

**VOLUME 8, CHAPTER 6 “MISCELLANEOUS ACTIONS (SPECIAL ACTIONS)”**

**SUMMARY OF MAJOR CHANGES**

All changes are denoted by **blue font**.

Substantive revisions are denoted by an \* symbol preceding the section, paragraph, table, or figure that includes the revision.

Unless otherwise noted, chapters referenced are contained in this volume.

Hyperlinks are denoted by **bold, italic, blue and underlined font**.

The previous version dated December 2009 is archived.

<b>PARAGRAPH</b>	<b>EXPLANATION OF CHANGE/REVISION</b>	<b>PURPOSE</b>
All	Updated all electronic links.	Update
0601	Rewritten to provide clarity.	Update
060104.B.4	Added Voluntary Early Retirement Authorization (VERA) and Voluntary Separations Incentive Payment (VSIP).	Add
060105 Previous	Moved Back Pay Notification to section, 0605, paragraph 060513.	Update
060106.A	Updated address for the National Personnel Records Center (NPRC).	Update
0603	Updated information for clarity and updated address for Director of Enterprise Solutions and Standards Office.	Update
0604	Updated information for clarity and updated address for the Merit System Oversight and Effectiveness Office.	Update
060511	Added Thrift Savings Plan information to this section.	Add
060513	Moved Offsetting Unemployment Compensation for Back Pay to this section.	Update
0606	Added Continuation of Pay (COP) for Federal Employees from Chapter 3.	Add
0607	Added Emergency Evacuation Payments from Chapter 3.	Add
Figure 6-1	Added Sample 1 Format of Back Pay Computation.	Add
Figure 6-2	Added Sample 2 Format of Back Pay Computation.	Add
Figure 6-3	Added Example of Buy Back of Leave Computation – Sick Leave for Full Pay Period.	Add
Figure 6-4	Added Example of Buy Back of Leave Computation – Sick Leave for Less Than a Full Pay Period.	Add

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## CHAPTER 6

**MISCELLANEOUS ACTIONS (SPECIAL ACTIONS)****\*0601 UNEMPLOYMENT COMPENSATION FOR FEDERAL EMPLOYEES**

## 060101. General

The Unemployment Compensation for Federal Employees (UCFE) program provides eligible former Federal civilian employees with unemployment compensation benefits during periods of unemployment. The Department of Labor (DOL) is responsible for implementing the UCFE Program. UCFE is administered by the states as agents of the Federal government under 5 United States Code (U.S.C.) Chapter 85 and 20 Code of Federal Regulations (C.F.R.) Part 609. UCFE operates under the same terms and conditions as those that apply to regular state unemployment insurance programs. Generally, UCFE benefits are determined under the law of the state where the employee's last official duty station as a Federal civilian employee was located. State laws are not uniform and there may be variations in eligibility requirements. Each Department of Defense (DoD) component is responsible for managing its respective UCFE program. The employing agency is responsible for the payment of these benefits, therefore there is no payroll deduction from a Federal employee's wages for UCFE protection. See also Department of Defense Instruction (DoDI) 1400.25-V850.

## 060102. UCFE Claim-Related Forms

There are two primary claim forms pertaining to UCFE. Various state employment security agencies (SESAs) may require other claim forms. See DoDI 1400.25-V850 for other UCFE claim forms.

A. Standard Form (SF)-8, Notice to Federal Employees About Unemployment Insurance. The Human Resources Office (HRO) must issue the SF-8 to the employee when the employee separates from Federal civilian service, transfers, or is placed in a non-pay status for seven consecutive days or more. The form explains eligibility requirements for the UCFE program and provides general information on how to file a claim. HRO should explain the form during an employee's out-processing. For additional information on the SF-8, see DoDI 1400.25-V850.

B. Employment Security (ES)-931 (Request for Wage and Separation Information). SESA generates an ES-931 when a former Federal employee files an initial claim for unemployment compensation. The state forwards the ES-931 to the servicing HRO to obtain wage information for specific work-year quarters. HRO must complete and return the ES-931 to SESA within four workdays of receipt. For further information, see 20 C.F.R. 609.21-22 and the "UCFE Instructions for Federal Agencies," Chapter VI.

## 060103. Civilian Payroll Office (PRO) Duties

A. Provide Accurate Wage Data. For SESA to accurately determine the former employee's weekly and maximum unemployment benefit amounts, PRO must provide exact wage data to SESA through HRO. Accurately report all monetary information affecting the claim, such as lump-sum annual leave payments, severance pay, annuity pay, or incentive pay.

B. Defense Civilian Pay System (DCPS) Interface. DCPS provides a biweekly interface extract to support the Injury Compensation-Unemployment Compensation (IC-UC) application. The servicing HRO uses this data to complete the ES-931. If requested, PRO will provide additional information to HRO for employees recently transferred to DCPS. If PRO is unable to provide the requested information within a four workday period, PRO must notify HRO immediately and HRO must follow the procedures in 20 C.F.R. 609.21(b).

C. Refer All Inquiries to HRO. The central point of contact for all UCFE matters is the servicing HRO. All inquiries received by PROs (such as state queries, telephone calls, and requests for UCFE documentation) will be referred to the servicing HRO. The servicing HRO shall contact PRO for any additional information.

## 060104. Base-Period Wages and Annual Leave Information

A. Base-Period. Each state sets the amount and duration of UCFE payable to individuals. A "base-period" is used for determining the amount payable and is defined by state law. A base-period is comprised of either four consecutive quarters or 52 weeks. Most states use a base-period that includes the first four of the last five completed calendar quarters. The amount of UCFE benefits is based on the gross Federal wages paid to or earned by an employee during the base-period preceding the date of claim. Most states require six or eight quarters of information which is reported by HRO on the ES-931.

B. Reportable Federal Wages. Federal wages for purposes of UCFE means all allowances and pay in cash or in kind (including cash allowances and remuneration in any medium other than cash) for Federal civilian service. See 5 U.S.C. 8501.

1. Report Gross Amount of Federal Wages. The amounts to be reported as base-period wages are gross wages before deductions for Social Security/Medicare, Civil Service Retirement System (CSRS), Federal Employees Retirement System (FERS), Thrift Savings Plan (TSP), and Federal, state, and local taxes. Gross wages also include allowances and pay in a medium other than cash. Do not include expenses for official business, such as taxi fares, per diem, or mileage. Do not include payments for uniform allowances.

2. Types of Wages Included. The following shall be included in gross wages:

a. Foreign and Non-Foreign Differentials and Allowances. Federal wages include cost of living differentials paid at various foreign posts and cash allowances for quarters and subsistence. An exemption from Federal income tax for any such item does not exclude the payment from gross wages for the purposes of UCFE.

b. Back Pay. Federal wages include back pay awards which are counted as wages in the period for which they are paid. Include wages paid during the base-period, even though earned prior to that period. [For additional information, see section 0605.](#)

c. Salaries Paid by DoD to Reemployed Annuitants. [In the case of a civil service annuitant who is being paid the difference between the salary rate and the amount of annuity, only the amount paid by the employing agency is considered Federal wages.](#) Thus, Federal wages for UCFE is the amount equal to the difference between the salary of the position and the annuity received. The annuity paid by the Office of Personnel Management (OPM) is not Federal wages for UCFE purposes.

d. Increases in Rates of Compensation Authorized by Acts of Congress. Such increases shall be reported as wages for the pay period in which paid. This is required even if the first payment covers a retroactive period. If the base-period begins or ends during the pay period in which this payment was made, then the entire payment should be allocated to the second week of the pay period.

e. Lump-Sum Payments for Annual Leave or Severance Pay. Federal wages include all payments for leave, but do not report lump-sum payments for annual leave and severance payments as base-period wages since payments for leave are reported separately.

### 3. Reporting Methods

a. General. Report wages the same way the records are kept. Do not attempt to add or subtract wages earned by the employee for any days before the beginning of the quarter or the remaining days between the last payroll cutoff date and the end of the quarter. For example, if the pay period ends March 28, do not add March 29 through 31 to the wages reported for the January 1 to March 31 quarter. Do not report wages for periods other than, or in addition to, those periods requested. If the claimant had no base-period wages, then so indicate.

b. Reporting Lump-Sum Annual Leave or Severance Pay. All lump-sum payments are Federal wages for purposes of UCFE, however, report these items separately from gross wages (base-period wages).

(1). Annual Leave. If the employee received a lump-sum payment for annual leave after the beginning date of the base-period, then furnish the following:

- (a). Amount of payment,
- (b). Date(s) of payment,
- (c). Amount of annual leave (days and hours),
- (d). Period of lump-sum annual leave.

and

If lump-sum annual leave is payable but has not been paid, then report “annual leave payment due but not paid,” and provide details (period covered, amount of payment, when it will be paid) if known.

(2). Severance Pay. If the employee receives or is entitled to receive severance pay, then report the information to HRO via the interface supporting IC-UC. States with laws that require an offset of severance pay from UCFE benefits must be advised whether the former employee is receiving or will receive severance pay. SESA obtains severance pay details from the employee’s copy of the SF 50 (Notification of Personnel Action) and/or the ES-931, if appropriate.

\*4. Voluntary Early Retirement Authority (VERA) or Voluntary Separation Incentive Payment (VSIP). If the employee received authorization for VERA or VSIP, report the information in accordance with subparagraph 060104.B.3.

\*060105. Employees on Leave Without Pay (LWOP)

Upon HRO’s receipt of ES-931, HRO shall report the non-pay status of an employee to SESA. HRO must report LWOP from the starting date through the ending date, and must include any other pertinent data. If the employee is in a non-pay status for more than 30 days, then the SF 50 provides the LWOP information. For LWOP of 30 days or less, the biweekly interface extract provides this information to HRO. HRO shall indicate whether employees on LWOP are awaiting an on-the-job injury approval or disability retirement from the Office of Workers’ Compensation Programs (OWCP). If an employee is awaiting an OWCP determination, then SESA is responsible for contacting OWCP for any necessary data it needs.

060106. Obtaining Data From the National Personnel Records Center (NPRC)

A. Requesting Official Records. If the necessary records required to furnish wage data to HRO have already been forwarded to NPRC, the records must be requested via written authorization. This information is subject to the Privacy Act of 1974; therefore, PRO should handle the records in accordance with the provisions of that Act. The written request must clearly identify the office requesting the information and be addressed to NPRC-Annex, 1411 Boulder Blvd, Valmeyer, IL 62295. The request should state: “Unemployment insurance request

for wages for four calendar quarters, enter period as shown on the ES-931, and statement of reasons for separation for (last name, first name, and middle initial), (name under which employed, if different), (date of birth), and Social Security number (SSN).”

B. Prohibited Actions. PROs shall not send the ES-931 to NPRC for completion, nor shall PRO ask SESA to obtain data from NPRC. Once PRO has requested the necessary information from NPRC, PRO shall inform HRO who will inform SESA that the information has been requested.

C. NPRC Reply. NPRC will respond in writing and mail a photocopy of the individual’s pay record to PRO. PRO will furnish wage data based on the information received from NPRC. Upon receipt of the pay record, compare it with all wage data furnished to HRO. PRO will identify errors and notify HRO and HRO will notify SESA.

## 0602 EMPLOYMENT INSURANCE FOR CANADIAN EMPLOYEES

### 060201. The Canadian Employment Insurance Program

Since 1956, the U.S. government has taken part in the Canadian Employment Insurance Program for Canadians employed in Canada by DoD. PRO shall follow the procedures in this section for employment insurance withholdings and contributions for covered employees. Any DoD installation that employs personnel in Canada should follow guidance as issued by the Canada Revenue Agency.

### 060202. Policies Governing DoD Participation

A. Modifications Specific to DoD. The following requirements do not apply to DoD:

1. Standing deposit of one month’s combined contribution;
2. Application to operate on a calendar year basis. DoD installations will operate based on a payroll year, which, for this purpose, will be a calendar year; and
3. Remittance of contributions and withholding by certified check.

### B. Coverage

1. PRO shall use Canada Revenue Agency T4001 Employer’s Guide - Payroll Deductions and Remittances to determine insurable employment and earnings for withholding. Exceptions are in subparagraph 060202.B.2.

2. Do not withhold contributions from Canadian employees who are spouses of U.S. citizens that are employed by DoD Components or from U.S. civilians paid from appropriated and nonappropriated funds. If a Canadian employee’s marital status changes such that it would affect the employee’s insurability, then the Canadian employee must notify HRO, and

HRO will in turn forward the information to PRO. Deductions for Canadian Employment Insurance will stop at the end of the pay period in which notice of marital status change is received. If the Canadian employee receives notice of a divorce, then the deductions shall start at the beginning of the next pay period after receipt of notification.

C. Refund of Deductions. If refund of deductions is required, then DoD installations will refund only amounts totaling \$1 or more.

D. Retroactive Payments. DoD shall not make retroactive payments of deductions to the Canada Revenue Agency if the employee concerned has not given correct information to the employing installation. This includes cases that have been adjudicated.

E. Audit by the Canada Revenue Agency. DoD records of deductions, contributions, and remittances are subject to audit. The audit requirements may be met by sending copies of records of covered personnel and insurance remittance documents to the proper Canada Revenue Agency district office. PRO shall send copies of records required by Canadian authorities on request.

060203. Amount of Contributions

A. Employee's Share. Withhold funds from the pay of all insurable employees at the rate set in the Canada Revenue Agency T4001 Employer's Guide - Payroll Deductions and Remittances.

B. Employer's Share. The employer's share shall equal 1.4 times the amount withheld from the employee's pay on each payroll voucher. The contribution shall be charged to the fund from which employees' salaries are paid.

060204. Disposition of Contributions

A. Payroll Collection. The employee and employer contributions shall be made as a voucher deduction on the payroll voucher. For example, the accounting classification for the DoD PROs will be deposit fund account 97X6875, "Suspense, Department of Defense."

B. Remittance to Canada Revenue Agency. PRO shall request a bulk payment permit and information on deviation from remittance procedures from the Chief Coverage Officer, Employment Insurance Commission, Ottawa 1, Ontario, Canada. An SF 1049 (Public Voucher for Refunds) shall be used to make the biweekly remittance to the Commission from the deposit fund account \*\*X6875.

**\*0603 MASS TRANSFER OF PAY ACCOUNTS**

## 060301. Mass Transfers

A “mass transfer” means the movement of a number of employee accounts from one PRO (losing PRO) to another PRO (gaining PRO), with the losing PRO remaining operational. Refer to Volume 1, section 0105 for information concerning the disestablishment of DoD PROs.

## 060302. Requests for Mass Transfer

Send requests for mass transfers or transfer of payroll functions with a justification to the Defense Finance and Accounting Service – Indianapolis (DFAS-IN) Director of Enterprise Solutions and Standards (ESS), via the major command or claimant Financial Manager (FM) representative. The DFAS-IN Director of ESS or designated official, must approve all such requests in writing. The Director may also initiate these actions to improve efficiency and economy of the payroll operation.

## 060303. Losing PRO Responsibilities

A. Notification to Affected Parties. The losing PRO must notify all the affected parties receiving support from PRO as applicable. It is recommended that parties be notified at least 90 days in advance of the proposed transfer, but not less than 30 days prior to the date of the actual transfer. PROs should review internal operating procedures for additional guidance.

B. Transfer of Employee Document Files. The losing PRO shall prepare employee substantiating document files as outlined in the PRO’s internal operating procedures. Every effort shall be made to transfer data electronically through automated processes.

C. Complete Final Pay Period Processing. The losing PRO must complete processing for the last pay period for which it has responsibility for the employees affected by the mass transfer. Completion of the following actions by the losing PRO will ensure all employee records contain the most current information:

1. Compute and process final salary and other payments. Prior to processing the final pay period, ensure that all time and attendance reports and all documentation from HROs have been processed.

2. Reconcile and clear/remit any deposit fund accounts for the employees affected by the mass transfer.

3. Produce a unique Intra-Agency Retirement Register.

- a. CSRS Employees. Transfer retirement balances for employees covered under CSRS to the gaining PRO on retirement register-type Intra-Agency CSRS Mass transfer. Do not print the CSRS retirement records for these register-types.

b. FERS Employees. Transfer retirement balances for employees covered under FERS to the gaining PRO on retirement register-type Intra-Agency FERS Mass transfer. Do not print the FERS retirement records for these register-types.

c. Statements on Retirement Records. Post a statement to the service history on the retirement record reflecting the mass transfer separation effective date and the gaining PRO identification number. Post a statement to the fiscal history on the retirement card to reflect the automated intra-agency transfer that reflects both the losing and gaining PRO identification number.

4. Pay compensatory hours and religious compensatory hours for all transfers from one DoD Component to another. Pay credit hour balances for all employees who transfer to another agency as defined in 5 U.S.C. 6121(1). Additionally, pay credit hours when an employee is no longer subject to a flexible work schedule. See 5 U.S.C. 6126(b).

5. The losing PRO shall make any retroactive adjustments necessary for an employee previously paid by the losing PRO and send to the gaining PRO for payment/collection.

060304. Gaining PRO Responsibilities

The gaining PRO shall establish employee substantiating document files with the employee's SSN and name.

\*0604 CLAIMS FROM EMPLOYEES FOR ADDITIONAL COMPENSATION

060401. General

A. Authority to Settle Claims. Civilian employees may file claims for additional compensation for various reasons. The General Accounting Office Act of 1996, Public Law No. 104-316, transferred the claims settlement functions previously performed by the Government Accountability Office (GAO) to certain executive branch agencies. For additional information regarding the transfer, see <http://gao.gov/legal/functions.html>. Therefore, civilian employees, both former and current, must submit claims for additional compensation to the DoD employing activity in accordance with Volume 5, Chapter 25. Claims must be individually processed and an administrative determination must be made as to whether or not the employee is entitled to the amount claimed. If the claim relates to the determination of an entitlement or similar matter that is the responsibility of HRO, then the claim should be negotiated and documented through the employing activity's personnel channels.

B. Review of Denied Claims. If a claim for payment is denied and the employee wishes to request further review, then PRO shall assemble all documentation pertaining to the claim, including documents from any review process, and forward the file to the DFAS-IN, Directorate of Debt and Claims Management Office (DCMO), Department 3300, ATTN:

Customer Care Center, 8899 East 56<sup>th</sup> Street, Indianapolis, IN 46249-3300. The OPM Office of Merit Systems Oversight and Effectiveness (OMSOE) maintains the final authority to settle claims involving Federal employees' compensation and leave and deceased employees' compensation. See 5 C.F.R. Part 178 and Volume 5, Appendix E.

C. Fair Labor Standards Act (FLSA) Claims. If an employee is not required to file an FLSA claim using a negotiated grievance procedure, he or she may file a claim with either the employing agency during the claim period or to OPM, but not to both at the same time. An employee whose claim is denied by the agency may file the claim with OPM. See 5 C.F.R. 551.703 and 551.705.

D. Statute of Limitations for Filing a Claim. Under 31 U.S.C. 3702, a claim for payment must be filed within six years of the date the right to payment accrued. Claims for overtime pay under FLSA are generally subject to a 2-year statute of limitations (3-years for willful violations). See 5 C.F.R. 551.702.

#### 060402. Procedures for Submitting Claims

A. Filing a Claim. Claims should be filed with the activity at which the individual was/is employed during the period for which the additional compensation is claimed. When civilian pay claims cannot be resolved at the employing activity or major command level, the fully documented claim should be sent to DCMO at the address listed in subparagraph 060401.B.

#### B. Processing Claims

##### 1. Approved Claims

a. Paying Unquestionable Claims. Claims received by PRO from the claimant may be approved and paid when there is no question of law or fact.

b. Claims Subsequently Approved by OPM. Any claim received by PRO from OPM, including those originally received by DCMO and forwarded to OPM for final review, shall be acted upon in accordance with instructions in the letter or order transmitting the claim to PRO. When payment is to be made by PRO, the claim shall be paid as part of the regular payroll.

2. Disapproved Claims. Claims not received through OPM that are denied administratively by PRO shall be returned to the claimant with a letter providing a detailed explanation concerning why the claim was disapproved. If the employee appeals the denial of the claim, then PRO shall forward the claim with a transmittal letter (prepared by PRO) to OPM via DCMO. See subparagraph 060401.B.

C. Content of Claims. All claims submitted by the claimant/employee to the employing activity shall be in writing and signed by the claimant or by his/her representative. While no specific form is required, the request should describe the basis for the claim and state the [monetary](#) amount sought.

D. Submission of Disapproved/Denied Claims to OPM for Review. If a denied claim is submitted at the claimant's request for final review by OPM, the claim should include:

1. Claimant's name, address, telephone number, and facsimile number, if available;
2. Name, address, telephone number, and facsimile number of the agency employee who denied the claim;
3. A copy of the agency's denial of the claim; and
4. Any other information the claimant wants OPM to consider.

E. Administrative Report. At OPM's request, PRO/DCMO will submit an administrative report, which will include:

1. Factual findings;
2. Conclusions of law with relevant citations;
3. Recommendation for the claims disposition;
4. Copy of any supporting regulations or policy memorandums;
5. A statement that the claimant is or is not a member of a collective bargaining unit and, if so, a statement that the claim is or is not covered by a negotiated grievance procedure that specifically excludes the claim from coverage; and
6. Any other information that OPM should consider.

060403. Advance Decisions

OPM maintains the authority to issue advance decisions for claims settlement.

0605 BACK PAY UNDER 5 U.S.C. 5596 (THE BACK PAY ACT)

060501. General

The Back Pay Act at [5 U.S.C. 5596](#) provides the authority for the payment of back pay, interest, and reasonable attorney fees for the purpose of making a Federal employee financially whole (to the extent possible) after an unwarranted or unjustified personnel action. See also

5 C.F.R. 550, Subpart H. Back pay is appropriate when, based on a timely appeal or an administrative determination (including a decision relating to an unfair labor practice or a grievance), an appropriate authority finds that the employee was affected by an unjustified or unwarranted personnel action. Such action must have resulted in the withdrawal, reduction, or denial of all or part of the pay, allowances, and differentials otherwise due the employee under an applicable law, rule, regulation, or provision of a collective bargaining agreement. HRO will determine an employee's entitlement to back pay and document the determination in the remarks section of the SF 50. **Note: Not all settlement agreements or orders invoke the requirements of the Back Pay Act. For example, an employee may be awarded back pay under Title VII Equal Employment Opportunity Commission (EEOC) discrimination cases.**

060502. Correcting an Unjustified or Unwarranted Personnel Action

A. Back Pay May Not Exceed Originally Owed Entitlements. When an unjustified or unwarranted personnel action is corrected or awaiting correction, the employee may receive credit for performing Federal service during the period covered by the corrective action (back pay period). PRO shall compute, for the back pay period, the employee's pay, allowances, and differentials as if the improper personnel action never occurred. Any pay, allowances, or differentials (including leave benefits) **that are paid** under the Back Pay Act, may not exceed what the employee would have been entitled to had the unwarranted personnel action not occurred.

B. Employees Who Return to Duty or Resign from Duty. When an employee has been separated, corrective action will be completed on the date DoD has reasonably set for the employee's return to duty. DoD will notify the employee of the return date in writing. Until that date, the erroneous action remains in effect. Failure by the employee to report for duty on the date set by DoD may result in the employee being charged annual leave, leave without pay, or absence without leave for the period from the date set for return to duty until the date the employee actually returns to work. An employee who resigns instead of returning to duty is still entitled to back pay since there is no requirement that the employee return to duty. In that event, the employee will receive back pay up to the date that he or she is considered separated from Federal service, which may or may not be the date that he or she is requested to report for duty.

060503. Statute of Limitations

A. Six-Year Limitation. Under the Back Pay Act, an agency may not authorize pay, allowances, and differentials for a period beginning more than six years before the date of the filing of a timely written claim, or absent such filing, the date of the administrative determination that the employee is entitled to back pay. See 5 C.F.R. 550.804.

B. FLSA Claims. If a back pay claim involves an entitlement under FLSA at 29 U.S.C. 207, then an agency must apply a two-year statute of limitations (three years for willful violations). This applies to all FLSA claims filed on or after June 30, 1994. See 5 C.F.R. 551, Subpart G.

## 060504. Gross Back Pay Computations

A. General. When computing the amount of gross back pay due an employee, the agency shall compute all pay, allowances, and differentials the employee would have received if the unjustified or unwarranted personnel action had not occurred. This includes pay, leave, and other monetary employment benefits the employee would have been entitled to receive during the back pay period. PRO must include premium pay and any changes that would affect the amount of pay owed.

B. Periods Excluded from Back Pay Computations. The following periods of time are not included in the computation of back pay (see [5 C.F.R. 550.805\(c\) and \(d\)](#)):

1. Periods of Incapacitating Illness. Do not pay back pay for any period during which the employee was not ready, willing, and able to perform his or her duties because of an incapacitating illness. However, the employing agency must grant, upon request of the employee, any accrued sick or annual leave to cover the period of incapacity due to illness or injury.

2. Periods of Unavailability. Do not pay back pay for any period during which the employee was unavailable for performance of his or her duties for reasons not related to, or caused by, the unjustified or unwarranted personnel action.

C. Within-Grade Increases. When computing an employee's pay, it is necessary to include any within-grade increases (WGI) to which the employee became entitled during the back pay period. If the grant or denial of a WGI requires an acceptable level of competence determination under [5 C.F.R. 531, Subpart D](#), the requirements for such a determination, including the right of reconsideration and appeal, must be followed before the WGI may be included in the computation of the amount of back pay due the employee. This also applies to determinations made retroactively. Regulations governing WGIs allow for a waiver of the requirement of an acceptable level of competence determination when the employee [has not served in any position for the minimum period](#) during the final 52 calendar weeks of the waiting period because the employee received service credit under the Back Pay Act. See [5 C.F.R. 531.409\(d\)](#).

D. Overtime the Employee Would Have Earned. When computing the back pay of an employee who is restored to duty, any overtime the employee would have earned during the period of wrongful suspension or separation should be included in the back pay even though the overtime was not actually scheduled. The method of computing overtime incident to a back pay award due an employee may be based on the average number of overtime hours worked by fellow employees occupying similar positions during the same period.

E. Overtime Under a Collective Bargaining Agreement or Regulation. An employee who should have been selected for overtime work because a regulation or a collective bargaining agreement provided for assignment of overtime work in a prescribed manner is entitled to back pay for the overtime if the regulation or nondiscretionary provision of the

agreement was violated. The appropriate authority must find that the action taken was unjustified or unwarranted, and direct that corrective action be taken. The overtime will be computed based on the number of hours worked by an employee who was actually selected to perform the overtime work during the same period.

F. Allowances or Differentials. Include in the back pay owed to the employee any allowances or differentials that the employee would have received if the improper personnel action had not occurred. This is true even though the employee did not physically remain in the location giving rise to the entitlement.

G. Hazardous Duty Pay. A General Schedule (GS) employee may have been entitled to irregular or intermittent pay for physical hardship or hazard duty. PRO may assist HRO to determine the number of days per week the employee performed the irregular or intermittent hardship or hazard duty during the 52 weeks preceding the wrongful suspension or separation for which the employee would have been compensated. PRO may use an average of the amounts to make the necessary computations as authorized by HRO.

H. Environmental Differentials. Payment of environmental differentials on an actual exposure basis, or based on hours in a pay status, must be computed in accordance with OPM regulations and instructions. DoD determines entitlement to such differentials based on the 52 weeks preceding the wrongful suspension or separation for which the Federal Wage System (FWS) employee would have been compensated.

I. Intermittent Employees. When DoD is not able to determine with certainty the number of hours that the intermittent employee would have worked during the back pay period, HRO may estimate the amount of back pay due. This estimate is determined by taking an average of the number of hours worked by other DoD employees under the same type of appointment and performing the same kind of work that the employee would have been assigned to during this period. HRO also may determine the average number of hours a week the employee actually worked to obtain a representative period preceding the unjustified or unwarranted personnel action (such as 26 or 52 weeks, whichever would represent a fairer approximation of the employee's earnings if he or she had actually worked), and use these average weekly hours to make the necessary computations.

#### 060505. Computation of Adjusted Gross Back Pay

A. General. Adjusted gross back pay means gross back pay less the offset for outside earnings under [5 C.F.R. 550.805\(e\)\(1\)](#), but before adding interest. See [Figures 6-1 and 6-2](#) for examples showing various entitlements, deductions for erroneous payments, and other authorized deductions in the computation of back pay.

B. Outside Earnings. Under 5 C.F.R. 550.805(e)(1), interim or outside earnings refer to gross earnings, less any associated business losses or expenses, received by an employee for any employment or business enterprise undertaken to replace the employment from which the employee was separated due to the unjustified or unwarranted personnel action. However, deductions for losses sustained in a venture unrelated to the separation are not

allowable. PRO must determine the adjusted gross back pay by offsetting (deducting) any outside earnings that were earned by an employee from other employment during the period of wrongful suspension or separation. The amount of back pay entitlement is the difference between the amount of compensation the employee would have earned in government service, and the amount actually earned in other employment undertaken by the employee to replace the government employment. Overtime earned during the period of wrongful suspension or separation that is in excess of that overtime which would have been earned in the position from which the employee was separated should not be offset. When an employee's total outside earnings (including those from other Federal employment) exceed the total amount of back pay, the excess amount may be retained by the employee.

C. Exception for Additional or "Moonlight" Employment. The only earnings from other employment that may not be deducted from back pay are earnings from outside employment the employee already had before the period of wrongful suspension or separation. For example, if an employee usually worked 20 hours at a second part-time job ("moonlighting") prior to separation from government employment, and during the period of separation worked 40 hours at the outside job, then the amount representing the extra 20 hours worked would be offset against the back pay computation. To clearly establish whether the pay for outside employment increased substantially during the period of separation, DoD should obtain a statement or affidavits from the employee covering his or her outside earnings.

#### 060506. Computation of Interest on Back Pay Awards

A. General. Under 5 U.S.C. 5596, interest is paid on all back pay awards that are finalized on or after December 22, 1987. In most cases, the actual date of the award or decision is not the date the decision becomes final, i.e., no longer subject to reconsideration or higher-level review or appeal. Interest begins to accrue on the effective date on which the employee would have received the pay, allowances, and differentials had the unjustified or unwarranted personnel action not occurred. As a result, most computations will involve a series of effective dates, one for each date (usually a pay date) on which the employee failed to receive an amount of pay, allowances, and differentials because of the unjustified or unwarranted personnel action. See [5 C.F.R. 550.806](#).

B. Outside Earnings Offset. For purposes of computing back pay interest, an outside earnings offset is applied as a constant percentage offset to each payment of back pay for each pay period during the period covered by the corrected action. This percentage offset is determined by dividing the employee's outside earnings under 5 C.F.R. 550.805(e)(1) by the total amount of back pay owed to the employee prior to any deductions. [Procedures for the computations of back pay are set out in 5 C.F.R. 550.805](#), and [5 C.F.R. 550.806\(b\)](#) addresses the computation of the amount of interest due to the employee.

C. Date Interest Accrual Ends. DoD must issue interest within 30 calendar days of the date on which accrual of interest ends. If issuance of the interest payment is delayed more than 30 calendar days after the date on which accrual of interest ends, then interest must be recomputed based on a new ending date meeting the 30-day requirement.

D. Interest Rate. The applicable interest rate is the “overpayment rate” adjusted quarterly by the Secretary of the Treasury and published in an Internal Revenue Service (IRS) bulletin issued before the beginning of each quarter.

E. OPM Interest Calculator and Taxation of Interest. Compute interest in accordance with the formula or computer software provided to PROs by OPM. Do not withhold taxes from interest payments on back pay awards. PROs will provide employees with a Form 1099-INT (Interest Income) for all interest payments.

060507. Deductions of Erroneous Payments from Back Pay

A. General. The following deductions for erroneous payments received by the employee from the Government as a result of the unjustified or unwarranted personnel action are mandatory and necessary to achieve the “make whole” purpose of the back pay statute (see 5 C.F.R. 550.805(e)(2)):

1. Retirement Annuity Payments. An erroneously separated employee who received retirement annuity payments (either special payments or regular annuity payments) as a result of the separation is indebted to the government for the gross amount of retirement annuity payments paid to the employee during the period of wrongful separation. Because the gross amount of annuity payments has already been reduced by required health and life insurance premiums, PRO will recover an annuity amount from the back pay award that equals the gross annuity less health and life insurance premiums. PRO shall transfer the recovered annuity amount to the retirement system. The government will recover amounts paid from the CSRS or FERS gross annuity for health and life insurance premiums from the respective carriers for those programs, and, as a result, the retired employee’s account will be settled. PRO then must collect from the back pay any required health insurance premiums for coverage during the period following restoration and transfer that amount, plus the agency’s share, to OPM.

2. Refund of Retirement Contributions. Title 5 U.S.C. 8342(a) authorizes a refund of an employee’s retirement contributions only upon absolute separation from the service or transfer to a position not subject to the law. An employee must be separated or transferred for at least 31 consecutive days to be eligible for this refund. Therefore, a refund of retirement contributions paid to an employee based on a separation, which subsequently is found erroneous and canceled by restoring the employee to duty retroactively so that there was no break in service, removes the legal basis for the refund. A refund that was paid in error represents a debt due the retirement fund that must be deducted from any back pay entitlement. If the restored employee is entitled to back pay, then PRO must contact OPM to determine if the employee received such a refund and then offset the amount from the back pay entitlement. PRO must remit the appropriate amount to OPM.

3. Severance Pay. The gross severance pay paid to an erroneously separated employee at the time of his or her removal must be deducted from the back pay award upon restoration to duty.

4. Lump-Sum Payment for Annual Leave. Any erroneously separated employee who receives a lump-sum payment under [5 U.S.C. 5551\(a\)](#) prior to separation, must repay the lump-sum payment upon reinstatement to duty. PRO must restore the employee to duty and cancel the separation, thereby making the lump-sum payment erroneous. Offset any lump-sum payment received by the employee against the employee's back pay award and credit the leave to the employee's leave account. There is no authority permitting an employee to retain payment or receive credit for the leave.

B. Order of Precedence. The order of precedence for deducting erroneous payments from back pay awards when the net amount of back pay is insufficient to cover all the deductions is as follows:

1. Retirement annuity payments,
2. Refunds of retirement contributions,
3. Severance pay, then
4. Any lump-sum payment for accrued annual leave.

C. Waiver of Erroneous Payments

1. Retirement Fund Payments. Employees may request OPM to waive recovery of erroneous payments from the Civil Service Retirement and Disability Fund (CSRDF). Requests for waiver should be submitted to the U.S. Office of Personnel Management, Office of Retirement Programs, Reconsideration and Debt Collection Division, Room 3H30, 1900 E Street, NW, Washington, D.C. 20415. Employees also may submit requests to the same address to repay debts owed to CSRDF by installment deductions from salary.

2. Waiver of Lump-Sum Annual Leave and Severance Payments. For severance pay and lump-sum annual leave payments, any net indebtedness remaining after liquidation of back pay may be eligible for a waiver of repayment (by GAO or DFAS, as applicable) under the authority of [5 U.S.C. 5584](#).

060508. Other Authorized Deductions from Back Pay

Authorized deductions that would have been made from the employee's pay (if paid when properly due) should be made by PRO in accordance with the normal order of precedence for deductions from pay. See [5 C.F.R. 550.805\(e\)\(3\)](#). Authorized deductions include the following:

A. Mandatory Employee Retirement Contributions. Compute the employee retirement contributions on the employee's gross back pay subject to retirement, and deduct after subtracting the earnings from outside employment. Even if no amount of back pay is due because of excessive outside earnings, the employee must remit the appropriate amount of

retirement fund contributions in order to receive full retirement credit for the period of the unjustified or unwarranted separation. See [5 U.S.C. 8334\(c\)](#). If an employee is retroactively placed in a LWOP status under the terms of a settlement agreement or order, both the employee and agency contributions for the LWOP period must still be submitted to OPM.

B. Social Security and Medicare Taxes. Compute the Social Security taxes, also known as Old Age Survivor Disability Insurance (OASDI), and Medicare taxes on the adjusted gross back pay and deduct.

C. Federal Income Tax Withholding. Compute income tax withholdings on the adjusted gross back pay less any part of back pay not subject to income tax deductions. Therefore, if the back pay amount includes any amount not subject to income tax deductions, such as non-foreign area cost-of-living allowances and contributions to TSP, then compute the taxes after reducing the adjusted gross back pay by these nontaxable amounts.

D. Insurance Premiums and TSP. If applicable, health and life insurance premiums and TSP contributions may be made from the remaining back pay due the employee. Health insurance premiums for an employee restored to duty following an erroneous separation for retirement must be deducted if coverage under the health benefits program continued without interruption during the erroneous retirement. [Withhold any additional premiums the employee owes due to a retroactive increase in basic pay](#). See section 060510.

#### 060509. Restoration of Leave

A. Annual Leave. Annual leave that is restored to an employee as a result of the correction of an unjustified or unwarranted personnel action in excess of the maximum leave accumulation amount authorized by law [must](#) be credited to a separate leave account for use by the employee. See [5 C.F.R. 550.805\(g\)](#). The restored leave is referred to as “reinstated leave” and must be scheduled and used as provided in this section. If reinstated leave is not used within the prescribed time frames, it is forfeited. Refer to [5 U.S.C. 5596\(b\)\(1\)\(B\)](#) for additional information.

1. Full-Time Employees. For a full-time employee, excess annual leave of 416 hours or less must be scheduled and used by the end of the leave year in progress two years after the date on which the annual leave is credited to the separate account. This period is extended by one leave year for each additional 208 hours of excess annual leave or any portion thereof.

2. Part-Time Employees. A part-time employee shall schedule and use excess annual leave in an amount equal to or less than 20 percent of the employee’s scheduled tour of duty over a 52 calendar week period by the end of the leave year in progress two years after the date on which the annual leave is credited to the separate account. The agency shall extend this period by one leave year for each additional number of hours of excess annual leave, or any portion thereof, equal to 10 percent of the employee’s scheduled tour of duty over a period of 52 calendar weeks.

NOTE: For both part-time and full-time employees, the ending date of the time limit for use of excess annual leave is not necessarily exactly two years from the date on which the annual leave is credited to the separate account (or exactly at the end of any additional year added to the two-year period). Rather, the time limit ends at the end of the leave year ending two years after the restoration. For example, if the two-year period ends in July, an employee would have until the end of the current leave year (December or January) to use the restored annual leave.

3. Additional Information. To determine the time limitations for use of restored leave, see [Volume 8, Chapter 5](#).

B. Sick Leave. If an employee is reinstated to an agency as a result of an appeal, the agency must reestablish the employee's sick leave account as a credit or charge as it was at the time of separation. See [5 C.F.R. 630.502](#). At the request of an employee upon reinstatement, any sick leave available to the employee for a period of incapacitation that the employee can establish was the result of illness or injury shall be granted. See subparagraph 060504.B.1 and 5 C.F.R. 550.805(d).

060510. Health Insurance and Life Insurance Coverage

A. Health Insurance (FEHB). Under [5 U.S.C. 8908](#), an employee who was removed or suspended without pay, and who was restored to duty on the grounds that the removal or suspension was unjustified, may elect options one or two:

1. Have the prior enrollment reinstated retroactive to the termination date, with appropriate adjustments made in contributions and claims, as if no removal or suspension had occurred. [If the employee elects to have the enrollment retroactively reinstated, then payroll deductions for the period of suspension or removal must be made from the back pay award and the government premium contributions should be made as though the suspension or removal had not occurred.](#)

2. Enroll in the same manner as a new employee.

NOTE: The statutory provisions of 5 U.S.C. 8908 do not apply to an employee separated erroneously for retirement under conditions entitling him or her to continued enrollment. In such cases, there is no need to restore health benefits coverage since coverage was transferred to the retirement system and automatically continued. For additional information, refer to the [Federal Employees Health Benefits \(FEHB\) Program Handbook](#).

B. Life Insurance (FEGLI)

1. Withholding for Employees with Coverage at the Time of Removal. If an employee is retroactively restored to duty with back pay after a period of wrongful suspension or separation, no life insurance premium withholding is made from the retroactive pay adjustment for the period of suspension or separation. However, if death or dismemberment occurred during the period of wrongful suspension or separation, premiums are withheld from the back pay. Additionally, if the employee maintains Option C coverage and a covered family

member dies during the period of separation or removal, Option C premiums should be withheld from the back pay award. See 5 C.F.R. 890.404(e); [Federal Employees Group Life Insurance \(FEGLI\) Handbook](#) for additional information.

2. Employees with Coverage Who Missed Open Season. If an employee had life insurance coverage prior to a wrongful suspension or removal, and the employee is restored to duty after the closing date of an open season for life insurance that occurred during the employee's period of wrongful suspension or separation, the employee is entitled upon restoration to elect additional life insurance coverage as permitted during the open season. The effective date is the first day in a pay-and-duty status on or after the date the employing office receives the [SF 2817](#) (Life Insurance Election).

3. Employees Who Had No Coverage Prior to Removal. If an employee had no life insurance coverage prior to a wrongful suspension or separation, and the employee is restored to duty after the closing date of open season for life insurance that occurred during the employee's period of wrongful suspension or separation, the employee is entitled upon restoration to elect life insurance coverage as permitted during the open season. Since coverage for basic life insurance is automatic, the effective date is the first day in a pay-and-duty status. For options A, B, and C, the effective date is the first day in a pay-and-duty status on or after the date the SF 2817 is received by the employing office.

\*060511. Thrift Savings Plan (TSP)

An erroneously separated employee may request that any employee TSP contributions not made during the period of erroneous separation be deducted from his or her back pay award. The makeup contributions may be elected by reinstating the employee's contribution election on file at the time of separation. Alternatively, the employee may submit a new contribution election if he or she would have been eligible to make such an election but for the erroneous separation. Breakage or "lost earnings" is paid on all makeup contributions at the G Fund rate of return (unless otherwise specified by the agency or reinstatement order). The employee will receive the tax benefit in the year the contributions are made. PRO shall calculate the TSP amount using the gross basic pay amount of the back pay award prior to any offset for outside earnings. For additional information, see [5 C.F.R. 1605](#) or refer to Volume 8, Chapter 11.

060512. Payment of Reasonable Attorney Fees

[Title 5 U.S.C. 5596\(b\)\(1\)\(A\)\(ii\)](#) provides for payment of reasonable attorney fees in accordance with the standards established under [5 U.S.C. 7701\(g\)](#), under certain conditions. Under [5 C.F.R. 550.807](#), an employee, or an employee's personal representative, may request payment of reasonable attorney fees related to an unjustified or unwarranted personnel action that resulted in the withdrawal, reduction, or denial of all or part of the amount due the employee.

\*060513. Back Pay and Offsetting Unemployment Compensation for Federal Employees (UCFE)

A. If a reinstated employee is entitled to back pay, then HRO shall determine if the employee applied for UCFE within the last 52 weeks. If the employee applied for or received UCFE, then HRO shall promptly notify SESA of the date of the back pay payment, the amount, and the period covered.

B. DoD will not deduct the amount of unemployment compensation paid during the back pay period from the back pay award unless state law requires the employer (rather than the employee) to reimburse the state for overpayments. In some cases, a state agency may also determine that an overpayment has occurred and notify the Federal government as the employing agency. See DoDI 1400.25-V850. See also "[Comparison of State Unemployment Insurance Laws](#)" published by DOL at Chapter 5, table 5-15 and [U.S. GAO - B-220734, SEP 24, 1986, 65 COMP.GEN. 865.](#)

\*0606 CONTINUATION OF PAY (COP) (INJURY COMPENSATION) FOR FEDERAL EMPLOYEES

060601. General

The Federal Employees' Compensation Act (FECA), codified in pertinent part in [5 U.S.C. Chapter 81](#), provides for the payment of workers' compensation benefits and authorized medical care for all civilian employees of the U.S. for disability due to personal injury sustained while in the performance of duty. Regulations governing injury compensation are contained in [20 C.F.R. 10](#). See Injury Compensation in [DoDI 1400.25-V810](#) and the [DOL's FECA Procedure Manual](#).

A. [45 Calendar Days of COP](#). Civilian employees are entitled to medical care and compensation for absences due to traumatic on-the-job injuries and disease sustained while in the performance of duty. Traumatic injury is not the same as disability from occupational disease. Eligible employees are entitled to up to 45 calendar days of COP for traumatic injury.

B. [OWCP](#). The U.S. DOL OWCP administers the FECA through district offices. Each HRO maintains the address of the district office servicing its region.

060602. COP Procedures

A. [Entitlement to COP](#). An employee who sustains a disabling job-related traumatic injury is entitled to the continuation of regular pay for a period not to exceed 45 calendar days for each occurrence. The pay is subject to Social Security and/or Medicare, Federal, state, and local tax, retirement, and all other normal deductions. The pay for a separated

employee (unless the date of termination has been established prior to the injury) who is entitled to COP will be subject to Social Security and/or Medicare, Federal, state, and local tax if appropriate. Do not take any additional deductions. The injured employee's pay will continue unless DOL denies the claim.

1. Regular Pay. For COP purposes, regular pay is defined as follows:

a. Full-Time and Part-Time Employees. For a full-time or part-time employee who works the same number of hours per week, the weekly pay rate must be equal to the number of hours regularly worked each week times the hourly pay rate on the date of injury including premium pay, night or shift differential, holiday pay, and other extra pay, exclusive of overtime.

b. Part-Time Employees Only. For a part-time employee who does not work the same number of hours per week, the weekly pay rate will be the average weekly earnings for the 1-year period before the date of injury, exclusive of overtime.

c. Intermittent Employees. For an intermittent or part-time employee, either permanent or temporary, who does not work each week of the year (or the period of appointment); the weekly pay rate equals the average of the employee's weekly earnings during the one-year period before the injury. It is computed based on the total earnings divided by the number of weeks worked (partial weeks worked are counted as whole weeks). The annual earnings used for this computation must not be less than 150 times the average daily wage earned within one year before the date of injury.

2. Premium Pay. Standby premium, night or shift differential, holiday pay, or other extra pay should be included in regular pay in all instances. Overtime pay is not a part of COP except in the case of firefighters and law enforcement officers. If a salary increase (e.g., pay raise, step increase, promotion) occurs during the 45-day period, then use the new salary rate as of the effective date of the increase for computing the remaining COP.

B. Controverting a Claim. An agency may object to paying a claim for COP in a process referred to as "controverting a claim." The employing activity may controvert a claim by completing the indicated portion of Form CA-1 (Federal Employee's Notice of Traumatic Injury and Claim for COP/Compensation) and submitting detailed information in support of the objection to the OWCP. See 20 C.F.R. 10.221.

C. Denial of COP. COP is not payable when one of the following occurs (see 20 C.F.R. 10.220):

1. A traumatic injury is not the cause of the employee's disability;
2. The employee is not a U.S. or Canadian citizen;
3. The employee does not file a written claim within 30 days of the date of injury;

4. The injury was not reported until after separation from employment;

5. The employee received the injury away from the activity's premises and the employee was not performing his or her official duties;

6. The injury was due to the employee's own willful misconduct, intent to injure himself/herself or another person, or the injury was proximately caused by intoxication by alcohol or illegal drugs; or

7. The work did not stop until more than 45-days after the injury.

D. Termination of COP Already Begun. Generally, COP should continue after the employee stops work due to a disabling injury. Pay may be stopped only when at least one of the following circumstances is present (see 20 C.F.R. 10.222):

1. The employee does not provide *prima facie* medical evidence of a work-related injury within 10 calendar days after he/she submits a claim for COP;

2. The treating physician provides medical information to the activity indicating that the employee is not disabled from his or her regular position;

3. The treating physician provides medical information to the activity indicating the employee is not totally disabled, and the employee refuses a written offer of a suitable alternative position;

4. OWCP provides notification to the activity to terminate COP;

5. COP has been paid for 45 calendar days;

6. The employee's scheduled term of employment expires and the date of termination is prior to the date of injury; and/or

7. The employee returns to work with no loss of pay.

E. COP Suspended When Employee Obstructs a Medical Examination. If an employee or his or her representative refuses or obstructs a medical examination, the right to receive COP is suspended until the refusal or obstruction ceases. COP already paid or payable for the period of suspension is forfeited. If already paid, COP may be charged to annual or sick leave or considered an overpayment of pay consistent with 5 U.S.C. 5584. See 20 C.F.R. 10.223.

F. COP and Disciplinary Actions. If a preliminary notice regarding a disciplinary action was issued to the employee before the date of the injury and the action becomes final or otherwise takes effect during the COP period, COP may be interrupted or stopped. See 20 C.F.R. 10.222.

G. COP Period. The COP period is 45 calendar days. If the employee has stopped work because of the disabling effects of the injury, then the period starts at the beginning of the first full day or first full shift on which the disability begins. If disability occurs on the date of injury, do not count the remainder of that day or shift as COP. If the employee stops work for a portion of a day or shift, other than the day or shift when the disability begins, then that day or shift is one calendar day. When an employee is injured but not immediately disabled because of the injury, the 45-days begins on the first full day or the first full shift when the disability begins. The initial use of COP must begin within 45-days of the date of injury or the employee is only entitled to compensation from OWCP. The employee's scheduled non-workdays are included in determining the 45-days if medical evidence supports that the employee is disabled; however, there will be no COP paid for those non-workdays. See 20 C.F.R. 10.215.

H. Light-Duty Status. When a determination is made that an employee is capable of performing light-duty after an on-the-job injury, COP is still chargeable against the 45-day entitlement if a personnel action has been issued in order to:

1. Assign or detail the employee to an identified position for which a position description exists which is classified at a lower salary level than that earned by the employee when injured;
2. Change the employee to a lower grade, or to a lower rate of basic pay; or
3. Change the employee to a different schedule of work that results in loss of salary or premium pay (other than Sunday premium) authorized for the employee's normal administrative workweek.

An employee placed in light-duty who refuses to work after the offer of suitable work, is not entitled to COP. See 20 C.F.R. 10.217 and 10.517.

I. Recurrence of Disability. If an employee returns to work and then becomes disabled again and stops work, continue COP only if the 45 calendar days of entitlement to COP were not completely used during the initial period of disability. For COP to be continued, the employee must have experienced the recurrence of the disability and stopped working within 45-days of the time the employee first returned to work following the initial period of disability. When a recurrence happens after the 45-day window has expired, PRO shall discontinue the regular pay, even if some of the 45-days of COP eligibility may remain unused. In this event, the employee is only entitled to compensation payable by OWCP and is not entitled to COP. See 20 C.F.R. 10.207.

J. Use of Annual or Sick Leave Instead of COP

1. Application of the 45-Day COP Period. An employee may use annual, sick, or advanced leave to cover all or part of an absence due to an injury. If an employee elects to use leave, then count each full or partial day the employee takes leave against

the 45-days of COP entitlement. If an employee uses COP intermittently along with sick or annual leave, the COP entitlement period is still limited to 45-days. Do not use annual or sick leave to delay or extend the 45-day COP period.

2. One-Year Limitation to Elect COP in Lieu of Annual or Sick Leave. There are times when the employee may elect sick or annual, sick or advanced leave and the election is irrevocable. However, if an employee who has elected to use annual or sick leave for the period is otherwise eligible to elect COP instead, then the employing activity must make that change on a prospective basis from the date of the employee's request. The employee may receive COP in lieu of previously requested annual or sick leave provided the employee makes the request within one year of either the date the leave is used or written approval of the claim was granted, whichever is later. To authorize a change from annual or sick leave to COP, a corrected time-and-attendance report is required.

3. Leave Status of Employees

a. Leave Status When Injury Exceeds 45-Days. Employees who are eligible for COP must be placed in a leave status for time lost from work due to injury that is in excess of the 45-day COP period. During this period, an employee may take annual, sick, or advanced leave, or LWOP, if necessary, until OWCP approves the employee's claim for compensation. The employee should be in an LWOP status if the employee is receiving OWCP compensation after the 45-day period.

b. Leave Status of Employees Who are Ineligible for COP. Employees who are ineligible for COP must be in a leave status during an absence due to injury. Employees may take annual, sick, advanced leave, or LWOP while awaiting a decision from OWCP on their claims. Employees must be in an LWOP status while receiving OWCP compensation. These employees may buy back, and have reinstated, annual and sick leave used for time lost from work due to injury if OWCP approves their claims for compensation.

060603. Buy Back of Leave

A. General. If an employee is found eligible to receive OWCP compensation and the employee used sick, annual or a combination of both types of leave during a period of disability extending beyond the 45-day COP period, the employee may arrange with PRO to buy back the leave used (referred to as "leave buy back"). Note: Any sick or annual leave used during the 45-day COP period is not eligible for leave buy back unless the employee was not entitled to COP (see subparagraph 060603.D). An employee may not receive dual compensation for pay and leave plus OWCP compensation for lost time due to injury. Leave will be reinstated when bought back. See 20 C.F.R. 10.425.

B. Time Limit for Submitting a Claim for Leave Buy Back and Payment Arrangements. The CA-7 (Claim for Compensation) for leave buy back must be submitted within one year of the date the leave was used or the claim was accepted, whichever is later. PRO will arrange with OWCP to have compensation for the buy back period paid directly to that office. After receipt, PRO will notify the employee of the repayment amount and method of repayment.

C. Effect of Leave Buy Back. Leave buy back will reduce an employee's earnings. An employee is placed in LWOP status which may result in leave accrual reduction, reduced retirement contributions, and reduced TSP contributions. Employees may be required to pay health insurance and income taxes.

D. Leave that is Not Eligible for Buy Back. Employees who are eligible for COP who take annual, sick, or advanced leave for time lost due to injury instead of COP during the 45-day COP period are not eligible for OWCP compensation for that leave. These employees may not buy back the annual or sick leave and have it reinstated.

E. Computation. PRO shall recover any gross amount paid for leave used during a period retroactively covered by OWCP compensation. Certain deductions are recoverable by payroll adjustment. The amount recovered from the employee and/or OWCP will depend on whether payment for leave is paid in the current or prior year. See Figures 6-3 and 6-4 for examples.

F. Current Year Recovery

1. Deductions. The amount collected for leave payments made in the current calendar year will be the net pay plus deductions for:

- a. Bonds,
- b. Savings allotments,
- c. Alimony/Child support,
- d. Rent,
- e. Indebtedness to the U.S., and
- f. Other deductions the employee received value but not otherwise collected.

2. Reversed Deductions. Current Deductions that will be reversed (if applicable and if the moneys are recovered) in the payroll system are:

- a. CSRS or FERS,
- b. Social Security and/or Medicare,
- c. Federal, state, and local taxes,
- d. FEHB (if OWCP payment is for more than 28 days),
- e. FEGLI (basic and optional),
- f. TSP,
- g. Union dues,
- h. Charitable contributions, and
- i. Military service credit deposits and civilian service credit deposits.

3. Other. PRO shall make adjustments in the payroll system to earnings to date for those items other than the reversed deductions. Amounts collected from the employee and/or OWCP shall be taken up as a cash refund on a voucher for disbursement and/or collection.

G. Prior Year Recovery. The amount to be collected for leave payments made during a prior year will be the gross amount less CSRS/FERS, Social Security and/or Medicare, TSP, FEHB (if OWCP payment is for more than 28 days), and FEGLI (basic and optional). Post the credit to CSRS/FERS as a separate credit line item on the SF 2806 (Individual Retirement Record CSRS) or the SF 3100 (Individual Retirement Record FERS) fiscal side indicating the year the adjustment was made with an explanation in the "Remarks" column. No adjustments are authorized for Federal, state, and local income taxes. When an employee separates or at the end of the payroll year, prepare IRS Form W-2 (Wage and Tax Statement) as appropriate, and do not include any tax adjustments for a prior year. Prepare a certified statement to go with the current year's IRS Form W-2 stating that a refund for prior year was paid in the amount of \$XX.XX, but that the gross wages shown on the current year IRS Form W-2 were not reduced by the amount of the refund.

H. Partial Payroll Deductions. If circumstances warrant, the employee may repay through partial payroll deductions, the amount due from the employee (after recovery of the amount repaid by OWCP). Do not reverse deductions under subparagraph 060603.F.2 until the full amount is paid.

I. Recrediting of Leave. Credit the full amount of leave used during the buy back period to the employee's leave account. Do not recredit leave bought back until the total amount is repaid.

\*0607 EMERGENCY EVACUATION PAYMENTS

060701. Purpose

A memorandum issued by Secretary of Defense (Personnel and Readiness) entitled "Evacuation of Civilian Employees" (July 29, 1994) and the DoD Joint Travel Regulation (JTR) Chapter 6, identify the responsibilities of PRO in the event the proper authorities declare an official emergency evacuation of civilian employees. PROs will use these guidelines to determine whether it is appropriate to make advance payments to employees based on an ordered evacuation for military actions, natural disasters or other reasons that create imminent danger to lives and property. This section applies to areas located within the U.S. based on the provisions of 5 C.F.R., Part 550, Subpart D and outside of the U.S. based on the Department of State Standardized Regulations (DSSR) Chapter 600.

A. Eligibility. This guidance pertains to DoD and DoD Component employees when an official evacuation is declared. For additional information, see the Civilian Personnel Management Service (CPMS) Emergency Preparedness and Response website.

B. Forms. Use Department of Defense (DD) Form 2461 (Authorization for Emergency Evacuation Advance and Allotment Payments for DoD Civilian Employees) to authorize and record emergency payments to employees and dependents. PRO is responsible for maintaining this record of payments on the employee's permanent pay account. In appropriate cases, information on this form may be disclosed to other Federal agencies (i.e., Social Security Administration (SSA), IRS, and OPM), to state and local taxing/welfare authorities, and to certain private organizations for crediting payments to the employee's account. PRO must receive Form 2461 before making payment of amounts due the evacuated civilian employees or family members.

C. Determining Entitlements and Payee. Determine specific rates of entitlement, duration of evacuation/departure payments, and eligible payees as follows:

1. For employees at foreign installations, use the DSSR, Chapter 600.
2. For employees within the U.S., use 5 C.F.R. 550.401 through 550.408.

D. Payments. Compute employee's payments at the rate they are entitled to immediately before the order of evacuation/departure. Adult family members or designated representatives may receive payments in the form of allotments. Make all advance payments (and any necessary adjustments) according to the DoD Component's procedures.

## 060702. Transmission of Data to Safe-Haven Post

A. Methods of Transmission. After authorities issue an evacuation order, PRO shall immediately forward all significant payroll data from the evacuated installation to the safe-haven post. The forwarding of data is critical in order to support further payments. Some possible methods of forwarding payroll data to the safe-haven post are the following:

1. Shipping machine or manual listings of data;
2. Shipping the last complete payroll together with appropriate notations and changes;
3. Transmitting essential data over available telephone, telegraph, or radio lines;
4. Shipping the actual payroll, leave, and other appropriate records; and/or
5. Providing the evacuated employees and dependents at the time that the evacuation is ordered with a statement of essential data in a locally reproduced format.

B. Considerations. The physical conditions and circumstances at the evacuation installation will determine the method and timing for transmitting data. Safeguarding and preserving payroll leave, and travel records are matters of primary concern because of the continuing need for the records after the conditions which gave rise to the emergency evacuation have been resolved. Take all necessary steps to safeguard and preserve the records at the safe-haven post.

## 060703. Action Upon and During Evacuation

To the extent possible and practicable, pay employees and dependents remaining at the evacuated installation in accordance with the normal fiscal procedures of that installation. A special advance payroll will be prepared in accordance with normal payroll procedures and charged against the appropriate funds available to the evacuated installation for authorized advance payments.

## 060704. Action Upon Assignment of an Evacuated Employee

A. Return to Former Place of Employment

1. Obtain Records of Payments. The disbursing officer will obtain a record of payments made to the employee and dependents from the safe-haven post and immediately request the supporting DFAS Center to furnish from its records the total amounts paid to each employee and dependents during the time of evacuation.

2. Reconcile Amounts Paid. Upon receipt of the payment information from the supporting DFAS Center, the disbursing officer will reconcile all amounts paid and determine the amounts due the employee. A final payroll will be prepared to settle the employee's pay account subsequent to the last normal payment. Include all suspended deductions during the period of evacuation.

B. Assignment to an Another Installation. The disbursing officer will take all action required in subparagraph 060704.A.1 and 2. The disbursing officer will initiate a request to the former employing activity for the date of the last normal payment and all other pertinent information that normally would be furnished by a releasing activity. PRO shall establish a new pay record based on the information obtained. When the required information is not available from the employee's last permanent station because of destruction of the records, assume that the employee drew all amounts due the employee as of the last day prior to evacuation. See DSSR, Chapter 600 and 5 C.F.R., Part 550, Subpart D.

060705. Evacuation Payments During a Pandemic Health Crisis

Effective September 8, 2006, 5 C.F.R. 550.409 was amended to allow agencies to direct an employee to work from home or a mutually agreed upon alternative location. The designated location is the safe-haven location during a pandemic health crisis and is used as an alternate work site only during the pandemic crisis. The agency may make special allowance payments to the employee, as determined on a case-by-case basis, to help defray additional expenses caused by the crisis.

## \*Figure 6-1. Sample 1 Format of Back Pay Computation

An employee's gross back pay computation is \$32,420, as follows:

Basic pay	\$31,000.00
Overtime pay	\$300.00
Holiday pay	\$120.00
On-call pay	\$1,000.00

The employee received lump-sum payments in the amount of \$1,000, and net retirement payments (gross retirement less the amounts withheld for health insurance premiums and for post-retirement basic life insurance premiums) amounting to \$10,000. During the period covered by the corrective action, the employee earned \$11,000 from outside employment (interim earnings).

Gross back pay	\$32,420.00
Less outside earning	<u>(\$11,000.00)</u>
Subtotal (Adjusted Gross Back Pay)	\$21,420.00

Less erroneous payments	
Erroneous Retirement Annuity payments	\$10,000.00
Erroneous lump-sum payments for annual leave	<u>\$1,000.00</u>
Total	<u>(\$11,000.00)</u>
Subtotal	\$10,420.00

Less other authorized deductions	
Retirement deductions (CSRS) computed on gross basic pay (\$31,000)	\$2,170.00
Thrift Savings Plan computed on gross basic pay (\$31,000 - if applicable)	00.00
Federal tax computed on adjusted gross back pay (\$21,420)	\$5,355.00
State tax computed on adjusted gross back pay (\$21,420)	\$856.80
Medicare computed on adjusted gross back pay (\$21,420)	310.59
Health Insurance Premiums	<u>\$1,116.00</u>
Total	<u>(\$9,808.39)</u>

Net back pay	\$611.61
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## \*Figure 6-2. Sample 2 Format of Back Pay Computation

An employee's gross back pay computation (based on basic pay only) is \$10,000. During the period covered by the corrective action, the employee earned \$7,000 from outside employment (interim earnings).

Gross back pay	\$10,000.00
Less interim earning	<u>(\$7,000.00)</u>
Subtotal (Adjusted Gross Back Pay)	\$3,000.00
Less authorized deductions	
Retirement deductions (CSRS) computed on gross back pay (\$10,000)	\$700.00
Federal tax computed on adjusted gross back pay (\$3,000)	\$750.00
State tax computed on the adjusted gross back pay (\$3,000)	\$120.00
Medicare computed on the adjusted gross back pay (\$3,000)	<u>43.50</u>
Total deductions	(\$1,613.50)
Net back pay	\$1,386.50

\*Figure 6-3. Buy Back of Leave Computation – Sick Leave for Full Pay Period

<u>PP#</u>	<u>HRS</u>	<u>GROSS</u>	<u>CSRS</u>	<u>FICA/</u> <u>MED</u>	<u>TAX</u>	<u>FEHB</u>	<u>FEGLI</u>	<u>OPT</u> <u>FEGLI</u>	<u>CHARITY</u>	<u>UNION</u> <u>DUES</u>
21	80	\$680.80	47.66	9.87	120.57	31.50	5.50	16.00	2.00	1.75
<u>ALLOT</u>	<u>TSP</u>	<u>NET</u>								
50.00	10.00	\$385.95								

Current Year Recovery:

Net Pay	\$385.95
Allotment	50.00
Charity	2.00
Amount of repayment	<u>(437.95)</u>
Amount of OWCP check (75% X 680.80)	510.60
Amount due employee	<u>\$ 72.65</u>

Prior Year Recovery:

Net Pay	\$385.95
Allotment	50.00
Tax	120.57
Charity	2.00
Health Insurance Premiums	31.50
Union dues	1.75
Amount of repayment	<u>(591.77)</u>
Amount of OWCP check (75% X 680.80)	510.60
Amount due from employee	<u>(\$81.17)</u>

\*Figure 6-4. Buy Back of Leave Computation – Sick Leave for Less Than a Full Pay Period

<u>PP#</u>	<u>HRS</u>	<u>GROSS</u>	<u>CSRS</u>	<u>FICA</u> <u>MED</u>	<u>TAX</u>	<u>FEHB</u>	<u>FEGLI</u>	<u>OPT</u> <u>FEGLI</u>	<u>CHARITY</u>	<u>UNION</u> <u>DUES</u>	<u>ALLOT</u>	<u>NET</u>
20	80	\$680.80	47.66	9.87	120.57	31.50	5.50	16.00	2.00	1.75	50.00	\$395.95
Worked	47	\$399.97	28.00	5.80	71.14	31.50	5.50	16.00	2.00	1.75	50.00	\$188.28
Sick Lv	33	\$280.83	19.66	4.07	49.43	-	-	-	-	-	-	\$207.67
21	80	\$680.80	47.66	9.87	120.57	31.50	5.50	16.00	2.00	1.75	50.00	\$395.95
Worked	12	\$102.12	7.15	1.48	18.09	31.50	5.50	16.00	2.00	1.75	-	\$18.65
Sick Lv	68	\$578.68	40.51	8.39	102.48	-	-	-	-	-	50.00	\$377.30

Current Year Recovery:

Net Pay	\$584.97
Allotment	50.00
Amount of repayment	(\$634.97)
Amount of OWCP check (75% X \$859.51)	644.63
Amount due employee	\$ 9.66

Prior Year Recovery:

Net Pay	\$584.97
Allotment	50.00
Tax	151.91
Amount of repayment	(\$786.88)
Amount of OWCP check (75% X \$859.51)	644.63
Amount due from employee	(\$142.25)