday. Thus, if the regularly scheduled administrative workweek designated by an agency for an employee is Sunday through Saturday midnight, and the employee's basic workweek is Sunday through Thursday, this provision will have the effect of moving the employee's holiday from Monday to Sunday (the day before) and providing a 3-day weekend (Friday, Saturday, and Sunday) to the employee. However, when employees working overseas do not have Sunday through Thursday work schedules, the new law will usually not have the desired effect unless the agency makes an adjustment in the administrative workweek.

This change in law became effective on October 17, 1998. See the conforming revisions in 5 CFR 610.201 and 610.202. Section 610.202 has also been revised to reflect the fact that employees on alternative work schedules may have a basic work requirement, as defined in 5 U.S.C. 6121(3).

#### **Waiver of Notice of Proposed Rule Making and Delay in Effective Date**

Pursuant to 5 U.S.C. 553(b)(3)(B) and (d)(3), I find that good cause exists for waiving the general notice of proposed rulemaking and making this rule effective on the date of its publication in the **Federal Register**. This waiver is appropriate because the attached changes in regulations update Office of Personnel Management regulations to make them consistent with changes in law that are already effective.

#### **E.O. 12866, Regulatory Review**

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

#### **Regulatory Flexibility Act**

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they will apply only to Federal agencies and employees.

#### **List of Subjects in 5 CFR Parts 550, 595, and 610**

Administrative practice and procedure, Claims, Government

employees, Health professions, Holidays, Wages.

Office of Personnel Management.

**Janice R. Lachance,**  
*Director.*

Accordingly, OPM is amending parts 550, 595, and 610 of title 5 of the Code of Federal Regulations as follows:

### **PART 550—PAY ADMINISTRATION (GENERAL)**

#### **Subpart H—Back Pay**

3. The authority citation for subpart H of part 550 continues to read as follows:

**Authority:** 5 U.S.C. 5596(c); Pub. L. 100–202, 101 Stat. 1329.

4. In § 550.804, paragraph (e) is added to read as follows:

#### **§ 550.804 Determining entitlement to back pay.**

\* \* \* \* \*

(e)(1) The pay, allowances, and differentials paid as back pay under this subpart (including payments made under any grievance or arbitration decision or any settlement agreement) may not exceed that authorized by any applicable law, rule, regulation, or collective bargaining agreement, including any applicable statute of limitations.

(2) An agency may not authorize pay, allowances, and differentials under this subpart in any case for a period beginning more than 6 years before the date of the filing of a timely appeal, or, absent such filing, the date of the administrative determination that the employee is entitled to back pay, consistent with 31 U.S.C. 3702(b). (See also § 178.104 of this chapter.)

(3) For back pay claims dealing with payments under the Fair Labor Standards Act of 1938, as amended (29 U.S.C. 207, *et seq.*), an agency must apply the 2-year statute of limitations (3 years for willful violations) in 29 U.S.C. 255a. (See also § 551.702 of this chapter.)

### **PART 595—PHYSICIANS' COMPARABILITY ALLOWANCES**

7. The authority citation for part 595 continues to read as follows:

**Authority:** 5 U.S.C. 5948; E.O. 12109, 44 FR 1067, Jan. 3, 1979.

8. In § 595.102, paragraph (c) is added to read as follows:

#### **§ 595.102 Coverage and exclusions.**

\* \* \* \* \*

(c) Physicians employed and paid under title 38, United States Code, and Commissioned Corps officers of the

Public Health Service under title 42, United States Code, are not eligible for physicians' comparability allowances.

9. In § 595.105, paragraphs (b) and (c) are revised to read as follows:

#### **§ 595.105 Determination of amount of comparability allowance.**

\* \* \* \* \*

(b) A physician with 24 months or less of service as a Government physician may not be paid a physicians' comparability allowance in excess of \$14,000 per annum. A physician with more than 24 months of service as a Government physician may not be paid a physicians' comparability allowance in excess of \$30,000 per annum.

(c) In determining length of service as a Government physician, agencies must exclude periods of leave without pay. However, agencies may credit any prior service as a Government physician, including—

(1) Prior service as a physician under sections 7401 and 7405 of title 38, United States Code; and

(2) Prior active service as a medical officer in the Commissioned Corps of the Public Health Service under title II of the Public Health Service Act (42 U.S.C. chapter 6A).

\* \* \* \* \*

### **PART 610—HOURS OF DUTY**

#### **Subpart B—Holidays**

10. The authority citation for part 610, subpart B, continues to read as follows:

**Authority:** 5 U.S.C. 6101; sec. 1(1) of E.O. 11228, 3 CFR, 1964–1965 Comp., p. 317.

11. Section 610.201 is revised to read as follows:

#### **§ 610.201 Identification of holidays.**

Holidays are determined under section 6103 of title 5, United States Code, and Executive Order 11582 of February 11, 1971.

12. In § 610.202, paragraph (a) is revised, and paragraph (d) is added to read as follows:

#### **§ 610.202 Determining the holiday.**

\* \* \* \* \*

(a) Except when a different holiday is designated by section 6103(b)(3) of title 5, United States Code, when a holiday falls on a day during which part of the employee's basic workweek (as defined in § 610.102) or basic work requirement (as defined in 5 U.S.C. 6121(3)) is scheduled to be completed, that workday is the employee's holiday.

\* \* \* \* \*

(d) The provisions of section 6103(b)(3) of title 5, United States Code, on determining holidays for certain

employees at duty posts outside the United States apply to covered employees who are working outside the United States at a permanent or temporary station or under travel orders. For the purpose of section 6103(b)(3), *United States* includes—

- (1) A State of the United States;
- (2) The District of Columbia;
- (3) Puerto Rico;
- (4) The U.S. Virgin Islands;
- (5) Outer Continental Shelf Lands, as defined in the Outer Continental Shelf Lands Act (67 Stat. 462);
- (6) American Samoa;
- (7) Guam;
- (8) Midway Atoll;
- (9) Wake Island;
- (10) Johnston Island; and
- (11) Palmyra.

[FR Doc. 99-33587 Filed 12-27-99; 8:45 am]

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## OFFICE OF PERSONNEL MANAGEMENT

### 5 CFR Part 870

RIN: 3206-A164

### Federal Employees' Group Life Insurance Program: Life Insurance Improvements

**AGENCY:** Office of Personnel  
Management.

**ACTION:** Interim rule with request for  
comments.

**SUMMARY:** The Office of Personnel Management (OPM) is issuing interim regulations to implement the Federal Employees Life Insurance Improvement Act, which was enacted October 30, 1998. This law made numerous changes to the Federal Employees' Group Life Insurance (FEGLI) Program. These changes include the elimination of maximums on Basic insurance and Option B, coverage of foster children under Option C, making the contractual incontestability provision statutory, providing for the direct payment of premiums for all employees and annuitants whose pay is too small for premium withholdings, allowing retiring employees to elect unreduced Option B and Option C coverage, establishing a three-year demonstration project for the portability of Option B, and increasing the coverage available under Option C.

**DATES:** Interim rules are effective January 27, 2000. Comments must be received on or before February 28, 2000.

**ADDRESSES:** Send written comments to Abby L. Block, Chief, Insurance Policy and Information Division, Office of

Insurance Programs, Retirement and Insurance Service, Office of Personnel Management, P.O. Box 57, Washington, DC 20044; or deliver to OPM, Room 3425, 1900 E Street, NW, Washington, DC; or FAX to (202) 606-0633.

**FOR FURTHER INFORMATION CONTACT:**

Karen Leibach, (202) 606-0004.

**SUPPLEMENTARY INFORMATION:** On October 30, 1998, Public Law 105-311, 112 Stat. 2950, was signed into law. This law, the Federal Employees Life Insurance Improvement Act, changed many parts of the FEGLI Program. These regulations put the various new statutory provisions into place.

#### 1. Elimination of Maximums

An employee's Basic Insurance Amount is his/her annual rate of basic pay, rounded to the next higher thousand, plus \$2,000. Each multiple of Option B coverage is equal to an employee's annual pay, rounded to the next higher thousand.

Before the enactment of Public Law 105-311, the law limited both Basic insurance and the multiples of Option B insurance to the annual rate of pay for Level II Executive Schedule positions, rounded up (plus \$2,000 for Basic). The maximum amount of Basic insurance was \$139,000, and the maximum amount of an Option B multiple was \$137,000.

The new law removed those maximums. These regulations also provide that Option A coverage, which increased for employees in this situation, will no longer exceed \$10,000.

This provision of the law became effective the first pay period beginning on or after October 30, 1998.

#### 2. Coverage of Foster Children

Before the enactment of Public Law 105-311, foster children were not eligible for coverage under Option C. They became eligible as covered family members effective October 30, 1998.

For ease of administration, we have made the requirements for coverage of foster children under Option C the same as the requirements for coverage of foster children under the Federal Employees Health Benefits Program. Those requirements are that the child be unmarried and under the age of 22 (or if over 22, incapable of self-support because of a disabling condition that started before the 22nd birthday), that the child be living with the employee or annuitant in a regular parent-child relationship, that the employee/annuitant be the principal source of support for the child, and that the employee/annuitant expect to raise the child to adulthood. The employee/

annuitant must certify in writing that the child meets these requirements. Grandchildren can qualify as foster children only if they meet all the requirements.

#### 3. Incontestability

This provision allows an erroneous enrollment to stand if it has been in effect for at least 2 years. There was already such a provision in the FEGLI contract, but it did not apply if the employee or annuitant was excluded from coverage by law or if the employee's position was excluded by regulation. The contractual provision also did not require that the individual have paid premiums for the erroneous coverage before incontestability could apply. The new statutory provision applies to all situations in which an administrative error allows an employee or annuitant to be insured when the law or regulations would otherwise prohibit the election. If the erroneous coverage and applicable premium withholdings have been in place for at least 2 years before the error is discovered, the coverage is allowed to stand.

This provision was effective for any findings of erroneous coverage made on or after October 30, 1998.

#### 4. Direct Payment of Premiums

Before the enactment of Public Law 105-311, all employees and compensations and most annuitants whose pay/compensation/annuity was too small for premium withholdings had to terminate their FEGLI coverage. The only exception to this was FERS (Federal Employees' Retirement System) annuitants; these annuitants were allowed to make direct premium payments.

Public Law 105-311 extends the right to make direct payment of FEGLI premiums to anyone with insufficient pay, compensation, or annuity. These regulations provide that this applies when the "pay," after all other deductions, is insufficient on an ongoing basis, *i.e.*, when the situation is expected to continue for at least 6 months.

Insured individuals in this situation can choose either to terminate their FEGLI coverage or to make direct payments. Employees who choose to make direct payments must pay on a current basis; if they do not make the payments, the coverage cancels. Employees who choose to terminate are entitled to the 31-day extension of coverage and the right to convert. When the employee's pay again becomes sufficient for the premium withholdings, premiums will again be withheld from the employee's pay. Any