

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

**SUMMARY OF MAJOR CHANGES**

Changes are identified in this table and also denoted by [blue font](#).

Substantive revisions are denoted by an asterisk (\*) 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 [May 2019](#) is archived.

<b>PARAGRAPH</b>	<b>EXPLANATION OF CHANGE/REVISION</b>	<b>PURPOSE</b>
All	Updated hyperlinks and formatting to comply with current administrative instructions.	Revision
1.2 (060102)	Updated Authoritative Guidance to address new reference listing at the end of the chapter.	Revision
References	Added References section.	Addition

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## CHAPTER 6

MISCELLANEOUS ACTIONS (SPECIAL ACTIONS)

## 1.0 GENERAL (0601)

## 1.1 Purpose (060101)

This chapter prescribes the policy for miscellaneous actions, which occur outside of normal payroll processing.

## \*1.2 Authoritative Guidance (060102)

The pay policies and requirements established by the DoD in this chapter are derived primarily from, and prepared in accordance with Title 5 of the United States Code (U.S.C.), and Titles 5 and 20 of the Code of Federal Regulations (CFR). Due to the subject matter in the chapter, the list of authoritative sources is extensive. The specific statutes, regulations, and other applicable guidance that govern each section are listed in a reference section at the end of this chapter.

## 2.0 UNEMPLOYMENT COMPENSATION FOR FEDERAL EMPLOYEES (UCFE) (0602)

## 2.1 General (060201)

2.1.1. Purpose. The 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.

2.1.2. UCFE Program Administration. UCFE is administered by the states as agents of the federal government under [5 U.S.C. Chapter 85](#) and [20 CFR 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 may vary in eligibility requirements. Each DoD component is responsible for managing its respective UCFE. 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 DoD Instruction [\(DoDI\) 1400.25-V850](#) for additional information.

## 2.2 UCFE Claim-Related Forms (060202)

There are two primary claim forms pertaining to UCFE. Various State Employment Security Agencies (SESA) may require other claim forms. See DoDI 1400.25-V850 for other UCFE claim forms.

2.2.1. 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 7 consecutive days or more. The form explains eligibility requirements for UCFE and provides general information on how to file a claim. The HRO should explain the form during an employee's out-processing. For additional information on the SF 8, see DoDI 1400.25-V850.

2.2.2. Employment Security (ES) Form 931, Request for Wage and Separation Information. The 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. The HRO must complete and return the ES 931 to the SESA within 4 workdays of receipt. For additional information, see [20 CFR 609.21-22](#) and [UCFE Instructions for Federal Agencies, Chapter VI](#).

### 2.3 Employing Activity Responsibilities (060203)

2.3.1. Provide Accurate Wage Data. The Civilian Payroll Office (PRO) must provide exact wage data through the HRO to the SESA in order for the SESA to determine the former employee's weekly and maximum unemployment benefit amounts. The PRO must accurately report all monetary information affecting the claim, such as lump-sum annual leave payments, severance pay, annuity pay, or incentive pay.

2.3.2. Respond Timely to SESA Requests. The HRO must complete and return the ES 931 to the SESA within 4 workdays of receipt. If the PRO is unable to provide the requested information within a 4-workday period, the PRO must notify the HRO immediately and the HRO must follow the procedures in 20 CFR 609.21(b).

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

### 2.4 Base-Period Wages and Annual Leave Information (060204)

2.4.1. Base-Period. Each state sets the amount and duration of unemployment compensation under UCFE that is payable to individuals. A "base-period" is defined by state law and used for determining the amount payable. A base-period is comprised of either 4 consecutive quarters or 52 weeks. Most states use a base-period that includes the first 4 of the last 5 completed calendar quarters. The amount of unemployment compensation benefits is based on the gross federal wages paid to or earned by an employee during the base-period preceding the date of claim.

2.4.2. Reportable Base-Period 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](#).

2.4.2.1. Report Gross Amount of Base-Period Federal Wages. The amounts 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. Expenses for official business, such as taxi fares, per diem, or mileage, and payments for uniform allowances should not be included.

2.4.2.2. Types of Wages Included in Base-Period Wages. The DOL has determined the following specific types of wages are to be included in the amount reported as gross (base-period) wages:

2.4.2.2.1. 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.

2.4.2.2.2. Back Pay. Federal wages include back pay awards. Back pay awards 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 4.0.

2.4.2.2.3. Salaries Paid by DoD to Reemployed Annuitants. In the case of a civil service annuitant, who receives the difference between the salary rate and the amount of annuity, only the amount paid by the employing agency is 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.

2.4.2.2.4. Increases in Rates of Compensation Authorized by Acts of Congress. Such increases must be reported as wages for the pay period in which the increases are 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.

2.4.2.3. Reporting Methods for Base-Period Wages. The PRO reports wages the same way the records are kept. Adjustments are not made for 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 include March 29 through 31 in the wages reported for the January 1 to March 31 quarter. Do not report wages for periods other than those periods requested. If the claimant had no base-period wages, then indicate it on the report.

### 2.4.3. Other Wages Reported, but Not Included in Base-Period Wages

2.4.3.1. Lump-Sum Annual Leave. All lump-sum annual leave payments are federal wages for purposes of UCFE, but not reported as base-period wages. Report lump-sum leave payments separately from gross wages (base-period wages).

2.4.3.1.1. If the employee received a lump-sum payment for annual leave after the beginning date of the base-period, the PRO must furnish the following:

2.4.3.1.1.1. Amount of payment,

2.4.3.1.1.2. Date(s) of payment,

2.4.3.1.1.3. Amount of annual leave (days and hours), and

2.4.3.1.1.4. Period of lump-sum annual leave.

2.4.3.1.2. 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.

2.4.3.2. Severance Pay. Severance payments are reported separately from base-period wages. If the employee receives or entitled to receive severance pay, the PRO must report the information to the HRO. 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. The 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.

2.4.3.3. 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 2.4.3.2.

## 2.5 Employees on Leave Without Pay (LWOP) (060205)

Upon the HRO’s receipt of the ES 931, the HRO must report the non-pay status of an employee to the SESA. The 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 the HRO. The HRO must 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 the SESA is responsible for contacting the OWCP for any necessary data it needs.

## 2.6 Obtaining Data From the National Personnel Records Center (NPRC) (060206)

If the necessary records required to furnish wage data to the HRO have already been forwarded to the NPRC, the records must be requested via written authorization. This information is subject to The Privacy Act of 1974 ([5 U.S.C. § 552a](#)). Therefore, records must be handled in accordance with the provisions of the Act. Authorized representatives of federal personnel offices may request records by mailing the SF 127, Request for Official Personnel Folder, to the following address:

[NPRC](#), Annex  
1411 Boulder Boulevard  
Valmeyer, IL 62295

## 3.0 CLAIMS FROM EMPLOYEES FOR ADDITIONAL COMPENSATION (0603)

### 3.1 General (060301)

3.1.1. Authority to Settle Claims. Employees may file claims involving compensation or leave under [31 U.S.C. § 3702](#). The General Accounting Office (GAO) Act of 1996, [Public Law 104-316](#), transferred the claims settlement functions previously performed by the GAO to certain executive branch agencies. For additional information, see [GAO Transferred Functions](#). Therefore, both former and current employees must submit claims for additional compensation to the DoD employing activity in accordance with Volume 5, Chapter 12. Claims are 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 the HRO, then the claim should be negotiated and documented through the employing activity's personnel channels.

3.1.2. Review of Denied Claims. If a claim for payment is denied and the employee wishes to request further review, then the PRO must assemble all documentation pertaining to the claim, including documents from any review process, and forward the file to the Defense Finance and Accounting Service (DFAS).

DFAS Indianapolis  
Debt and Claims Management Office (DCMO)  
Department 3300, ATTN: COR/Claims  
8899 East 56th 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 CFR Part 178](#) and Volume 5, Chapter 12.



3.1.3. 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 the OPM, but not with both at the same time. An employee, whose claim is denied by the agency, may file the claim with the OPM. See [5 CFR 551.703](#) and [5 CFR 551.705](#).

3.1.4. Statute of Limitations for Filing a Claim. Under 31 U.S.C. § 3702, a claim for payment must be filed within 6 years of the date the right to payment accrued. Claims for overtime pay under the FLSA are generally subject to a 2-year statute of limitations (3 years for willful violations). See 5 CFR 178.104 and [5 CFR 551.702](#).

## 3.2 Claims Submission (060302)

3.2.1. 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 the DCMO at the address listed in subparagraph 3.1.2.

### 3.2.2. Processing Claims

#### 3.2.2.1. Approved Claims

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

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

3.2.2.2. Disapproved Claims. Claims not received through the OPM that are denied administratively by the PRO must 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 the PRO must forward the claim with a transmittal letter (prepared by the PRO) to the OPM via the DCMO. See subparagraph 3.1.2.

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

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

3.2.4.1. Claimant's name, address, telephone number, and facsimile number, if available;

3.2.4.2. Name, address, telephone number, and facsimile number of the agency employee who denied the claim;

3.2.4.3. A copy of the agency's denial of the claim; and

3.2.4.4. Any other information the claimant wants the OPM to consider.

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

3.2.5.1. Factual findings;

3.2.5.2. Conclusions of law with relevant citations;

3.2.5.3. Recommendation for the claims disposition;

3.2.5.4. Copy of any supporting regulations or policy memorandums;

3.2.5.5. 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

3.2.5.6. Any other information that the OPM should consider.

### 3.3 Advance Decisions (060303)

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

## 4.0 BACK PAY UNDER 5 U.S.C. § 5596 (THE BACK PAY ACT) (0604)

### 4.1 General (060401)

4.1.1. Authority. 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 CFR 550, subpart H](#).

4.1.2. Introduction. 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. The HRO will determine an employee's entitlement to back pay and document the determination in the "Remarks" section of the SF 50.

4.1.3. Invoking the Back Pay Act. Some settlement agreements or orders may not directly invoke the requirements of the Back Pay Act by citing 5 U.S.C. § 5596. Generally, if an agreement or order uses an undefined term of art like "back pay" without defining it, DFAS will apply the regulatory or statutory definition of the term. In such cases, back pay will be processed pursuant to the Back Pay Act unless the agreement or order expresses a contrary intent.

4.1.4. Equal Employment Opportunity Commission Cases Under Title VII. Title VII of the Civil Rights Act provides authority for agencies to award back pay to employees in discrimination cases. Such cases are independent of the Back Pay Act and back pay is authorized under Title VII without the finding of an unjustified or unwarranted personnel action. An award of back pay under Title VII is computed in the same manner as under the Back Pay Act regulations pursuant to [29 CFR 1614.501](#). See [42 U.S.C. § 2000e](#) and [42 U.S.C. § 1981a](#).

4.1.5. Non-Appropriated Fund (NAF) Employees. The Back Pay Act does not apply to NAF employees. NAF employees may receive back pay, but such payments are not made under the Back Pay Act and interest is not payable.

4.1.6. Lump-Sum Payments In Lieu of Back Pay. A lump-sum payment "in lieu of back pay" is a payment offered in settlement of a case and not considered back pay processed under the Back Pay Act. See paragraph 4.14 for information on processing lump-sum payments and proper tax reporting and withholding.

## 4.2 Correcting an Unjustified or Unwarranted Personnel Action (060402)

4.2.1. 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). The PRO must compute, for the back pay period, the employee's pay, allowances, and differentials as if the improper personnel action had never occurred. In no case, can the amount of pay, allowances, or differentials (including leave benefits) paid under the Back Pay Act exceed the amount that the employee would have been entitled to had the unwarranted personnel action not occurred. See 5 CFR 550.805.

4.2.2. Employees Who Return to Duty or Resign From Duty. When an employee has been separated, corrective action will be completed on the date the DoD has reasonably set for the employee's return to duty. The 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 the DoD may result in the employee being charged annual leave, LWOP, 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.

#### 4.3 Statute of Limitations (060403)

4.3.1. Six-Year Limitation. Under the Back Pay Act, an agency may not authorize pay, allowances, and differentials for a period beginning more than 6 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 CFR 550.804.

4.3.2. FLSA Claims. If a back pay claim involves an entitlement under the FLSA at [29 U.S.C. § 207](#), then an agency must apply a 2-year statute of limitations (3 years for willful violations). This applies to all FLSA claims filed on or after June 30, 1994. See [5 CFR 551, subpart G](#).

4.3.3. Back Pay Act vs. Barring Act. The Barring Act statute of limitation under 31 U.S.C. § 3702 sets a time limit on how long an individual has to file a claim against the United States (within 6 years after the claim accrues). The Back Pay Act statute of limitation sets a time limit on the remedy received (no more than 6 years of back pay).

#### 4.4 Gross Back Pay Computations (060404)

4.4.1. General. When computing the amount of gross back pay due an employee, the agency must 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. The PRO must include premium pay and any changes that would affect the amount of pay owed. See 5 CFR 550.805.

4.4.2. Periods Excluded From Back Pay Computations. The following periods are not included in the computation of back pay. See 5 CFR 550.805(c) and (d).

4.4.2.1. Periods of Incapacitating Illness. Back pay is not paid 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.

4.4.2.2. Periods of Unavailability. Back pay is not paid 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.

4.4.3. Within-Grade Increases (WGI). When computing an employee's pay, the PRO must include any 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 CFR Part 531](#), 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.

4.4.4. 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.

4.4.5. 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 corrective action. 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.

4.4.6. Allowances or Differentials. The PRO must 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 upon which the entitlement is based.

4.4.7. Hazardous Duty Pay. General Schedule employees that also meet the requirements in [5 CFR 550.904](#), may be eligible to receive irregular or intermittent pay for physical hardship or hazard duty. The PRO may assist the 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. The PRO may use an average of the amounts to make the necessary computations as authorized by the HRO.

4.4.8. Environmental Differentials. Federal Wage System (FWS) prevailing rate (wage) employees may be eligible to receive environmental differential pay under the separate provisions of [5 U.S.C. § 5343\(c\)\(4\)](#). Payment of environmental differentials on an actual exposure basis, or based on hours in a pay status, must be computed in accordance with the OPM regulations and instructions. The DoD determines entitlement to such differentials based on the 52 weeks preceding the wrongful suspension or separation for which the FWS employee would have been compensated. See [5 CFR 532.511](#).

4.4.9. Intermittent Employees. When the DoD is not able to determine with certainty the number of hours that the intermittent employee would have worked during the back pay period, the 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. Alternatively, the 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). The HRO may use the average weekly hours to make the necessary computations.

4.4.10. Cash Awards. Back pay includes any cash award the employee would have been entitled to if the unjustified or unwarranted personnel action had not occurred. The award must be supported by the appropriate personnel action.

#### 4.5 Adjusted Gross Back Pay (060405)

4.5.1. General. Adjusted gross back pay means gross back pay less the offset for outside earnings under 5 CFR 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.

##### 4.5.2. Outside or Interim Earnings

4.5.2.1. Interim Earnings Defined. Under 5 CFR 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.

4.5.2.2. PRO Duties. The 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 employee may retain the excess amount.

4.5.2.3. Outside Earnings Exceed Back Pay. When an employee's outside earnings exceed the back pay award, the employee does not owe the difference to the government. The employee must be indebted for any amounts owed for retirement contributions or health care premiums. See paragraph 4.11 for TSP contributions.

4.5.3. Exception for Additional or “Moonlight” Employment. The only earnings from other employment that are not 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 determine whether the pay for outside employment increased substantially during the period of separation, the DoD should obtain a statement or an affidavit from the employee covering his or her outside earnings.

#### 4.6 Interest on Back Pay Awards (060406)

4.6.1. General. Under 5 U.S.C. § 5596, interest is paid on all back pay awards that are finalized on or after December 22, 1987. Interest begins to accrue on the effective date on which the employee would have received the pay, allowances, and differentials if the unjustified or unwarranted personnel action had 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 due him or her because of the unjustified or unwarranted personnel action. See 5 CFR 550.806.

4.6.2. Outside Earnings Offset. Interest is paid on the adjusted gross pay amount (gross back pay less any offset for outside earnings). Interest is computed before making any deductions for erroneous payments. 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 CFR 550.805(e)(1) by the total amount of back pay owed to the employee prior to any deductions. See 5 CFR 550.806(b).

4.6.3. Date Interest Accrual Ends. The 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. Back pay and interest should be paid simultaneously whenever possible. When the interest payment is issued after the payment of the back pay, see 5 CFR 550.806(g) for calculation on any interest on interest owed.

4.6.4. 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.

4.6.5. OPM Interest Calculator and Taxation of Interest. The PRO must compute interest in accordance with the formula or computer software provided to the PROs by the OPM. The PRO may not withhold taxes from interest payments on back pay awards. The PROs will provide employees with the [IRS Form 1099-INT](#), Interest Income, for all interest payments.

#### 4.7 Deductions of Erroneous Payments From Back Pay (060407)

4.7.1. General. In the context of back pay, erroneous payments are payments that were received by an employee from the government as a result of the unjustified or unwarranted personnel action. Erroneous payments must be returned to the appropriate government agency or pay system. Such payments must be recovered from the back pay award. If the back pay award is insufficient to satisfy the full recovery, then a debt must be established against the employee. See 5 CFR 550.805(e)(2).

##### 4.7.1.1. Retirement Annuity Payments

4.7.1.1.1. 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 United States Federal Government for the gross amount of retirement annuity payments paid to the employee during the period of wrongful separation.

4.7.1.1.2. Because the gross amount of annuity payments was previously reduced by required health and life insurance premiums, the PRO will recover an annuity amount from the back pay award that equals the gross annuity less health and life insurance premiums.

4.7.1.1.3. The PRO must transfer the recovered annuity amount to the retirement system.

4.7.1.1.4. 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 in order to settle the retired employee's account.

4.7.1.1.5. The 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 the OPM.

4.7.1.2. Refund of Retirement Contributions. [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 paid in error represents a debt due the retirement fund and must be deducted from any back pay entitlement. If the restored employee is entitled to back pay, then the PRO must contact the OPM to determine if the employee received such a refund and then offset the amount from the back pay entitlement. The PRO must remit the appropriate amount to the OPM.

4.7.1.3. 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.



4.7.1.4. 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. The PRO must restore the employee to duty and cancel the separation, thereby making the lump-sum payment erroneous. The PRO must 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. No authority exists that would permit an employee to retain the lump-sum payment in lieu of receiving credit for the leave.

4.7.2. 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:

4.7.2.1. Retirement annuity payments,

4.7.2.2. Refunds of retirement contributions,

4.7.2.3. Severance pay, then

4.7.2.4. Any lump-sum payment for accrued annual leave.

4.7.3. Waiver of Erroneous Payments

4.7.3.1. Retirement Fund Payments. Employees may request OPM waive recovery of erroneous payments from the Civil Service Retirement and Disability Fund (CSRDF). Requests for waiver should be submitted to the following address:

U.S. Office of Personnel Management  
Office of Retirement Programs  
Reconsideration and Debt Collection Division  
1900 East Street NW, Room 3H30  
Washington, D.C. 20415

Employees may also submit requests to the same address to repay debts owed to the CSRDF by installment deductions from salary.

4.7.3.2. 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 the GAO or DFAS, as applicable) under the authority of [5 U.S.C. § 5584](#).

#### 4.8 Other Authorized Deductions From Back Pay (060408)

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

4.8.1. Mandatory Employee Retirement Contributions. The PRO must compute the employee retirement contributions on the employee's gross back pay subject to retirement, and deduct the contributions after subtracting the earnings from outside employment. Even if no amount of back pay is due because of excessive outside earnings, the employee must be indebted for the appropriate amount of retirement fund contributions. See [5 U.S.C. § 8334\(c\)](#). If an employee is retroactively placed in an LWOP status under the terms of a settlement agreement or order and no back pay is due, both the employee and agency contributions for the LWOP period must still be submitted to the OPM. [5 CFR 842.304\(a\)\(4\)](#), which grants retirement credit during periods of LWOP without requiring employee contributions, does not apply to situations involving retroactively applied LWOP granted under a settlement agreement or order.

4.8.2. Social Security and Medicare Taxes. The PRO must compute and deduct the Social Security taxes, also known as Old Age Survivor Disability Insurance (OASDI), and Medicare taxes on the adjusted gross back pay.

4.8.3. Federal Income Tax Withholding. The PRO must 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, the PRO must compute the taxes after reducing the adjusted gross back pay by these nontaxable amounts.

4.8.4. 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. The PRO must withhold any additional premiums the employee owes due to a retroactive increase in basic pay.

4.8.5. Flexible Spending Accounts (FSA). At the request of the employee, FSA contributions may be deducted from the back pay award in the amount that would have been allotted to the employee's FSA if the unjustified or unwarranted personnel action had not occurred. The FSA contributions may be used to cover eligible medical expenses incurred during the corresponding back pay period.

#### 4.9 Restoration of Leave (060409)

4.9.1. 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 CFR 550.805(g). The restored leave must be scheduled and used as provided in this section. If restored leave is not used within the prescribed periods, it is forfeited. Refer to 5 U.S.C. § 5596(b)(1)(B) for additional information.

4.9.1.1. 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 2 years after the date on which the annual leave is credited to the separate account. This period is extended by 1-leave year for each additional 208 hours of excess annual leave or any portion thereof.

4.9.1.2. Part-Time Employees. A part-time employee must 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 2 years after the date on which the annual leave is credited to the separate account. The agency will extend this period by 1-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.

#### 4.9.1.3. Time Limitations

4.9.1.3.1. For both part-time and full-time employees, the ending date of the time limit for use of excess annual leave may not be exactly 2 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 2-year period). Rather, the time limit ends at the end of the leave year ending 2 years after the restoration. For example, if the 2-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.

4.9.1.3.2. To determine the time limitations for use of restored leave, see Chapter 5.

4.9.2. 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 CFR 630.502](#). Upon request of an employee, the PRO may grant any sick or annual leave available to the employee for a period of incapacitation if the employee can establish that the period of incapacitation was the result of illness or injury. See 5 CFR 550.805(d).

#### 4.10 Health Insurance and Life Insurance Coverage (060410)

4.10.1. Health Insurance. 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 one of the following options:

4.10.1.1. The employee may 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.

4.10.1.2. The employee may enroll in the same manner as a new employee.

4.10.2. Health Insurance Provision for Erroneous Retirement. 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 transfers to the retirement system and continues automatically. For additional information, refer to the Federal Employees Health Benefits [\(FEHB\) Program Handbook](#).

#### 4.10.3. Life Insurance

4.10.3.1. 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 CFR 880.304](#) and the Federal Employees Group Life Insurance [\(FEGLI\) Handbook](#) for additional information.

4.10.3.2. 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 that the employing office receives the [SF 2817](#), Life Insurance Election.

4.10.3.3. 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.

#### 4.11 TSP (060411)

4.11.1. TSP Contributions From Back Pay Award. 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. Unless otherwise specified by the agency or reinstatement order, breakage or "lost earnings" is paid on all makeup contributions and calculated in accordance with 5 CFR 1605.2. The employee will receive the tax benefit in the year the contributions are made. The PRO must 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 CFR Part 1605](#) and Chapter 11.

4.11.2. TSP Contributions When Back Pay Is Insufficient. An employee's outside earnings may offset the total amount of back pay owed, or the employee may otherwise have insufficient back pay to deduct TSP contributions. Basic pay is the only allowable source for TSP contributions. See [5 U.S.C. § 8432](#) and 5 CFR 1605.11. An employee's makeup contributions may only be made through payroll deductions. TSP contributions may not be made by check, money order, cash, or other form of payment directly from the employee to TSP, or from the employee to DFAS for deposit to TSP. If no back pay is available for TSP contributions, a current or reinstated employee may only make up TSP contributions through future payroll deductions.

#### 4.12 Payment of Reasonable Attorney Fees (060412)

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 CFR 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.

#### 4.13 Back Pay and Offsetting UCFE (060413)

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

4.13.2. The 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 the [DOL's Comparison of State Unemployment Insurance Laws](#), Chapter 5, Table 5-15 and [65 Comp. Gen 865 \(1986\)](#). See also DoDI 1400.25-V850.

#### 4.14 Tax Withholding and Reporting in Back Pay Matters (060414)

4.14.1. General. For information on proper tax withholding and reporting in back pay matters, refer to [IRS Memorandum PMTA 2009-035](#), Income and Employment Tax Consequences and Proper Reporting of Employment-Related Judgements and Settlements (October 22, 2008) For income tax purposes, the IRS treats back pay as wages in the year paid. See also [IRS Publication 957](#), Reporting Back Pay and Special Wage Payments to the Social Security Administration (SSA).

4.14.2. Lump-Sum Payments. A settlement or order may require an employing agency to issue a lump-sum payment be paid to the employee in lieu of back pay or as an award of damages. To ensure proper tax reporting and withholding, employing agencies should make every effort to identify the nature of lump-sum payment(s) awarded as being wages or non-wages. The PRO must review the nature of the payment before processing and should contact the agency if there is a question as to the identity or apportionment of a lump-sum payment.

4.14.2.1. Wages. Generally, if a settlement or order requires an employing agency to pay the employee a lump-sum payment, the payment should be considered wages for tax purposes if the payment is not clearly identified as damages or attorney fees. A lump-sum representing wages must be submitted to the PRO as an individual award to ensure proper processing. Federal and state taxes, OASDI, and Medicare taxes are withheld from wage payments. A wage payment is reported on the [IRS Form W-2](#), Wage and Tax Statement.

4.14.2.2. Non-Wages. Lump-sum payments of damages are processed by the DFAS Vendor Pay (or other appropriate vendor pay office) and are reported on the [IRS Form 1099-MISC](#), Miscellaneous Income, with no taxes withheld.

4.14.3. Attorney Fees. Payments to attorneys are generally taxable to the employee. An employee must include in their gross income the entire amount of the judgment or settlement, including the amount paid to the attorney. Depending on how the payment is made, there may be tax reporting to both the attorney and the employee.

4.14.4. Judgment Fund Payments. The U.S. Department of Treasury operates the Judgment Fund under [31 U.S.C. § 1304](#). Back pay awards may be paid out of the Judgment Fund. Treasury regulations require the agency that submits a request for payment from the Judgment Fund issue the tax reporting. Therefore, for employees paid by DFAS, DFAS will issue the tax reporting on behalf of the employing agency even when the award of back pay or damages is made from the Judgment Fund. See [31 CFR 256.51](#).

## 5.0 CONTINUATION OF PAY (COP) (INJURY COMPENSATION) (0605)

### 5.1 General (060501)

The Federal Employees' Compensation Act (FECA), [5 U.S.C., Chapter 81](#), provides for the payment of workers' compensation benefits and authorized medical care for all civilian employees of the United States for disability due to personal injury sustained while in the performance of duty. The U.S. DOL OWCP administers FECA through district offices. Each HRO maintains the address of the district office servicing its region. The regulations governing injury compensation are contained in [20 CFR Part 10](#). For additional information, see Injury Compensation in DoDI 1400.25-V810. See also the DOL's Division of Federal Employees' Compensation [\(DFEC\) Procedure Manual](#).

### 5.2 45 Calendar Days of COP (060502)

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 the continuation of regular pay, or COP, for a period not to exceed 45 calendar days per occurrence. The pay is subject to OASDI and/or Medicare, federal, state, and local tax, retirement, and all other normal deductions. For a separated employee (unless the date of termination has been established prior to the injury), COP will be subject to OASDI and/or Medicare, federal, state, and local tax, where appropriate. The PRO may not take any additional deductions. The injured employee's pay will continue unless the DOL denies the claim.

### 5.3 Calculation of COP (060503)

#### 5.3.1. Computation of COP Days

5.3.1.1. Calendar Days. Days are counted on a calendar basis. If an employee is charged COP on Friday and the disability continues through the weekend, then the employee is charged COP for Saturday and Sunday. Holidays, weekends, and regular days off following a COP day count as COP days. If 1 hour is used to see a physician and 7 hours are worked, the day is still counted as 1 full day of COP. The employee's time and attendance must reflect the actual hours worked to accurately reflect the employee's work record.

5.3.1.2. Period Charged to COP. Unless the injury occurs before the beginning of the workday, time lost on the day of injury must be charged to administrative leave. The period charged to COP begins with the first day or shift of disability or medical treatment following the date of injury, provided the absence began within 45 days after the injury. COP must be charged for weekends and holidays if the medical evidence shows the employee was disabled on the days in question. For example, if the physician indicates that disability will continue only through Saturday for an individual who has Saturday and Sunday off, then COP will be charged only through Saturday.

5.3.1.3. Full Days Charged to COP. If work stoppage occurs for only a portion of a day or shift other than the date of injury, then a full day of COP will be counted against the

45 calendar day entitlement, even though the employee is not entitled to COP for the entire day or shift. For example, if an employee who has returned to work uses 3 hours in order to receive physical therapy for the effects of the injury, then the employee is entitled only to 3 hours of COP, even though 1 full calendar day will be charged against the 45-day limit. If an employee is absent for all or part of the same remaining workday, then the time lost must be covered by leave, as appropriate, since absence beyond the time needed to obtain the physical therapy must not be charged to COP.

5.3.1.4. Full Days Charged When Employee Works Partial Days. If the employee is partially disabled following the injury and continues to work several hours each workday, then each day or partial day of absence from work is chargeable as a full day of COP against the 45-day period.

5.3.2. Recurrence of Disability. If an employee returns to work and then becomes disabled again and stops work, the PRO may 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, the PRO must 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 the OWCP and is not entitled to COP. See 20 CFR 10.207.

5.3.3. Weekly Pay Rate for COP. 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 or decrease (e.g., promotion, demotion, and WGI increases) occurs during the 45-day period, then the PRO will use the new salary rate as of the effective date of the change for computing the remaining COP. See 20 CFR 10.216. For COP purposes, weekly pay rate is determined as follows:

5.3.3.1. 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.

5.3.3.2. 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.



5.3.3.3. 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 1-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 1 year before the date of injury.

5.3.4. Light-Duty Status. When a determination has been made that an injured employee may return to duty in a light-duty status within the first 45 days of disability following an injury, each day or portion of a day in light duty status may be counted as 1 day of COP. This also includes any day or portion of a day worked while under injury-related work restrictions imposed by a physician.

5.3.4.1. Official Personnel Actions. An employee performing light duty because of an on-the-job injury normally is not charged COP. However, COP must be charged if an employee has been assigned light duty by the SF 50 and pay loss results. The employee must be furnished with documentation of the personnel action before the effective date of the action. 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 to:

5.3.4.1.1. 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,

5.3.4.1.2. Change the employee to a lower grade or to a lower rate of basic pay, or

5.3.4.1.3. 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.

5.3.4.2. Loss of Night Differential Pay. When an employee is detailed to a work schedule involving the loss of night differential pay earned before the injury, COP days will be charged, even though the employee is working. The cost of COP is calculated as the difference between the employee's normal pay and pay earned in the detail position.

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

5.3.5. Return to Duty. The injury compensation program administrator may contact the attending physician in writing to inquire about the employee's estimated return to light duty and/or contact the servicing OWCP office for an expected date of return to duty.

#### 5.4 Conversion and Termination of COP (060504)

5.4.1. Denial of COP. Absences charged to COP and later disapproved by the DOL will require conversion to sick or annual leave. If sick or annual leave is not available, then COP will be converted to LWOP and reimbursements to the government must be made for any gross earnings paid while in a COP status. Due process procedures apply to the collection of any such debt owed by an employee. The amount collected must include payments made on behalf of the employee and any adjustments to the deposit fund accounts by the PRO. COP is not payable when one of the following occurs (see 20 CFR 10.220):

5.4.1.1. A traumatic injury is not the cause of the employee's disability;

5.4.1.2. The employee is not a U.S. or Canadian citizen;

5.4.1.3. The employee does not file a written claim within 30 days of the date of injury;

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

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

5.4.1.6. 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

5.4.1.7. The work did not stop until more than 45 calendar days after the injury.

5.4.2. 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 [\*\*\*DOL 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 CFR 10.221.

5.4.3. 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 CFR 10.222):

5.4.3.1. 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;

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

5.4.3.3. 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;

5.4.3.4. The OWCP provides notification to the activity to terminate COP;

5.4.3.5. COP has been paid for 45 calendar days;

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

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

5.4.4. Disciplinary Actions and COP. 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 CFR 10.222.

5.4.5. 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 COP has already been paid, then COP may be charged to annual or sick leave or considered an overpayment of pay in accordance with 5 U.S.C. § 5584. See 20 CFR 10.223.

## 5.5 Use of Annual or Sick Leave Instead of COP (060505)

5.5.1. 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. An employee may not use annual or sick leave to delay or extend the 45-day COP period.

5.5.2. One-Year Limitation to Elect COP in Lieu of Annual or Sick Leave. There are times when the employee may elect sick, annual, 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 if the employee makes the request within 1 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.

### 5.5.3. Leave Status of Employees

5.5.3.1. 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 leave, sick leave, advanced leave, or LWOP until the OWCP approves the employee's claim for compensation. The employee should be in an LWOP status if the employee is receiving the OWCP compensation after the 45-day period.

5.5.3.2. 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 leave, sick leave, advanced leave, or LWOP while awaiting a decision from the OWCP on their claims. Employees must be in an LWOP status while receiving the OWCP compensation. These employees may buy back, and have reinstated, annual and sick leave used for time lost from work due to injury if the OWCP approves their claims for compensation.

## 5.6 Buy Back of Leave (060506)

5.6.1. 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 the PRO to buy back the leave used (referred to as "leave buy back"). An employee may not receive dual compensation for pay and leave plus the OWCP compensation for lost time due to injury. Leave will be reinstated when bought back. See 20 CFR 10.425.

5.6.2. Time Limit for Submitting a Claim for Leave Buy Back and Payment Arrangements. The [\*DOL Form 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. The PRO will arrange with the OWCP to have compensation for the buy back period paid directly to that office. After receipt, the PRO will notify the employee of the repayment amount and method of repayment.

5.6.3. 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.

5.6.4. Leave 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 the OWCP compensation for that leave. These employees may not buy back the annual or sick leave and have it reinstated.

5.6.5. Computation. The PRO must recover any gross amount paid for leave used during a period retroactively covered by the OWCP compensation. Certain deductions are recoverable by payroll adjustment. The amount recovered from the employee and/or the OWCP will depend

on whether payment for leave is paid in the current or prior year. See Figures 6-3 and 6-4 for buy back of sick leave computation examples.

#### 5.6.6. Current Year Recovery

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

5.6.6.1.1. Bonds,

5.6.6.1.2. Savings allotments,

5.6.6.1.3. Alimony/Child support,

5.6.6.1.4. Rent,

5.6.6.1.5. Indebtedness to the United States, and

5.6.6.1.6. Other deductions the employee received value but not otherwise collected.

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

5.6.6.2.1. CSRS or FERS;

5.6.6.2.2. OASDI and/or Medicare;

5.6.6.2.3. Federal, state, and local taxes;

5.6.6.2.4. FEHB (if the OWCP payment is for more than 28 days);

5.6.6.2.5. FEGLI (basic and optional);

5.6.6.2.6. TSP;

5.6.6.2.7. Union dues;

5.6.6.2.8. Charitable contributions; and

5.6.6.2.9. Military service credit deposits and civilian service credit deposits.

5.6.6.3. Other. The PRO must 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 the OWCP must be identified as a cash refund on a voucher for disbursement and/or collection.

#### 5.6.7. Prior Year Recovery

5.6.7.1. Amount Collected. The amount to be collected for leave payments made during a prior year will be the gross amount less CSRS/FERS, OASDI and/or Medicare, TSP, FEHB (if the OWCP payment is for more than 28 days), and FEGLI (basic and optional). The PRO must post the credit to the 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 of the adjustment along with an explanation in the “Remarks” column. Adjustments are unauthorized for federal, state, and local income taxes.

5.6.7.2. Separating Employees. When an employee separates or at the end of the payroll year, the PRO must prepare a W-2, as appropriate, but may not include any tax adjustments for a prior year. The PRO must prepare a certified statement to go with the current year’s 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 W-2 were not reduced by the amount of the refund.

5.6.8. Partial Payroll Deductions. If circumstances permit, the employee may repay the amount due (after recovery of the amount repaid by the OWCP) through partial payroll deductions. The PRO will not reverse deductions under subparagraph 5.6.6.2 until the full amount is paid.

5.6.9. Recrediting of Leave. Credit the full amount of leave used during the buy back period to the employee’s leave account. The PRO will not recredit leave bought back until the total amount is repaid.

## 6.0 EMERGENCY EVACUATION PAYMENTS (0606)

### 6.1 Purpose (060601)

The [DoD Joint Travel Regulations, Chapter 6](#), identifies the responsibilities of the PRO in the event the proper authorities declare an official emergency evacuation of civilian employees. The PROs will use the 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 United States based on the provisions of [5 CFR 550, subpart D](#) and outside of the United States based on the provisions of the Department of State Standardized Regulations ([DSSR](#)), [Chapter 600](#).

6.1.1. Eligibility. This guidance pertains to civilian DoD and DoD component employees when an official evacuation is ordered.

6.1.2. Forms. The DoD [\(DD\) Form 2461](#), Authorization for Emergency Evacuation Advance and Allotment Payments for DoD Civilian Employees, authorizes and records emergency payments to employees and dependents. The 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., the SSA, the IRS, and the OPM), to state and local taxing/welfare authorities, and to certain private organizations for crediting payments to the employee's account. The PRO must receive DD 2461 before making payment of amounts due the evacuated civilian employees or family members.

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

6.1.3.1. For employees at foreign installations, see the DSSR, Chapter 600.

6.1.3.2. For employees within the United States, see 5 CFR 550, subpart D.

6.1.4. 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. The PRO must make all advance payments (and any necessary adjustments) in accordance with the DoD component's procedures.

## 6.2 Transmission of Data to Safe-Haven Post (060602)

6.2.1. Methods of Transmission. After authorities issue an evacuation order, the PRO must immediately forward all significant payroll data from the evacuated installation to the safe-haven post.

6.2.2. 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.

## 6.3 Action Upon and During Evacuation (060603)

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

## 6.4 Actions After Evacuation (060604)

6.4.1. Review of Accounts. The PRO with jurisdiction over the employee's account will review the account for necessary adjustments at the earliest possible date after the evacuation is terminated (or earlier if circumstances apply), or after the employee returns to his or her duty station, or when the employee is officially reassigned. See 5 CFR 550.408.

6.4.2. Reconcile Amounts Paid. The PRO will adjust the employee's pay based on the rates of pay, allowances, or differentials, if any, to which he or she would otherwise be entitled. Adjustments will reflect any advance payments the employee may have received. If the employee is indebted for any part of the advance payment(s) made to him or her, or to his or her dependent(s), or designated representative, the PRO with jurisdiction over the account must recover the debt, unless there is an approved waiver. See 5 CFR 550.408.

## 6.5 Evacuation Payments During a Pandemic Health Crisis (060605)

An agency may direct an employee to work from home or a mutually agreed upon alternative location during a pandemic health crisis. The designated location is the safe-haven location during a pandemic health crisis and used as an alternate worksite during the pandemic crisis. The agency may make special allowance payments to the employee, as determined on a case-by-case basis, to help cover additional expenses caused by the crisis. See 5 CFR 550.409 [and also the DSSR, Chapter 600](#).



Figure 6-1. Example 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
TSP 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. Example 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. Example 1 - Buy Back of Sick Leave Computation – 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	(437.95)
Amount of OWCP check (75% X 680.80)	510.60
Amount due employee	\$ 72.65

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	(591.77)
Amount of OWCP check (75% X 680.80)	510.60
Amount due from employee	(\$81.17)

Figure 6-4. Example 2 - Buy Back of Sick Leave Computation – Less Than Full Pay Period

PP#	HRS	GROSS	CSRS	FICA		FEHB	FEGLI	OPT	CHARITY	UNION	ALLOT	NET
				MED	TAX			FEGLI		DUES		
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)

## \*REFERENCES

**CHAPTER 6 – SPECIAL ACTIONS (MISCELLANEOUS ACTIONS)****2.0 – UNEMPLOYMENT COMPENSATION FOR FEDERAL EMPLOYEES (UCFE) (0602)**

2.1.2	5 U.S.C., Chapter 85 20 CFR Part 609 DoDI 1400.25-V850
2.2	DoDI 1400.25-V850
2.2.1	DoDI 1400.25-V850
2.2.2	20 CFR 609.21-22 UCFE Instructions for Federal Agencies, Chapter VI
2.3.2	20 CFR 609.21(b)
2.4.2	5 U.S.C. § 8501
2.6	National Personnel Records Center 5 U.S.C. § 552a

**3.0 – CLAIMS FROM EMPLOYEES FOR ADDITIONAL COMPENSATION (0603)**

3.1.1	31 U.S.C. § 3702 Public Law 104-316 Transferred Functions DoD FMR Volume 5, Chapter 12
3.1.2	5 CFR Part 178 DoD FMR Volume 5, Chapter 12
3.1.3	5 CFR 551.703 5 CFR 551.705
3.1.4	31 U.S.C. § 3702 5 CFR 178.104 5 CFR 551.702

**4.0 – BACK PAY UNDER 5 U.S.C. § 5596 (THE BACK PAY ACT) (0604)**

4.1.1	5 U.S.C. § 5596 5 CFR 550, subpart H
4.1.3	5 U.S.C. § 5596
4.1.4	29 CFR 1614.501 42 U.S.C. § 2000e 42 U.S.C. § 1981a
4.2	5 CFR 550.805
4.3.1	5 CFR 550.804
4.3.2	29 U.S.C. § 207 5 CFR 551, subpart G
4.3.3	31 U.S.C. § 3702

## \*REFERENCES (Continued)

4.4.1	5 CFR 550.805
4.4.2	5 CFR 550.805(c) 5 CFR 550.805(d)
4.4.3	5 CFR Part 531
4.4.7	5 CFR 550.904
4.4.8	5 U.S.C. § 5343(c)(4) 5 CFR 532.511
4.5.1	5 CFR 550.805(e)(1)
4.5.2.1	5 CFR 550.805(e)(1)
4.6.1	5 U.S.C. § 5596 5 CFR 550.806
4.6.2	5 CFR 550.805(e)(1) 5 CFR 550.806(b)
4.6.3	5 CFR 550.806(g)
4.7.1	5 CFR 550.805(e)(2)
4.7.1.2	5 U.S.C. § 8342(a)
4.7.1.4	5 U.S.C. § 5551(a)
4.7.3.2	5 U.S.C. § 5584
4.8	5 CFR 550.805(e)(3)
4.8.1	5 U.S.C. § 8334(c) 5 CFR 842.304(a)(4)
4.9.1	5 CFR 550.805(g) 5 U.S.C. § 5596(b)(1)(B)
4.9.1.3.2	DoD FMR Volume 8, Chapter 5
4.9.2	5 CFR 630.502 5 CFR 550.805(d)
4.10.1	5 U.S.C. § 8908
4.10.2	5 U.S.C. § 8908 FEHB Program Handbook
4.10.3	5 CFR 880.304 FEGLI Handbook
4.11.1	5 CFR 1605.2 5 CFR Part 1605 DoD FMR Volume 8, Chapter 11
4.11.2	5 U.S.C. § 8432 5 CFR 1605.11
4.12	5 U.S.C. § 5596(b)(1)(A)(ii) 5 U.S.C. § 7701(g) 5 CFR 550.807

## \*REFERENCES (Continued)

4.13.2	DOL's Comparison of State Unemployment Insurance Laws, Chapter 5, Table 5-15 65 Comp. Gen 865 (1986) DoDI 1400.25-V850
4.14.1	IRS Memorandum PMTA 2009-035 IRS Publication 957
4.14.4	31 U.S.C. § 1304 31 CFR 256.51

## 5.0 – CONTINUATION OF PAY (COP) (INJURY COMPENSATION) (0605)

5.1	5 U.S.C., Chapter 81 20 CFR Part 10 DoDI 1400.25-V810 DOL's DFEC Procedure Manual
5.3.2.	20 CFR 10.207
5.3.3	20 CFR 10.216
5.3.4.3	20 CFR 10.217 20 CFR 10.517
5.4.1	20 CFR 10.220
5.4.2	20 CFR 10.221
5.4.3	20 CFR 10.222
5.4.4	20 CFR 10.222
5.4.5	5 U.S.C. § 5584 20 CFR 10.223
5.6.1	20 CFR 10.425

## 6.0 – EMERGENCY EVACUATION PAYMENTS (0606)

6.1	DoD Joint Travel Regulations, Chapter 6 5 CFR 550, subpart D DSSR, Chapter 600
6.1.3.1	DSSR, Chapter 600
6.1.3.2	5 CFR 550, subpart D
6.4.1	5 CFR 550.408
6.4.2	5 CFR 550.408
6.5	5 CFR 550.409 DSSR, Chapter 600