

VOLUME 8, CHAPTER 10: “SPECIAL CATEGORY EMPLOYEES”**SUMMARY OF MAJOR CHANGES**

All changes are 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 [January 2014](#) is archived.

PARAGRAPH	EXPLANATION OF CHANGE/REVISION	PURPOSE
All	Revised hyperlinks and formatted to comply with current administrative instructions.	Revision
1001	Added “General,” “Purpose,” and “Authoritative Guidance” sections.	Additions
100509.B	Revised information for Death Gratuity under Title 5, United States Code, section 9904.	Revision
1011	Added information for Temporary and Term Appointments.	Addition
101503.A.3	Added information for on-duty sleep and meal periods for Emergency Medical Technicians.	Addition
1023	Added new section, “De Facto Employees” for clarity.	Addition
1024	Added new section for “Highly Qualified Experts (HQEs) and HQEs-Senior Mentors (HQEs-SMs)” with revised policy.	Addition

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CHAPTER 10**SPECIAL CATEGORY EMPLOYEES*****1001 GENERAL**

100101. Purpose

This chapter provides guidance on special category employees. Special category employees include those whose retirement, leave, or pay may be specific to an occupational series or tour of duty. Special category employees also include employees deemed legally incompetent, missing or deceased, and de facto employees.

100102. Authoritative Guidance

Specific statutes, regulations, and other guidance are referenced under each section of this chapter.

1002 OVERSEAS EMPLOYEES

100201. General

The general pay provisions for General Schedule (GS) employees **who work** stateside also apply to GS employees stationed overseas. The Department of Defense Instruction (DoDI) [1400.25](#), Department of Defense (DoD) Civilian Personnel Management System, [Volume \(V\)1250](#), Overseas Allowances and Differentials, authorizes and governs the payment of allowances and differentials to DoD civilian employees who are citizens of the United States (U.S.) and located in a foreign area. The Department of State Standardized Regulations ([DSSR](#)) prescribe eligibility requirements, the applicable rates to be paid, and the provisions to be observed in paying overseas foreign area allowances and differentials to employees.

100202. Foreign Nationals

A. **Authority.** Title 22 United States Code (U.S.C.), section 3968 ([22 U.S.C. § 3968](#)) establishes the pay for foreign national employees. Delegation of authority is established by [DoDI 1400.25 V1231](#), Employment of Foreign Nationals. Authority is delegated to each military department to re-delegate to its Service Component Commanders the authority to establish salaries, wages, fringe benefits, related compensation items, and other terms of employment for foreign national employees. Additional guidance can be found in the DoD Manual for Foreign National Compensation, [DoD Manual 1416.08](#), which prescribes procedures and instructions for the development of compensation programs for foreign nationals employed by the U.S. Forces in foreign areas.

B. **Entitlements.** The Wage and Salary **Division** of the Defense Civilian Personnel Advisory Service (DCPAS) establishes wage schedules for foreign national employees

based on locality wage surveys, or other available data, as provided by the activity labor agreement between the U.S. and the foreign country. The basis for salary determinations and deductions are contained in the employing activity's applicable inter-country agreements and personnel regulations.

100203. Canadian Employees

A. General. Canadian national direct-hire employees receive compensation comparable to that paid to Canadian Government employees in the same locality and performing essentially the same work with relatively the same degree of responsibility.

B. Authority. DoDI 1400.25-V1231 contains the authority for the administration of foreign nationals, including Canadians.

C. Entitlements

1. Holidays. Canadian legal holidays are observed with no charge to leave. If an emergency requires work on a Canadian holiday, the pay for an additional day is provided, or the employee is given compensatory time off. The following are the legal Canadian holidays:

- a. New Year's Day (January 1);
- b. Good Friday (March-April);
- c. Easter Monday (March-April);
- d. Victoria Day (May 24);
- e. Canada Day (July 1);
- f. Civic Holiday (1st Monday in August);
- g. Labor Day (1st Monday in September);
- h. Thanksgiving Day (Oct-Nov);
- i. Remembrance Day (November 11);
- j. Christmas Day (December 25); and
- k. Boxing Day (December 26).

2. Absence and Leave. **Employees accrue** sick leave at a rate of 4 **and one-quarter** hours each pay period except for the last pay period of the leave year. During the last

pay period, 6 and one-quarter hours accrue. The total annual accumulation is 112 and one-half hours or 15 days of sick leave.

3. Work-Related Injury or Illness. The Federal Employees' Compensation Act covers work-related injuries or illness.

D. Pay. Salaries are based on rates in approved agreements between the Treasury Board of Canada and the Public Service Alliance of Canada for Canadian Civil Service Employees. The effective dates are the same as in the basic Canadian agreements. Pay is in Canadian dollars on a biweekly basis.

E. Hours of Duty. The workday is 7 and one-half hours, and the workweek is 37 and one-half hours.

F. Step Increases. Employees receive step increases until they reach the top step. Step increases require written certification by the supervisor that an employee has demonstrated an acceptable level of competence during the waiting period. Certification is completed and forwarded to the Human Resources Office (HRO) for processing prior to the effective date of the step increase. Step increases are effective at the beginning of the first pay period following the effective date of the anniversary.

G. Retroactive Pay. Retroactive pay adjustments are made based on agreements covering Canadian Civil Service employees. These adjustments are payable to employees separated during the retroactive period.

H. Leave Without Pay (LWOP). Aggregate periods of LWOP of more than 80 hours during the waiting period for a step increase will delay the increase. Extended periods of LWOP also affect leave accruals.

I. Awards. Canadian National employees generally are eligible for all awards, except quality increases.

J. Canada Pension Plan. The civilian payroll office (PRO) deducts employee contributions for the Canada Pension Plan from employee salaries. The U.S. Government pays the employer's contribution.

K. Registered/Retirement Pension Plan. The U.S. Government pays an amount equivalent to the employees' contributions up to a legal maximum of annual salaries.

L. Severance Pay. Employees are paid a lump-sum amount according to the following:

1. Lay-Off. Two weeks of pay for the first complete year of continuous employment and 1 week of pay for each complete additional year of continuous employment with a maximum benefit of 28 weeks of pay.

2. Resignation. When an employee resigns with 10 or more years of continuous employment, they will be paid one-half week of pay for each complete year of continuous employment up to a maximum of 26 years with a maximum benefit of 13 weeks of pay.

3. Retirement. Upon retirement, when an employee would be entitled to an immediate annuity, or to an immediate annual allowance had the employee been under the Canadian Government Public Service Superannuation Act, an employee is paid 1 week of pay for each complete year of continuous employment with a maximum benefit of 28 weeks of pay.

4. Death. Upon death, the PRO pays 1 week of pay for each complete year of continuous employment, with a maximum benefit of 28 weeks of pay. Payment is made to the employee's estate.

M. Ontario Health Insurance Plan. Employees enrolled in the Ontario Health Insurance Plan, are reimbursed an amount equivalent to the Canadian Government contributions under the plan. Claims for reimbursement, supported by receipts, are submitted annually by the end of the calendar year.

N. Unemployment Insurance. The U.S. Government contributes an amount equal to that paid by a Canadian Government employer to the Canadian fund. The PRO deducts the employee's contribution from his or her salary. See information on unemployment insurance for Canadian employees in Chapter 6.

O. Canadian Income Tax. The PRO deducts an employee's tax contributions from his or her biweekly salary.

P. Accidental Life Insurance. This is a voluntary contribution deducted from the employee's biweekly salary at the employee's request.

1003 OTHER THAN FULL-TIME CAREER EMPLOYEES

100301. General

This section provides guidance regarding employees who do not work the typical 40-hour workweek established under 5 C.F.R. 610.111. Such employees include part-time, intermittent, seasonal, and piecework employees.

100302. Part-Time Employment

Part-time employment generally is no less than 16 hours and no more than 32 hours per week under a schedule consisting of an equal or varied number of hours per day. Agencies may permit employees to work less than the minimum 16 hours per week based on guidance provided in Title 5, Code of Federal Regulations (C.F.R.) Section 340.202(b). Employment may be between 32 and 64 hours in a biweekly pay period in the case of a flexible or compressed work schedule. See 5 U.S.C. § 3401(2). Part-time employment does not include employment on a temporary or

intermittent basis. A part-time employee must have a regular schedule of at least 1 hour, set in advance, in each administrative workweek in each biweekly pay period. See 5 C.F.R. Part 340 and [5 U.S.C. § 3401-3408](#).

A. [Benefits](#). Part-time permanent employees are eligible to receive the same benefits as full-time employees. On a prorated basis, part-time employees are eligible to receive leave, retirement, and health and life insurance coverage. See [Office of Personnel Management \(OPM\) Hiring Authorities](#).

1. [Leave](#)

a. [Annual Leave](#). Part-time employees, who have a regular tour of duty established in advance of one or more days during each administrative workweek, earn annual leave on a prorated basis based on the total number of hours in a pay status in each biweekly pay period, excluding overtime hours. See [5 U.S.C. § 6302](#). Hours in a pay status include straight time and additional hours worked, up to a total 80 hours in the biweekly pay period. Maximum carryover at the end of the leave year is the same as for a full-time employee. Leave is charged for an absence during the hours an employee is regularly scheduled to work. See Chapter 5.

b. [Sick Leave](#). Part-time employees with a regularly scheduled tour of duty shall earn and be credited with 1 hour for each 20 hours in a pay status. See [5 U.S.C. § 6307](#).

c. [Other Leave](#). Part-time employees are eligible for other leave categories (e.g., absent without leave (AWOL), LWOP, court leave, funeral leave, or excused absences) on the same basis as full-time employees. The rules governing the Family and Medical Leave Act of 1993 and the Federal Employees Family Friendly Leave Act also apply to part-time employees. See Chapter 5.

d. [Military Leave](#). Each member of a Reserve Component who is an employee of the U.S. is entitled to a leave of absence from his or her duties without loss of pay, time, or efficiency rating for each day, but for no more than 15 days in any fiscal year in which he or she is on active duty or training. Eligible part-time employees accrue military leave that is prorated based on the tour of duty. See [5 U.S.C. § 6323\(a\)\(2\)](#) and Chapter 5.

e. [Holiday Leave](#). When a holiday falls on a scheduled workday, a part-time employee is entitled to basic pay for the number of hours the employee is regularly scheduled to work on that day, not to exceed 8 hours, unless covered by a compressed work schedule. A part-time employee is not entitled to pay for a holiday that falls on a day the employee is not normally scheduled to work.

f. [“In Lieu of” Holiday](#). An “in lieu of” holiday is granted to replace the day designated as a holiday by Federal statute or executive order when the holiday falls on a full-time employee’s non-work day. Under [DoDI 1400.25-V610](#), Hours of Duty, part-time employees are not entitled to “in lieu of” holidays. However, if a part-time employee is prevented

from working because the activity is closed, he or she may either be placed in an appropriate leave category or be excused (placed on administrative leave) without loss of pay for the number of hours that he or she is regularly scheduled to work on that day.

2. Retirement. Part-time employees are subject to deductions for retirement benefits on the same basis as full-time employees.

3. Federal Employees' Health Benefits (FEHB). Part-time employees are eligible to participate in the FEHB Program. See the [FEHB Handbook](#). The cost to the employee is the total cost of health benefits (both the employee and the employer's share) less the prorated government contribution. See Chapter 11 for more information on FEHB for part-time employees.

4. Federal Employee Group Life Insurance (FEGLI)

a. Part-time Eligibility. A part-time employee is eligible to participate in the FEGLI Program. Participation is voluntary and eligible part-time employees are automatically covered under the basic insurance option unless they waive the insurance coverage. The part-time employee's basic insurance amount is the greater of their annual rate of basic pay rounded up to the next even \$1,000 plus \$2,000, or a flat \$10,000. Basic life insurance coverage is effective from the first day the employee is in an official duty status. Employees may elect additional optional insurance within 31 days from their appointment date. All new employees must complete a [Standard Form](#) (SF) 2817, Life Insurance Election, to cancel basic insurance or to elect additional optional insurance. If a part-time employee becomes a full-time employee in the middle of a pay period, the amount withheld for basic life insurance is based on the amount of insurance last in force for the employee during the pay period (that is, the full-time rate). See the [FEGLI Program Handbook Introduction](#).

b. Nonpay Status. FEGLI coverage continues for up to 12 months when an employee enters nonpay status. [FEGLI ends at the end of the 12 months with a 31-day extension of coverage and a right to convert to an individual policy](#). If the employee is in nonpay status for part of the pay period, withholding for premiums and the government contribution is still required. [The employee is not required to pay premiums while on LWOP unless they are receiving benefits from the Department of Labor, Office of Workers' Compensation Program \(OWCP\)](#). See the FEGLI Handbook for special nonpay situations during which the employee must continue to make premium payments.

c. Part-Time Annual Rate of Basic Pay. For life insurance purposes, the annual pay for a part-time employee is the annual rate of basic pay applicable to his or her tour of duty in a 52-week work year. For example, an employee whose pay is \$56,282 per annum, employed half-time, would have an annual pay for insurance purposes of \$28,141.

d. Concurrent Part-Time Employment. An employee may be employed on a part-time basis in more than one Federal agency and eligible for FEGLI coverage in one or both of the positions. However, an employee may not maintain more than one FEGLI election even if he or she is serving in more than one position. See the FEGLI Handbook (under

“Concurrent Employment”) for exceptions including guidance concerning part-time employees in nonpay status at one of the agency positions. The amount of insurance is based on the sum of annual pay for all positions including annual pay for a position excluded from life insurance coverage.

(1) The agency that pays the greater of the two salaries makes the withholding and pays the government contribution.

(2) The agency must contact the other employing office, confirm the salaries paid and assume responsibility for withholding all of the required premiums from the salary.

(3) The agency that pays the greater salary to the individual must also provide the government contribution for basic insurance based on the aggregate amount of basic coverage the employee has from all covered positions. This eliminates the need for the other employing office to make partial withholdings and government contributions.

B. Pay. Gross basic pay is computed by multiplying the employee’s hourly rate of pay by the total of the hours worked and the hours of paid leave during the pay period.

1. Overtime Pay. Under [5 U.S.C. § 5542](#), overtime pay for eligible part-time employees is authorized only for work over 8 hours a day or 40 hours in a week.

2. Compensatory Time Off. Under [5 U.S.C. § 5543](#), part-time employees may elect to take compensatory time off in lieu of overtime pay. Under [5 U.S.C. § 5550a](#), part-time employees may elect to perform compensatory overtime work to replace time taken off for religious observances.

3. Sunday Premium Pay. Under [5 U.S.C. § 5544\(a\)](#) and [5 U.S.C. § 5546\(a\)](#), a part-time employee is entitled to pay at his or her rate of basic pay plus premium pay at a rate equal to 25 percent of his or her basic pay for each hour of Sunday work. [Sunday premium pay may be paid only to a part-time employee who has Sunday as part of his or her non-overtime regularly scheduled tour of duty \(for example: Sunday through Thursday basic workweek\). An employee with a tour of duty of Monday through Friday who works either regularly scheduled overtime or irregular or occasional overtime work on a Sunday is entitled to overtime pay and is not entitled to Sunday premium pay.](#) An employee must perform actual work to receive Sunday premium pay. Employees who do not work during their Sunday tour of duty because they are on paid leave or excused absence, using compensatory time off or credit hours, or because Sunday is a holiday, are not entitled to Sunday premium pay. See *Fathauer v. United States*, 566 F.3d 1352 (Fed. Cir. 2009) and [OPM Memorandum](#), dated December 8, 2009, for additional guidance. Information pertaining to Sunday premium pay for full-time employees is located in Chapter 3.

4. Night Differential Pay. Under [5 U.S.C. § 5545](#), GS part-time employees are entitled to night pay for work performed between 6:00 p.m. and 6:00 a.m. as part of their regularly scheduled administrative workweek. See Chapter 3.

5. Night Shift Differential Pay. Under [5 U.S.C. § 5343\(f\)](#), Federal Wage System (FWS) part-time employees who work a regular scheduled shift of 8 hours or less are entitled to night shift differential. A majority of the hours worked, however, shall be on the second or third shift. For information on [pay](#) for the second and third shifts, see Chapter 3.

6. Holiday Premium Pay. Under 5 U.S.C. § 5546, a part-time employee who works on a holiday that falls during his or her regularly scheduled hours is entitled to holiday premium pay only for those scheduled hours. However, part-time employees who are excused from work on a holiday may only receive their rate of basic pay for the hours they are regularly scheduled to work on that day. Additionally, part-time employees do not receive holiday premium pay for working on an “in lieu of” holiday that is scheduled for full-time employees. Part-time employees are not entitled to an “in lieu of” holiday and, therefore, they are not entitled to holiday premium pay for work performed on that day.

100303. Intermittent Employment

A. General. The term “intermittent” relates to an employee’s work schedule and not the appointment type. Intermittent employees can be either permanent or temporary employees. Intermittent employees work sporadically and have no fixed or guaranteed schedules. This is other than full-time employment in which employees serve under an excepted or competitive service appointment without a regularly scheduled tour of duty. See 5 C.F.R. 340.403. An intermittent work schedule is appropriate for a position involving work that is sporadic and unpredictable such that a regular tour of duty cannot be scheduled in advance.

1. Pay. Intermittent employees are paid only for hours of work performed while in a duty status. The gross basic pay is computed by multiplying the employee’s hourly rate of pay by the total of the hours worked during the pay period. Because employees working on an intermittent basis do not maintain a regularly scheduled workweek as defined in 5 C.F.R. 610.102, [intermittent employees](#) are not eligible for pay for holiday work, night pay or night shift differential or Sunday [premium pay](#). See [5 C.F.R. 532.509](#), [5 C.F.R. 550.121](#), and 5 C.F.R. 550.103. Intermittent employees are entitled to overtime when appropriate. Intermittent employees receive their normal salary for working holidays, Sundays, or during a night shift. An exception exists for an FWS intermittent employee assigned to a regularly scheduled shift of fewer than 8 hours. The FWS employee in this situation is entitled to night shift differential pay if a majority of the hours are worked during the period when night shift differential is payable. See OPM [Appropriated Fund](#) Operating Manual for FWS Employees, [Subchapter S8-4](#). A GS intermittent employee is not eligible for night pay differential unless temporarily assigned to a regular tour of duty with night work.

2. Leave. Intermittent employees do not earn annual or sick leave.

3. Sick Leave Recredit upon Transfer. When a full or part-time employee transfers to an intermittent job to which he or she cannot transfer previously earned sick leave, the sick leave must be held in abeyance until the employee returns to the original leave system under which the leave was earned. The PRO must recredit the sick leave if the employee returns to the original leave system on or after December 2, 1994, without regard to the original date of transfer. See 5 C.F.R. 630.502.

4. Lump-Sum Annual Leave Payment. When a full-time or part-time employee is changed to an intermittent employee, any unused annual leave is paid as lump sum. A lump-sum payment is not required when the employee is part of a continuing program under which employees are required to return to full-time or part-time employment after a period of intermittent employment (e.g., student trainee). See 5 C.F.R. 550.1203.

C. Deductions

1. Retirement. Intermittent employees are not eligible for retirement coverage except when the intermittent employment follows employment in a covered position, and there has not been a break in service of more than 3 days. Intermittent employees are subject to Social Security and Medicare deductions. See [5 C.F.R. 831.201](#).

2. FEHB. Intermittent employees who are expected to work 130 hours per month for at least 90 days are eligible to enroll in an FEHB plan. These eligible employees will receive the same government contribution as full-time permanent employees. See [5 C.F.R. 890.102\(c\)\(6\)](#) and [Benefits Administration Letter \(BAL\) 14-210](#).

3. FEGLI. Intermittent employees are not eligible to participate in FEGLI except when the intermittent employment follows employment in a covered position, there has not been a break in service of more than 3 days, and the employee is expected to return to a covered position. [For insurance purposes](#), the annual pay for intermittent employees is the annual rate that they were receiving at the end of the pay period or, in the event of death or dismemberment, the annual rate they were receiving at the time of the death or accident. For example, if an intermittent employee is paid \$17.84 per hour, his or her rate of pay fixed by law is \$37,232 ($17.84 \times 2,087 = \$37,232$). If this employee works only 2 days or 16 hours during a particular pay period, the annual rate of pay for insurance purposes is based on actual time worked during that pay period. In this example, \$7,421 is the annual rate of pay for insurance purposes ($17.84 \times 16 \times 26 = \$7,421/\text{year}$). However, insured employees whose annual pay is \$8,000 or less are covered for the minimum \$10,000 of basic insurance. See the FEGLI Handbook.

100304. Seasonal Employment

[The term “seasonal” relates to an employee’s work schedule and not the appointment type.](#) Seasonal employment was established to allow agencies to recruit and train employees for duty that occurs on a predictable yearly basis and is expected to last less than 12 months each year. See 5 C.F.R. 340.402. As with other career employees, seasonal employees are entitled to receive full

benefits. At the end of the season, the employee is placed into a non-duty/nonpay status and will be recalled at the onset of the next season in accordance with a pre-established agreement between the agency and the employee. Because there is no difference in “on-call employment” and “seasonal employment,” [OPM has eliminated the use of the term “on-call employment.”](#)

A. Pay. Gross basic pay is computed by multiplying the employee’s hourly rate of pay by the total of the hours worked and the hours of paid leave during the pay period.

B. Leave. [Employees in a seasonal position](#) earn leave during the time in pay status and during the first 80 hours in nonpay status each year. [A seasonal employee earns leave on the same basis as any other employee eligible to earn leave.](#) See [5 C.F.R. 630.208](#) for information on leave during nonpay status.

C. Deductions

1. Regularly scheduled seasonal employees under career or career-conditional appointments and [who are](#) expected to work at least 6 months per year are subject to FEGLI and retirement deductions. These deductions are made on the same basis as those of full-time employees.

2. [Employees in a seasonal position who are expected to work 130 hours per month for at least 90 days are eligible to enroll in an FEHB plan.](#) These eligible employees will receive the same government contribution as full-time permanent employees. See [5 C.F.R. 890.102 and BAL 14-210.](#)

100305. Piecework Employees

When Executive Agency employees are hired on a piecework basis, the employee’s earnings are determined based on the amount of work produced. The general authority for entitlement of pay, scheduling of work, and excusing absences for piecework employees are granted under [5 U.S.C. § 6104](#) and 5 C.F.R. 610.301-306. Employees working limited appointments of 1 year or less and being paid piecework rates are excluded from retirement coverage unless they are covered by an exception. See 5 C.F.R. 831.201(a)(5). To determine rates payable for piecework, see 5 C.F.R. 532.241.

A. FEGLI. For life insurance purposes, the annual pay for a piecework employee is the total basic earnings for the previous calendar (52-week) year, not counting premium pay for overtime or holidays. See [5 C.F.R. 870.204\(d\)](#).

B. FEHB. Piecework employees are excluded from FEHB coverage except for those with a work schedule that provides for full-time or part-time service with a regularly scheduled tour of duty. See 5 C.F.R. 890.102(c)(6).

1004 REEMPLOYED ANNUITANTS

100401. General

A retired Federal employee may be rehired in Federal service as a reemployed annuitant. The retired employee's annuity may continue to be paid upon reemployment, or may be terminated or suspended. Reemployment may result in an increase in the employee's retirement and death benefits. Special provisions apply to annuitants reemployed by DoD on or after November 25, 2003, and to former members of Congress.

A. Employees Retired from Competitive Service

1. Regulations Governing Reemployment. Instructions governing the reemployment of employees retired from the regular competitive service under the Civilian Service Retirement System (CSRS) and the Federal Employees Retirement System (FERS) are contained in [5 U.S.C. § 8344](#), [5 U.S.C. § 8468](#), [5 U.S.C. § 9002](#), [5 C.F.R. 837](#), and the CSRS/FERS Handbook for Personnel and Payroll Offices, [Chapter 100](#), Reemployed Annuitants. See subparagraph 100401.B for annuitants reemployed by DoD on or after November 25, 2003.

2. Treatment of Annuity Upon Reemployment. As a general rule, if a CSRS or FERS annuitant is reemployed, the annuity continues to be paid, but the annuity payment is offset from the reemployed annuitant's salary. Certain exceptions apply which may result in the CSRS or FERS annuity being terminated or suspended upon reemployment. The Director of OPM may waive the reemployment provisions for CSRS or FERS annuitants on a case-by-case basis for a position where there is exceptional difficulty in recruiting or retaining a qualified employee.

a. Termination of a Disability Annuity. A CSRS or FERS disability annuitant may be reemployed in a temporary or permanent position and given the same type of appointment that would be given to any other person appointed to the position. Reemployment may cause the disability annuity to terminate if OPM determines the annuitant has recovered or been restored to earning capacity prior to reemployment. Additionally, reemployment may terminate the annuity of a CSRS or FERS disability annuitant who was medically disqualified for continued membership in the National Guard.

b. Termination of an Annuity Based on Involuntarily Separation. When involuntary separation such as for reduction-in-force and lack of funds is the basis for a CSRS annuitant's retirement, and the new appointment is subject to retirement coverage, the annuity payment is terminated upon reemployment and retirement deductions shall be taken from the salary.

c. Termination Upon Presidential Appointment or Election to Congress. When a CSRS annuitant receives a Presidential appointment subject to retirement deductions, or is elected as a member of Congress, payment of the annuity terminates upon reemployment.

d. Suspension Upon Judicial Appointment. When a CSRS or FERS annuitant is appointed as a justice or a judge of the U.S., payment of the annuity is suspended.

e. Suspension Upon Interim Appointment by Merit System

Protection Board (MSPB). When a CSRS or FERS annuitant receives an interim appointment under [5 U.S.C. § 7702](#) by the MSPB, payment of the annuity is suspended.

3. Reemployment of Law Enforcement Officers (LEOs), Firefighters and Air Traffic Controllers (ATCs). A retired law enforcement officer or firefighter mandatorily separated is generally barred from reemployment in a primary position involving law enforcement or firefighting duties after reaching age 57. However, he or she is not barred from reemployment in a secondary position or any other position. Similarly, a retired air traffic controller is generally barred from reemployment in the same position after reaching age 56. He or she is not barred from reemployment in any other position not covered by the special retirement provisions for air traffic controllers. The agency must withhold the required deductions from the reemployed annuitant's pay (one-half percent higher than the regular deduction rate). See [5 U.S.C. § 8335](#) and [5 U.S.C. § 8425](#).

4. Supplemental Annuity or Redetermined Annuity. A reemployed annuitant may earn future benefits either in the form of a supplemental annuity or a redetermined annuity.

a. Supplemental Annuity. A supplemental annuity is an annuity added to the reemployed annuitant's present annuity. An employee who works as a reemployed annuitant on a full-time basis for at least 1 year, or on a part-time basis for a proportionately longer period, may be entitled to a supplemental annuity. For a reemployed annuitant who qualifies for a supplemental annuity, the SF 2806, Individual Retirement Record CSRS, or SF 3100, Individual Retirement Record FERS, typically prepared for a new employee, is prepared at the time of separation rather than at the time of appointment.

b. Redetermined Annuity. A redetermined annuity is recomputed and takes the place of the employee's present annuity. A reemployed annuitant who completes at least five years of actual continuous full-time service and/or part-time service that is equivalent may elect to have their annuity redetermined under the law in effect at the time of separation from reemployment, in lieu of a supplemental annuity.

c. LEOs, Firefighters, and ATCs. The special retirement provisions for law enforcement officers, firefighters, and air traffic controllers do not apply to service from reemployment. Therefore, any service credit from reemployment that is used to calculate a supplemental or redetermined annuity is treated as regular service, even if the employee is reemployed in an approved LEO, firefighter, or ATC position.

B. Annuitants Reemployed by DoD on or after November 25, 2003. The Secretary of Defense was granted the authority to reemploy annuitants without a reduction in pay or of the annuity (see 5 U.S.C. § 9902). Instructions governing annuitants who are reappointed by DoD on or after November 25, 2003, are found in the [DoDI 1400.25-V300](#), Employment of Federal Civilian Annuitants in the DoD. Generally, annuitants hired by DoD prior to November 25, 2003, are subject to salary offset unless an exception is approved by OPM or DoD. However, reemployed annuitants hired by DoD after November 25, 2003, may continue to receive their full annuity and salary upon appointment and shall not have their salary offset by their annuity

or further retirement deductions. An exception applies for certain discontinued service retirement (DSR) annuitants who are receiving annuities based on involuntary separation for reasons other than for cause based on misconduct or delinquency. A DSR annuitant hired by DoD after November 25, 2003, may elect retirement contributions and earn further retirement credit in lieu of receiving their full salary plus annuity. See CSRS/FERS Handbook [Chapter 44](#).

C. Former Members of Congress

1. Suspension of Annuity upon Reemployment. The CSRS annuity of a retired Member of Congress is generally suspended when the annuitant becomes reemployed or accepts an appointment. See 5 U.S.C. § 8344(d). Contact OPM Retirement and Insurance Programs, Annuitant Services Division, Washington, DC 20415 for further guidance regarding reemployment of Members.

2. Supplemental or Redetermined Annuities. Members of Congress are not covered under the provisions for supplemental or redetermined annuities. The agency retirement counselor should contact OPM concerning the benefits for reemployed former Members.

100402. Prorating Annuities for Appropriate Reductions of Wage and GS Salaries

A. General. Upon reemployment, the HRO provides the SF 50, Notification of Personnel Action, data to the PRO as to the amount of annuity **paid to** a reemployed annuitant.

B. Employees Retired from the Competitive Service. A reemployed annuitant, who retains his or her annuity, shall have his or her salary reduced by a sum equal to the retirement annuity allocable to the period of actual employment. The appropriate reduction and adjusted salary shall be determined as follows:

1. An annuitant reemployed on an annual pay basis shall have his or her per annum salary reduced by the amount of the annual annuity. The remainder of the salary is computed in amounts payable on a biweekly pay period basis. Payment for overtime worked is based on an annuitant's full rate of basic pay before any reduction by the amount of their annuity.

2. An annuitant reemployed on an hourly pay basis shall have his or her daily or hourly rate of pay converted to the per annum equivalent. The per annum rate is reduced by the total amount of the annuity being received by the employee. The remainder converts to a per diem or per hour rate, as appropriate.

3. The PRO adjusts the reimbursement to OPM following increases in an annuity as provided in the CSRS and FERS Handbook and any OPM instructions issued with periodic cost-of-living adjustments.

C. Former Members of Congress. A former Member of Congress who is employed in an appointive position on an intermittent service basis, and who retains his or her annuity, shall have his or her salary reduced by a sum equal to the retirement annuity allocable to the period of actual employment. The amount of annuity allocable to each pay period shall be processed as a payroll deduction rather than as a reduction in pay period earnings, as is the case with reemployed competitive service annuitants. Therefore, annuities withheld shall not reduce earnings for tax and other purposes. Annuities withheld in the case of former Members of Congress shall be remitted to OPM.

100403. Processing

Retirement deductions are optional for CSRS reemployed annuitants, and there is no requirement for a matching government contribution. Retirement deductions are required for FERS reemployed annuitants, as are government contributions. These deductions are computed on the reemployed annuitant's basic pay before any offset due to receipt of an annuity. Deductions for Medicare (CSRS employees) or Social Security/Medicare (FERS employees) are computed on the amount remaining after subtracting the annuity offset, in accordance with Social Security Administration guidance. [The PRO](#) computes Federal, state, and local taxes on the amount remaining after subtracting the annuity offset. [A reemployed annuitant may not be credited with sick leave that was reported to OPM for use in the calculation of the employee's annuity. Sick leave used in the annuity computation is charged against an employee's sick leave account and is considered used. The sick leave may not thereafter be used, transferred, or recredited. See 5 C.F.R. 630.407.](#)

100404. Computation of Lump-Sum Leave Pay

Under the provisions of 5 U.S.C. § 8344, the lump-sum payment for unused annual leave payable to a reemployed annuitant upon separation will be computed on the basis of the employee's wage or salary rate fixed for his or her position or occupation without reduction for the amount of annuity received by the employee. This includes reemployed annuitants who are retired from the competitive service or who are former Members of Congress.

1005 DECEASED EMPLOYEES

100501. General

Procedures governing the settlement of accounts of deceased civilian employees are set in [5 U.S.C. § 5581-5583](#) and [5 C.F.R. 178.201-208](#). An employee may designate a beneficiary or beneficiaries to receive his or her unpaid compensation using an SF 1152, Designation of Beneficiary for Unpaid Compensation of Deceased Civilian Employee. If no beneficiary has been designated by the employee, payment is made pursuant to the order of precedence set out in [5 U.S.C. § 5582\(b\)](#). Deceased civilian employees also include former employees who die after

separation from the employing installation, but prior to receiving final pay and allowances. The procedures do not apply to the settlement of accounts for deceased Members of Congress or to the employees of certain Federal banks. For death gratuity payments, refer to paragraph 100509.

100502. Unpaid Compensation

The settlement of a deceased employee's account includes payment of any unpaid compensation due the employee in the form of pay, allowances, or other amounts due at the time of death including, but not limited to:

- A. Current salary (including any retroactive salary), including cost-of-living allowances, overtime and premium pay;
- B. Unclaimed or unnegotiated checks;
- C. Cash awards;
- D. Foreign and non-foreign area differentials and allowances;
- E. Lump-sum annual leave payment;
- F. Travel reimbursement; or
- G. Severance pay.

100503. Payment of Unpaid Compensation due a Deceased Employee

When the HRO is notified of the death of an employee, the HRO forwards a copy of the employee's SF 1152 (if available) and all SF 1153s, Claim for Unpaid Compensation of Deceased Civilian Employee, submitted by claimants to the PRO. Claimants must provide supporting documentation as requested by the PRO. Upon notice of the death of a civilian employee, the PRO prepares an SF 1154, Public Voucher for Unpaid Compensation Due a Deceased Civilian Employee, to permit prompt payment of the amounts due. If undisputed, the unpaid compensation due to a deceased employee may be paid directly by the agency to the designated beneficiary/beneficiaries or, if none, to the person or persons eligible for payment under the order of precedence set out in 5 U.S.C. § 5582 and 5 C.F.R. 178.204. Disputed claims for unpaid compensation due to a deceased employee are submitted to the OPM Office of Merit Systems Oversight and Effectiveness (OMSOE) for settlement.

A. Undisputed Claims for Unpaid Compensation. Direct payment is permitted to claimants who are legally entitled to **an employee's unpaid compensation**. When paying more than one beneficiary, the PRO applies percentages due each beneficiary as specified by the deceased employee on the SF 1152. If the SF 1152 does not specify percentages, the total amount of unpaid compensation should be divided equally among the eligible claimants. The SF 1152 must be signed by the employee and filed with the employee's employing activity prior to his or her death. Legal claimants are determined based on the following order of precedence:

1. First, to the beneficiary or beneficiaries designated by the employee in writing (SF 1152) received in the employing agency before his or her death.
2. Second, if there is no designated beneficiary, to surviving spouse of the employee.
3. Third, if none of the above, to the child or children of the employee, and descendants of deceased children by representation.
4. Forth, if none of the above, to the parents or surviving parent of the employee.
5. Fifth, if none of the above, to the duly appointed legal representative of the estate of the employee.
6. Sixth, if none of the above, to the person or persons entitled under the laws of the domicile of the employee at the time of his or her death.

B. Disputed Claims. Disputed claims include those claims where doubt exists as to the amount or validity of the claim or as to the person properly entitled to payment. Disputed claims may also include unnegotiated or undelivered checks for money due to the decedent. Disputed claims are submitted to OMSOE in accordance with 5 C.F.R. 178.102 and 5 C.F.R. 178.207 either by the claimant or by the agency on the claimant's behalf. After the OMSOE settles the dispute and certifies the SF 1154, the form is returned to PRO for payment. Any disputed claim being submitted to OMSOE should first be coordinated through the Defense Finance and Accounting Service (DFAS) Office of General Counsel. To submit a disputed claim to OMSOE for settlement, the PRO **must take the following action**:

1. Write a letter of transmittal to the office identified in Chapter 8 which includes the following:
 - a. A statement regarding designation of beneficiary;
 - b. A statement explaining why referral to OMSOE is recommended. As appropriate, cite unusual circumstances surrounding the death of the employee or eligibility of the claimant(s) to receive the unpaid compensation;
 - c. A statement with the amount of the claim and any indebtedness; and
 - d. A statement that the claim must be settled by OMSOE before it can be paid.

2. Attach the following to the letter of transmittal:
 - a. The written claim in the form and manner prescribed by 5 C.F.R. 178.102 and 178.207, including the agency's administrative report;
 - b. The original SF 1154 and sub-vouchers with the statement "Payment after OMSOE Settlement." in the block for the name of the payee; and
 - c. The certified copy of the leave record and time and attendance report for the period covered by the voucher.

100504. Computation of Amount Due

The PRO computes the employee's pay earned through the date of death and any lump-sum payment for unused annual leave due the employee. The PRO must post the payment on a regular biweekly payroll disbursement voucher or a special payroll voucher with a charge to the applicable appropriation and other applicable accounting information. The following instructions govern deductions from the unpaid salary.

A. Retirement. If the employee was covered by a retirement system, deduct the retirement contribution from the unpaid salary earned through the date of death.

B. Social Security and Medicare Portions of the Federal Insurance Contributions Act (FICA) Tax. If the employee was subject to Social Security/Medicare, deduct for Social Security/Medicare tax from unpaid salary paid in the same calendar year as the employee's death. See Internal Revenue Service (IRS Circular E). Gross wages paid in the calendar year through the date of death, subject to the statutory limitation, are subject to Social Security/Medicare. The PRO must withhold Social Security/Medicare taxes from wages paid to a beneficiary or to the estate of the deceased employee in the same calendar year that the employee died. If the PRO makes a payment after the calendar year of employee's death, wages are exempt from Social Security/Medicare taxes.

C. Federal Income Tax. A deceased employee's unpaid wages are not subject to federal income tax withholding in either the calendar year in which the employee died or afterward. The PRO does not deduct Federal income tax withholding from unpaid salary earned by an employee through the date of death. See IRS Circular E.

D. State Tax. The PRO does not deduct withholding for state, territory, or District of Columbia income tax from the unpaid salary and lump-sum leave earned by an employee through the date of death.

E. Local Tax. The PRO does not deduct withholding for local taxes from the unpaid salary and lump-sum leave earned by an employee through the date of death.

F. FEHB. If a survivor is eligible to continue enrollment, withholding for premiums are made using the daily proration rule according to Chapter 4. If there is no eligible

survivor, or the employee maintained self-only enrollment, a full premium deduction is withheld for the pay period during which the employee died. See Chapter 4.

G. FEGLI. If the employee was subject to FEGLI, the PRO must withhold deductions for premiums for the periods for which pay is due, including the pay period during which death occurred.

H. Thrift Savings Plan (TSP). The PRO must make deductions for TSP contributions and any TSP loans outstanding.

I. Allotments. The PRO does not make allotment deductions for the pay period in which death occurred.

J. Other Deductions. The PRO must make any other required deductions, such as for any indebtedness owed by the employee.

100505. Lump-sum Payment for Accrued Leave

The PRO does not deduct retirement, federal, state, or local income tax, health benefits, or life insurance from the lump-sum payment.

100506. Preparation of Tax Statement

A. Decedent Form W-2 (Wage and Tax Statement). Gross amounts of final pay for the pay period of death plus any lump-sum annual leave payments must be reported as Social Security wages (box 3) and Medicare wages (box 5) only if these amounts are paid to the estate or beneficiary in the same year that the death of the employee occurs. The Social Security and Medicare taxes withheld are reported in boxes 4 and 6. These amounts are not included as wages, tips, or other compensation in box 1. The PRO does not report payments made after the year of death on a Form W-2 and will not withhold Social Security and Medicare taxes.

B. Miscellaneous Income. The PRO will take the following actions:

1. Prepare a Form 1099-MISC, Miscellaneous Income, for amounts payable to the decedent's estate or to beneficiary(s) whether the PRO makes the payment in the year of death or after the year of death;

2. Report the payment in box 3, "Other income";

3. Include the gross amounts of final pay for the pay period of death, lump-sum annual leave, and other moneys such as travel reimbursements; and

4. Enter the name and Social Security Number (SSN) of the individual if the recipient of the payment is an individual beneficiary. Enter the name and Federal tax identification number for the estate if the recipient of the payment is the Employee's estate.

100507. Transfer of Funds

The unpaid compensation is placed in the deposit fund suspense account X6276, [Other Federal Payroll Withholding, Allotments](#), pending receipt of a claim for the compensation. If a claim has not been received within 1 year from the date on which the amount was placed in the deposit fund suspense account, transfer the funds.

A. [Any unpaid compensation that meets the following criteria is transferred into fund account 20X6133, Payment of Unclaimed Moneys:](#)

1. The amount is \$25 or more;
2. A refund, upon claim, would be absolutely justified;
3. There is no doubt as to legal ownership of the funds; and
4. A named individual can be identified with the item.

Subsequent payment of claims from this account is made by preparing an SF 1154 citing account 20X6133 and the account of the disbursing officer that supports the consolidated PRO.

B. [The PRO must transfer to miscellaneous receipt account –1060, Forfeitures of Unclaimed Money and Property](#), if the claim for unpaid compensation is less than \$25 or amounts greater than \$25 do not meet all the provisions for account 20X6133. Subsequent payment of claims from this account is made by preparing an SF 1154 citing account 20X1807, Refund of Money Erroneously Received and Recovered, and the account of the disbursing officer who supports the consolidated PRO. [See Department of Treasury Financial Manual, Chapter 3000.](#)

100508. Life Insurance Status for Employee Death Cases within the Department

When an employee dies, the SF 2821, Agency Certification of Insurance Status, is processed according to the guidance in the FEGLI Handbook. The same official cannot make the dual certifications of personnel and payroll record data on the SF 2821. To reduce the time survivors or beneficiaries must wait for FEGLI benefit payments; expedite the processing of the SF 2821.

A. [For Collocated HROs and PROs.](#) Upon notification of an employee's death, HRO shall complete and forward the SF 2821 to the servicing PRO for certification. The PRO certification will be completed, and all copies of the SF 2821 returned to the HRO within 24 hours of receipt.

B. [For HROs Geographically Separated from PROs.](#) Upon notification of an employee's death, HRO shall complete and mail the SF 2821 to the PRO for certification. The PROs certification will be completed within 24 hours of receipt, and all copies of the completed SF 2821 will be express mailed back to the HRO.

*100509. Death Gratuity Payments [for Federal Employees](#)

A. \$10,000 Death Gratuity. Public Law (P.L.) 104-208 authorizes agencies to pay a death gratuity payment not to exceed \$10,000 to the personal representative of any federal employee who dies from an injury sustained in the performance of duty on or after August 2, 1990. The gratuity is also payable if the employee died after separating from service and the death was a direct result of injuries received in the line of duty on or after August 2, 1990. The following information should be considered when making the \$10,000 death gratuity payment:

1. The gratuity payment, when combined with certain other payments, may not exceed \$10,000. Other payments include the \$200 payable under 5 U.S.C. § 8133(f) for reimbursement of the cost of termination of the decedent's status as an employee of the U.S. and up to \$800 payable under 5 U.S.C. § 8134(a) for funeral and burial expenses. Pursuant to DCPAS guidance, the death gratuity is payable only if the death claim is approved by OWCP.

2. The gratuity payment is not considered wages for the purpose of Social Security, Medicare, or federal, state, or local tax withholding. A Form 1099-R, "Distributions for Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc." must be prepared by the PRO and forwarded to the personal representative.

* B. Death Gratuity under 5 U.S.C. § 9904. Under the provisions of 5 U.S.C. § 9904, DoD civilian employees who are assigned to certain activities outside the United States determined to be hazardous to life or health or that involve specialized security requirements may be eligible for benefits comparable to those provided under 22 U.S.C. § 3973 by the Secretary of State to members of the Foreign Services. Pursuant to 22 U.S.C. § 3973 a death gratuity is paid when an employee dies as a result of injuries received in the performance of duties. The gratuity is equal an amount equal to level II of the Executive Schedule under section 5 U.S.C. 5313, at the time of an employee's death. This gratuity payment shall be made as follows, regardless of other beneficiaries designated to receive any other benefits:

1. First, to the widow or widower, as defined under 5 U.S.C. § 8101(6) and (11).

2. Second, to the child, or children as defined under 5 U.S.C. § 8101(9), in equal shares, if there is no widow or widower.

3. Third, to the dependent parent, or dependent parents, as defined under 5 U.S.C. § 8101(7), in equal shares, if there is no widow, widower, or child.

If there are no survivors as indicated subparagraph 100509.B., the death gratuity shall not be paid. For additional information, see DoD DCPAS Memorandum, December 27, 2011, Continuation of Certain Benefits, Allowances and Gratuities.

C. Death Gratuity for Service with Armed Forces in a Contingency Operation. Title 5 U.S.C. § 8102a provides a death gratuity of up to \$100,000 to the survivors of a federal employee who dies from injuries received in connection with services performed with an Armed Force in a contingency operation. The gratuity is reduced by the amount of any death

gratuity payments that have been paid under any other law of the U.S. based on the same death. See [20 C.F.R. 10.916](#). OWCP is responsible for administering and adjudicating all claims under this authority. For additional information, see 20 C.F.R. 10, [Subpart J](#). See also [DOL Death Gratuity Page](#).

1006 EXPERTS AND CONSULTANTS

100601. General

An agency may make excepted service appointments to hire experts and consultants. Agencies may appoint experts and consultants on a temporary basis (i.e., not to exceed 1 year) or an intermittent basis (i.e., without a regularly scheduled tour of duty) under [5 U.S.C. § 3109](#) and [5 C.F.R. 304](#). PRO pays experts and consultants based on the SF 50 data received from the HRO. See also the Director of Administration and Management, Administrative Instruction [Number 2](#), Employment of Experts and Consultants. [Experts and consultants appointed under 5 U.S.C. 3109 are considered to be Federal civil service employees under 5 U.S.C. 2105. See 5 C.F.R. 304.101. Unless expressly provided otherwise, they are covered by laws applicable to Federal employees, including pay and leave requirements.](#)

100602. Setting Pay on Initial Appointment

Determining the appropriate rate of basic pay for experts and consultants, including a decision to pay no salary, is made on an individual case basis. The rate of basic pay may be an hourly or daily rate. Normally, pay is set equal to a GS rate in grades GS-13 through GS-15. Unless specifically authorized by an appropriation or other statute, the highest payable rate is the daily rate for GS-15, step 10, or if paid on a biweekly basis, the biweekly rate for GS-15, step 10 (both excluding locality pay or any other additional pay). See 5 C.F.R. 304.105 for daily and biweekly basic pay limitations.

100603. Overtime and Premium Pay

A. [Overtime](#). Experts and consultants paid on a daily rate basis are not normally entitled to overtime pay under 5 U.S.C. § 5542, regardless of the number of hours worked. Nevertheless, the designation of a regular tour of duty in the appointment documents does not necessarily preclude receipt of compensation at the agreed daily rate for work performed outside of that tour of duty. For example, if such an employee works 6 days a week, the 6th day is paid at the straight time rate rather than the overtime rate. Experts and consultants employed on a daily basis may be paid the rate of basic compensation for work on days outside the prescribed tour of duty, provided the compensation within any biweekly pay period does not exceed the rate of basic pay for Level V of the Executive Schedule. Experts and consultants who are nonexempt under the Fair Labor Standards Act (FLSA) may be entitled to overtime pay. Overtime must be authorized and approved in advance by an appropriate official.

B. [Holiday Pay](#). Experts and consultants with a regularly scheduled tour of duty (i.e., not intermittent) are entitled to pay for any holiday occurring on a workday on which they perform no work, provided that workday is part of the basic workweek. Those employed on an intermittent basis do not earn leave and are not entitled to paid holidays. See 5 C.F.R. 304.106.

100604. Salary Increases

Experts and consultants are not automatically entitled to an equivalent pay increase when the GS is adjusted under [5 U.S.C. § 5303](#) unless noted in an appointment document. However, agencies may adjust expert or consultant pay on an ad hoc basis, subject to the limitations of 5 C.F.R. 304.105. The SF 50 data from the HRO notifies the PRO of the proper salary increase.

100605. Exception from Dual Pay Restriction

Generally, an individual is prohibited by statute from receiving basic pay from more than one position for more than an aggregate of 40 hours of work in 1 calendar week. An exception to this restriction is provided for an individual who earns pay for service on an intermittent basis from more than one consultant or expert position, provided the pay is not received for the same hours of the same day. See [5 U.S.C § 5533\(d\)\(1\)](#).

100606. Annual and Sick Leave

A. An expert, consultant, or other employee who serves on an intermittent or other basis without a prearranged regular tour of duty does not earn annual and sick leave. See 5 U.S.C. § 6301(2)(B)(ii).

B. An expert or consultant who serves on a regularly prescribed tour of duty, full-time or part-time, earns annual and sick leave. HRO shall determine the regular tour of duty in advance and annotate the appointment document specifically to show whether the employee earns leave. The accrual rate is the same as for other full-time and part-time federal employees as discussed in 5 C.F.R. 630. See 5 C.F.R. 304.106.

100607. Retirement

Experts and consultants are appointed on a temporary or an intermittent basis and therefore, they are not covered under the federal retirement systems. See 5 C.F.R. 831.201 and 842.105. However, coverage is continued for an employee who is currently covered by a Federal retirement system and who is later appointed as an intermittent or temporary (full-time or part-time) expert or consultant without a break in service or after a separation from the service of 3 days or less.

100608. FEGLI

Experts and consultants are ineligible for FEGLI due to their temporary or intermittent appointment status. However, coverage is continued if an employee currently covered by FEGLI is appointed as an intermittent or temporary appointment (full-time or part-time) expert or consultant without a break in service or after a separation from the service of 3 days or less. To continue life insurance coverage for an intermittent employee, there must be an expectation that the employee will return to the previous position on a full-time basis.

100609. FEHB

Employees in an expert or consultant position who are expected to work 130 hours per month for at least 90 days will be eligible to enroll in an FEHB plan. These eligible employees will receive the same government contribution as full-time permanent employees. See 5 C.F.R. 890.102 and BAL 14-210.

1007 LEGALLY INCOMPETENT EMPLOYEES

100701. General

The HRO must notify the PRO in writing when an employee is found to be legally incompetent. The HRO sends the PRO the SF 50 data showing the employee's separation because of mental incompetence. [The agency may also place](#) the employee on an extended leave of absence by means of an SF 50 action. The PRO makes no payments to the employee once [HRO informs the PRO](#) that the employee is declared legally incompetent. A claim must be filed on the employee's behalf before the pay account can be settled. No specific form is required to file a claim for amounts due mentally incompetent or former employees. The claim must be filed in writing over the signature of the person claiming on behalf of the legally incompetent employee. If the claim is from a claimant other than a guardian or committee, the servicing PRO's Office of General Counsel should be consulted prior to making payment.

A. Guardian or Committee. The initial claim filed by the guardian or committee of the estate of a legally incompetent employee shall be accompanied by a certificate of the court showing the appointment and qualification of the claimant as guardian or committee. After [making](#) the first payment, [the PRO may make](#) subsequent recurring payments to the same payee without further claim as long as the appointment as guardian or committee remains in effect and the matter is otherwise free from doubt. Each subsequent payment voucher must include a citation to the voucher upon which the initial claim was paid.

B. Other than Guardian or Committee. If a guardian or committee has not been appointed and will not be appointed, [a sworn statement that includes the following information to support the initial claim:](#)

1. The claimant's relationship to the legally incompetent employee, if any;
2. The name and address of the person having care and custody of the legally incompetent employee;
3. A remark that any amount paid to the claimant shall be applied only to the use and benefit of the legally incompetent employee; and
4. A remark that no appointment of a guardian or committee is contemplated.

100702. Claim Action

Upon receipt of a claim, consider the proposed date of separation to determine whether compensation is due currently or a payroll voucher for final settlement should be processed. To avoid invalid payments when the employee is on extended paid leave, the HRO **must** monitor the case for any changes in the employee's condition and immediately advise the PRO.

100703. Processing Claims

The PRO may pay claims for unpaid amounts owed to legally incompetent employees unless the PRO doubts the amount or validity of the claim or it doubts the claimant's entitlement to the payment.

A. Any unclaimed, undelivered, or uncashed salary checks drawn in favor of the employee **must be** returned to the disbursing officer for cancellation and credit to the appropriation or fund originally charged.

B. **The PRO must post** the net amount of any returned check to the appropriate pay record. Adjustment of the items originally deducted from the gross pay is not required if the proceeds of the check are due the employee. If the proceeds of the check are not due, **the PRO must** prepare an SF 1098, Schedule of Canceled or Undelivered Checks, to cancel the check **and must** adjust entries for the deductions from gross pay.

C. The amount to be paid to the claimant must be computed and must include any further payments due to the employee for each pay period in the regular payroll cycle (for example, payments due when the employee is carried on sick leave). **The PRO must take the following actions:**

1. Prepare a statement for all arrears of pay due. Include the net amount of any uncashed checks if the proceeds are due.

2. Enter the following on the payroll voucher such as on a Department of Defense (**DD Form 592**), Payroll for Personal Services, Certification, and Summary under "OTHER:"

- a. The term "Mentally Incompetent Employee";
- b. The name of the proper claimant and capacity in which serving, followed by the name and SSN of the mentally incompetent employee;
- c. The citation of the designated deposit fund account; and
- d. The amount the claimant is due.

3. Upon receipt of a properly executed claim supported by a court certificate showing guardianship or sworn statement from the claimant, the PRO shall disburse funds from the deposit fund account designated on the payroll voucher to the claimant. See

Volume 5, Chapter 11. The claimant's name and address must appear on the voucher along with the employee's name, SSN, and the pay period. The voucher is forwarded to the disbursing officer for payment.

4. Forward a copy of the processed voucher to the claimant. A copy should also be filed in the employee's file.

5. Include in the final payment any lump-sum payment for annual leave and any other salary amount to which the employee is entitled.

6. Record the official date that the employee is declared legally incompetent in the payroll records.

100704. Processing Doubtful Claims for OPM Certification

Doubtful claims **are** submitted to OPM following these procedures:

A. Prepare the voucher for the net amount due **to** a mentally incompetent employee per paragraph 100703. This voucher along with the required number of copies is sent to OPM. After OPM certifies the voucher, it will be returned to the submitting PRO for payment.

B. Enter "Local Payment After OPM Certification" on the face of the voucher. OPM adds the name and legal capacity of the claimant on the voucher.

C. Certify the voucher and attach the following:

1. A legal authorization of the claimant including any certificate of the court showing appointment and qualifications of the claimant;

2. A claim submitted by the claimant such as a letter from the guardian or administrator;

3. A statement of the doubtful aspects and the reason the PRO recommends referral of the claim to OPM; and

4. A certificate stating that the claim has not been paid and will not be paid until certified.

D. Retain a copy of the voucher and supporting documents in the employee's file.

1008 MISSING PERSONS, CAPTURED OR INTERNED

100801. General

Civilian personnel who are determined officially to be missing are entitled to continued

pay and allotments from their pay under the Missing Persons Act ([5 U.S.C. § 5561-5568](#)) and the Terrorism Compensation Act ([5 U.S.C. § 5569](#)). Missing status includes persons:

- A. Missing;
- B. Missing-in-action;
- C. Interned in a foreign country;
- D. Captured, beleaguered, or besieged by a hostile force; or
- E. Detained in a foreign country against the employee's will.

100802. Actions by the [Payroll Office](#)

A. Upon receipt of an official determination that a civilian employee is in a missing status, return any unclaimed or un-cashed checks to the disbursing area.

B. The PRO retains responsibility for the employee's pay, leave, and retirement records.

C. The initiation, continuance, discontinuance, increase, decrease, suspension, or resumption of an allotment from the pay and allowances of an employee in a missing status, is authorized when that action is in the interests of the employee, the dependents, or the U.S. See [5 U.S.C. § 5563](#).

1. Allotments authorized by an employee before the missing status began normally continue for the period of absence.

2. The missing employee's dependents may receive an allotment of the employee's pay. Dependent payments cannot exceed the employee's net pay. The needs of the dependents, the number of dependents and their relationship to the employee, however, should be considered when determining the payment amount. If possible, reserve a reasonable amount each pay period to ensure that the employee will have funds available upon return.

D. The pay and allowances of a missing employee in a captive status may be allotted to an interest bearing savings fund established by the Secretary of the Treasury. See 5 U.S.C. § 5569. Captive status means a missing status, which, as determined by the President, arises, because of a hostile action and is a result of the individual's relationship with the government. All or any portion of the employee's pay and allowances may be allotted to the extent that such pay and allowances are not subject to an allotment under 5 U.S.C. § 5563 as outlined in subparagraph 100802.C.

E. Maintain the pay account on a pay-period basis. Include normal deductions for retirement, FICA, federal and state income tax withholding, FEHB, and FEGLI in the totals for the regular payroll voucher.

F. Establish a special leave account to restore any annual leave forfeited by an employee while in a missing status after January 1, 1965.

100803. Termination of Absence

Employees **should not be separated from Federal service** while they are entitled to pay and allowances under the Missing Persons Act (see 5 U.S.C. § 5561-5568).

A. **If** an employee returns from a missing status, the PRO must voucher the balance withheld from the employee and furnish a list of allotments started and paid in the employee's absence. The accounting classification must be charged to what was current when the pay accrued. The employee may initiate any allotment discontinuances or changes for any allotments that started or changed during the absence. The PRO will pay future salaries using normal payroll procedures.

B. **If** the employee returns from missing status, a statement of the special leave account balance must be furnished to his or her HRO. The employee must elect, in writing, to receive **either a payment** or credit for the leave. **If the employee requests** payment, the **PRO must make** the payment at the employee's rate of pay in effect at the time **of the forfeiture of the leave**.

C. **If the HRO receives** an official notice of the employee's death or presumed death, **the PRO will take** action as outlined in Section 1005.

D. **If** the employee returns from missing status, **the agency must charge** the pay adjustment or final settlement, including local allotment payments to dependents, to the employee's appropriated fund account.

1009 AUTHORITY FOR TEMPORARY ASSIGNMENTS

The authority for temporary assignments of employees between executive agencies and State, local, and Indian Tribal Governments, institutions of higher education, and other eligible organizations is found in **5 U.S.C. § 3371-3376** and **5 C.F.R. 334**. An employee's pay and leave provisions will be included in the employee's written assignment agreement as required by 5 C.F.R. 334.106.

1010 EMPLOYEES TRANSFERRED TO INTERNATIONAL ORGANIZATIONS

101001. General

An agency may detail or transfer an employee to any organization that the Department of State has designated as an International Organization (IO). See [5 U.S.C. § 3581-3584](#) and [5 C.F.R. 352, Subpart C](#). A detail or transfer may not exceed 5 years; however, this may be extended 3 additional years upon the approval of the head of the agency. An employee who is transferred is entitled to be reemployed in his or her former position, or one of like status, within 30 days of his or her application for reemployment.

101002. Computation of Deductions

Under [5 U.S.C. § 3582](#), an employee who transfers to an IO may elect to keep coverage for retirement, FEGLI, and FEHB. The agency continues to make the agency contributions to the funds, and the employee's coverage continues as long as the employee's share of the payments remains current.

A. The PRO computes the retirement and FEGLI on the rate of basic compensation the employee was receiving at the time of transfer. If these amounts are changed by law or regulation while an employee is serving with an IO, the amounts will be recomputed based on notification from the HRO and the employee and the IO will be notified (if applicable) of the effective date and new amount. For regulations on retirement and FEGLI, refer to 5 C.F.R. 352.309. When the SF 50 data is received showing a step increase, or a general pay increase, the amounts due are recomputed.

B. The PRO computes FEHB based on the cost of the plan of the employee's choice. If the enrollment cost changes while the employee is serving with an IO, the PRO must recompute the amount based on notification from the HRO and notify the employee and the IO (if applicable) of the effective date and new amount.

101003. Payments from Transferred Employees

The HRO advises transferred employees to make payments for retirement, FEHB, and FEGLI promptly for each pay period. Payments are current if received within 3 months after the end of the pay period covered by the payment. See 5 C.F.R. 352.309(d). The PRO advises the HRO and carrier for FEHB of any delayed payments. If payments are not timely, coverage terminates on the last day of the pay period for which the required payment was timely, subject to a 31-day extension of FEGLI and FEHB as provided in Chapter 11.

101004. Accounting for Payments

A [DD Form 1131](#), Cash Collection Voucher, is used to deposit amounts received from either the individual or the employing organization into a deposit fund established for such purposes. An SF 1080, Voucher for Transfers Between Appropriations and/or Funds, or SF 1081, Voucher and Schedule of Withdrawals and Credits, is used to transfer the employer's contribution,

if required, from the appropriation which would have been charged for the employee's pay to the proper deposit fund account. Total amounts (employee payments and government contributions) are included on the SF 2812A, Report of Withholdings and Contributions for Health Benefits by Enrollment Code, submissions to OPM through the Retirement and Insurance Transfer System (RITS). RITS calculates and tracks obligation due dates and payment timeliness. [The PRO posts the total annual retirement costs paid by the employee to the employee's SF 2806 or SF 3100; the "Remarks" section reflects the employee's status.](#) The IO keeps the SF 2806 or the SF 3100 for the entire term of employment, unless OPM asks for the form(s).

101005. Thrift Savings Plan (TSP)

An employee, who transfers to an IO, is not eligible to participate in the TSP while employed by the IO even if they elect to retain federal retirement coverage. However, upon reemployment, an employee who elected to retain federal retirement coverage while employed by the IO and has made all deposits required for such coverage may make contributions to the TSP which they missed as a result of the service with an IO, and receive make-up agency contributions, as provided under 5 C.F.R. 352.311(e).

101006. Leave Account

Employees who are transferred to an IO may elect to receive payment for accumulated annual leave or have it remain to their credit until they return to federal employment. Employees also may request payment at any time before reemployment. The HRO sets the date of separation to allow employees to use all accumulated annual leave that might otherwise be forfeited. The PRO prepares and delivers an extra copy of the SF 1150, Record of Leave Data, to the employee. Upon reemployment, the PRO uses a copy of the SF 1150 to recredit sick leave and annual leave, if applicable. If the employee is paid the balance of his or her leave and is reemployed within 6 months after transfer, he or she shall refund to the agency the amount of the lump-sum payment. See 5 U.S.C. § 3582 and Chapter 3.

101007. Equalization Allowances

Equalization allowance provisions that had been in Title 5, U.S.C. § 3582(b) were replaced by [P.L. 105-277, Section 2504](#), with a requirement for agencies to provide an employee reemployed after transfer to an IO with the rate of basic pay to which the employee would have been entitled had the employee remained in the civil service. The equalization allowance had guaranteed payments to an employee who transferred to an IO in an amount no less than the amount the employee would have received had the employee been detailed to the IO.

101008. Retirement

An employee who transfers from a position covered by CSRS, CSRS-Offset, or FERS to a public IO may continue retirement coverage for up to 5 years of such service or up to 8 years if authorized by the Secretary of State. See CSRS and FERS Handbook, [Chapter 12](#).

*1011 [TEMPORARY AND TERM EMPLOYMENT](#)

101101. General

Temporary and term appointments are used to fill positions when there is not a continuing need for the job to be filled. Employees occupying either category of appointment are not entitled to competitive status or reinstatement eligibility. Because temporary and term employees do not have status, they may not apply for permanent appointments while employed in these position through merit promotion. See 5 C.F.R. Part 316.

101102. Temporary Employment

A. Appointments. Pursuant to 5 C.F.R. 316, Subpart D, an agency may make a temporary appointment to:

1. Fill a short-term position that is not expected to last more than 1 year;
2. Meet an employment need that is scheduled to be terminated within 1 year (or at most, 2 years) for reasons such as reorganization, abolishment, or contracting out of the function, anticipated reduction in funding, or the completion of a specific project or peak workload; or
3. Fill positions on a temporary basis when the positions are expected to be needed for placement of permanent employees who would otherwise be displaced from other parts of the organization.

B. Benefits. Temporary employees are eligible to earn annual and sick leave and are covered by Social Security and unemployment compensation, but do not receive the other benefits provided to career civil service employees. Employees in a temporary position who are expected to work 130 hours per month for at least 90 days are eligible to enroll in an FEHB plan. These eligible employees will receive the same government contribution as full-time permanent employees. See 5 C.F.R. 890.102 and BAL 14-210. Temporary employees are generally ineligible for coverage under FEGLI or the Federal employees' retirement systems.

101003. Term Employment

A. Appointments. An agency may make a term appointment for more than 1 year but not more than 4 years to positions where the need for an employee's services is not permanent. Agencies may extend term appointments up to the 4-year limit in increments as determined by the agency. See 5 C.F.R. 316, Subpart C.

B. Benefits. Term employees are eligible to earn annual leave and sick leave. Term employees are also eligible for coverage under FERS, FEHB, and FEGLI. Term employees can work full or part-time work schedules and are eligible for promotions and within-grade increases upon satisfying the required waiting period.

1012 EMPLOYEES WHOSE WHEREABOUTS ARE UNKNOWN

In the event an employee's whereabouts are unknown and payment cannot be made to the employee, refer to Volume 5, Chapter 7 for guidance.

1013 AIR TRAFFIC CONTROLLERS (ATC)

101301. General

ATCs are employees in an ATC facility (i.e., tower, ground-controlled approach, and approach control), actively engaged in the separation and control of air traffic or in providing preflight, in-flight, or airport advisory service to aircraft operations, or the immediate supervisor of any such employee. See [DoDI 1400.25-V331](#), Civilian Air Traffic Controllers.

101302. Overtime

All overtime work scheduled in advance of the administrative workweek on a day containing part of an ATC's basic 40-hour workweek must be compensated under 5 C.F.R. 550.111.

101303. Premium Pay

Differential pay is authorized for certain DoD employees. The Secretary of Defense has authorized five percent ATC premium pay under [5 U.S.C. § 5546a\(a\)\(1\)](#). The payment of the premium is mandatory for Defense ATCs who are in the GS-2152 occupational series and occupy a position no lower than GS-9 at air traffic control centers, terminal or flight service stations. The HRO provides this information to the PRO via an SF 50.

101304. Leave

Leave accruals are based on guidelines published in 5 C.F.R. part 630.

101305. Mandatory Separation

Generally, under 5 U.S.C. § 8335(a) for CSRS employees and 5 U.S.C. § 8425(a) for FERS employees, an ATC who is otherwise eligible for immediate retirement must be separated from the federal service on the last day of the month in which the employee becomes 56 years of age. However, if the ATC has been granted a waiver of the mandatory separation age based on exceptional skills and experience, an ATC may delay separation until the day he or she becomes age 61. Additionally, an ATC, who has received a waiver of the maximum entry age under [5 U.S.C. § 3307\(b\)](#) may delay separation until the last day of the month he or she completes 20 years of service.

101306. Retirement

ATCs have unique retirement deduction percentages for CSRS and FERS coverage. OPM publishes the rates in the CSRS and FERS Handbook, [Chapter 30](#).

1014 PERSONNEL ON LONG-TERM FULL-TIME TRAINING

101401. General

Long-term, full-time training is defined as a training period of 120 consecutive workdays or more. See [5 U.S.C. Chapter 41](#) and [5 C.F.R. 410](#). Employees on long-term, full-time training are authorized payment of salary.

101402. Leave

If salary payments continue during the training period, annual and sick leave regulations apply. Leave is reported via the time and attendance reporting mechanism and is administered as specified for the following leave types:

A. [Annual Leave](#). Personnel on long-term, full-time training shall continue to accrue annual leave. Ordinarily, an employee will be charged with annual leave during school vacation periods that fall on government workdays unless he or she returns to the work site or has made documented arrangements with his or her DoD point of contact to be actively involved in academic work. These documented arrangements should be accomplished well in advance of the vacation periods. Annual leave charges are reported to the PRO on the employee's time and attendance report. See [OPM Training and Development Policy](#).

B. [Sick Leave](#). Personnel on long-term, full-time training continue to accrue sick leave. [The agency should charge sick leave on the time and attendance report when the employee is unable to attend classes due to illness.](#)

1015 EMERGENCY MEDICAL TECHNICIAN (EMT)

101501. General

This section applies to EMTs or paramedics who are not classified as firefighters.

101502. Tour of Duty

EMTs and paramedics work various schedules including the basic 40-hour workweek, compressed work schedules, and uncommon tours of duty. An uncommon tour of duty means an established tour of duty that exceeds 80 hours of work in a biweekly pay period. See [5 C.F.R. 630.201](#). Schedules and changes to tours of duty for an EMT or paramedic working uncommon tours must be on file in the employing activity/timekeeper site. [Sleep and meal](#) time also must be documented. [The EMT's hourly rate is multiplied by 40 hours, and the base pay and](#)

premium pay is based on this weekly rate regardless of the hours in the scheduled tour of duty for that week.

*101503. Overtime Computation

A. Standby Duty Pay

1. FLSA Nonexempt EMTs and paramedics are compensated for regularly scheduled overtime hours in excess of 40 hours in a week by the payment of annual premium pay for standby duty plus .5 times the employee's hourly regular rate for all overtime hours worked. If an EMT performs an additional 24-hour shift during a pay period, and the shift is scheduled in advance of the workweek, standby duty pay covers all regularly scheduled overtime hours, but the employee is entitled to .5 times the employee's hourly regular rate for all overtime hours worked. Sleep and meal periods during regularly scheduled tours of duty are hours of work for EMTs who receive annual premium pay for regularly scheduled standby duty. EMTs and paramedics are compensated for irregular or occasional hours of work in excess of 40 hours in a week by payment of the straight-time rate of pay for all irregular or occasional overtime hours of work plus .5 times the employee's hourly regular rate of pay times the overtime hours. When an employee works an additional 24-hour shift, which is irregular or occasional overtime work, the "two-thirds rule" will apply. Up to 8 hours of sleep and meal time (from a shift of 24 hours or more) are excluded from irregular overtime hours providing all regulatory conditions under [5 CFR 551.432](#) are met.

2. FLSA exempt EMTs and paramedics are compensated for regularly scheduled overtime hours in excess of 40 hours in a week by the payment of annual premium pay for standby duty. If an EMT performs an additional 24-hour shift during a pay period and the shift is scheduled in advance of the workweek, standby duty pay covers all regularly scheduled overtime hours. When an employee works an additional 24-hour shift that is irregular or occasional overtime work, overtime is paid in accordance with 5 C.F.R. 550.113 or 5 C.F.R. 550.114. The "two-thirds rule" will apply providing all regulatory conditions under [5 CFR 550.112\(m\)](#) are met.

* 3. [On-duty sleep and meal periods during regularly scheduled hours for which standby duty premium pay under 5 U.S.C. § 5545\(c\)\(1\) are payable may not be excluded from hours of work. See 5 C.F.R. 551.432\(e\).](#)

B. Compressed Work Schedule. The customary FLSA standard of compensating an employee with overtime pay for all hours of work in excess of 8 hours in a day and 40 hours in a week does not apply to an employee covered by a compressed work schedule under [5 U.S.C. § 6128](#). For example: an EMT with a 12-hour day in their schedule will not be entitled to FLSA overtime until they work over the 12-hour schedule for the day.

101504. Charging Leave

One hour (or an appropriate fraction thereof) of leave shall be charged for each hour (or an appropriate fraction thereof) of absence from the uncommon tour of duty. For additional guidance on leave accruals for EMTs refer to [DoDI 1400.25-V630](#), DoD Civilian Personnel Management

System: Leave, and 5 C.F.R. 630.210. When an employee takes 24 hours of leave, 8 hours of sleep and meal time for that employee are deducted from actual hours of work under FLSA. Sleep and meal time for days of partial leave must be documented on the time and attendance report so that actual hours of work are shown. Sleep and meal time scheduled during leave periods shall be added to total sleep and meal time so that total hours of actual work and total hours of sleep and meal time will be shown. For employees with uncommon tours of duty established under 5 C.F.R. 630.201 and 5 C.F.R. 630.210, employees may be charged leave for regularly scheduled overtime hours outside the 40-hour basic workweek. Thus, such employees may receive applicable premium pay and FLSA overtime pay during hours of paid leave.

101505. Accruing Leave

Employees on uncommon tours of duty accrue and use leave on the basis of that uncommon tour. Accrual rates for such employees are directly proportional to the standard leave accrual rates for employees on an 80-hour biweekly tour of duty. See 5 C.F.R. 630.210(a). The number of hours in the uncommon tour is multiplied by the accrual rate divided by 80 ((uncommon tour of duty hours) x (accrual rate/80) = uncommon accrual rate). See table in DoDI 1400.25-V630. Employees on uncommon tours of duty repeating a cycle of more than 1 biweekly pay period (e.g., a 3 biweekly pay period cycle) accrue leave based on the average hours in the biweekly tour. For example, an emergency medical technician on a tour of duty of 96 hours for 1 biweekly pay period and 120 hours for each of the following 2 biweekly pay periods works an average tour of 112 hours per pay period, and accrues leave based on a 112-hour tour of duty.

101506. Premium Pay

The HRO determines the amount of the premium pay for the irregular tour of duty and reports it on the SF 50. An EMT employed as an intermittent employee is not entitled to premium pay on an annual basis, nor is he or she entitled to paid leave. An EMT is paid under regular overtime rules. Refer to 5 C.F.R. 551 for additional guidance on pay administration for EMTs under the FLSA.

1016 FIREFIGHTERS

101601. General

Firefighter pay is governed under 5 U.S.C. § 5542(f), [5 U.S.C. § 5545b](#), and 5 C.F.R. 550, Subpart M. A firefighter is an employee classified in the GS-0081 Fire Protection occupational series, which includes line firefighters, supervisory firefighters and fire inspectors whose regular tour of duty averages at least 106 hours per biweekly pay period. Newly hired firefighters going through initial basic training with a 40-hour basic workweek are covered by the GS classification and pay system and classified in the GS-0099 General Student Trainee Series (as required by [5 C.F.R. 213.3202\(b\)](#)). Uniform allowances may be authorized for firefighters, refer to Chapter 3.

101602. Regular Tour of Duty

The term “regular tour of duty” means a firefighter’s official work schedule as established by the employing agency on a regular recurring basis. The regular tour of duty may consist of a fixed number of hours each week or a fixed recurring cycle of work schedules in which the number of hours per week varies in a repeating pattern. The regular tour of duty includes only those overtime hours that are part of the fixed recurring work schedule. However, irregular hours are deemed included in a firefighter’s regular tour of duty if those hours are substituted for hours in the regular tour of duty for which leave without pay is taken, as provided in 5 C.F.R. 550.1303(d). There are generally two types of official work schedules for firefighters:

A. 24-Hour Shift Firefighters. Most commonly, firefighters work a 72-hour workweek consisting of three 24-hour shifts. These shifts include periods of actual work and substantial periods of time during which firefighters are in a standby status. In standby status, firefighters are free to eat, sleep, and engage in personal activities, but are confined to the worksite and remain in a state of readiness to perform actual work as required.

B. 40-Hour Plus Firefighters. Other firefighters, (most commonly supervisors) have a regular 40-hour workweek consisting of five 8-hour days in addition to regularly scheduled standby duty (e.g., an extra 16-hour standby shift).

101603. Uncommon Tour of Duty

An agency shall establish an uncommon tour of duty for each firefighter compensated under 5 C.F.R. part 550, Subpart M, for the purpose of leave use and accrual. The uncommon tour of duty shall correspond directly to the firefighter’s regular tour of duty so that each firefighter accrues and uses leave based on that tour. See 5 C.F.R. 630.210.

101604. Hourly Rate of Basic Pay

The firefighter’s regular tour of duty is used in determining the appropriate pay computation method. Firefighters are paid on an hourly rate basis. A firefighter’s daily, weekly, or biweekly rate of basic pay must be computed using the applicable hourly rates derived under 5 C.F.R. 550.1303(a) and (b). Premium pay caps apply to the additional nonovertime pay received by firefighters with schedules exceeding the basic 40-hour workweek. Nonovertime pay is considered as basic pay and is not subject to reduction, but is included in the aggregate pay when determining the overtime pay cap. See 5 C.F.R. 550.1305 and 5 C.F.R. 550.107.

A. 24-Hour Shift Firefighters. For firefighters with a regular tour of duty that does not include a basic 40-hour workweek (firefighters whose schedules generally consist of 24-hour shifts with a significant amount of designated standby and sleep time), the hourly rate of basic pay is computed by dividing the applicable annual rate of basic pay by 2756 hours.

B. Basic 40-Hour-Plus Firefighters. For firefighters with a regular tour of duty that includes a basic 40-hour workweek plus additional nonovertime hours, the hourly rate of basic pay is computed by dividing the applicable annual rate of basic pay by:

1. 2087 hours, for hours within the basic 40-hour workweek (or an 80-hour biweekly pay period); and

2. 2756 hours, for any additional nonovertime hours.

C. Training. Firefighters are entitled to pay for their regular tour of duty during training. A firefighter should receive basic pay and overtime pay for the firefighter's regular tour of duty in any week in which attendance at agency-sanctioned training reduces the hours in the firefighter's regular tour of duty. This guidance does not pertain to student trainee employees in the GS-0099 series. A firefighter is not prohibited from receiving a higher amount of pay if he or she is entitled to that higher amount based on hours of actual work. See 5 C.F.R. 410.402(b)(6).

101605. Meal and Sleep Time

For firefighters compensated under 5 U.S.C. § 5545b, meal time and on-duty sleep time may not be excluded from hours of work.

101606. Overtime Computation

Under 5 U.S.C. § 5542, for firefighters compensated under 5 C.F.R. 550, Subpart M, overtime work means officially ordered or approved work in excess of 106 hours in a biweekly pay period, or in excess of 53 hours in an administrative workweek if the agency establishes a weekly basis for overtime pay computations. See 5 C.F.R. 550.111(g). Overtime pay is considered part of continuation of pay (COP) for firefighters. Overtime hourly rates of pay are calculated as follows:

A. FLSA-exempt (FSLA non-covered). For a firefighter who is exempt from FLSA, the overtime hourly rate is computed as provided in 5 C.F.R. 550.113(e). Generally, the overtime hourly rate is capped at 1-1/2 times the GS-10 minimum rate, but the rate may not fall below the firefighter's own hourly rate of basic pay.

B. FLSA-nonexempt (FLSA covered). For a firefighter who is covered by nonexempt from the overtime provisions of FLSA, the overtime hourly rate of pay equals 1-1/2 times the firefighters hourly rate of basic pay for that particular firefighter as established under 5 C.F.R. 550.1303(a) or 1303(b)(2).

101607. Premium Pay

Except for overtime pay in accordance with paragraph 101606, a firefighter is barred from being paid any other premium pay including night pay, Sunday **premium** pay, holiday pay, and hazardous duty pay. Premium pay for overtime in the firefighter's regular tour of duty covered by 5 U.S.C. § 5545b is subject to a biweekly limitation rather than an annual limitation. See 5 C.F.R. 550.107.

101608. Leave Accrual

The leave accrual rates for firefighters are established based on an uncommon tour of duty. See paragraph 101603. Leave accrual for firefighters is directly proportional based on the number of hours in the biweekly tour of duty and the accrual rate of the corresponding leave category to the standard leave accrual rates for employees who accrue and use leave on the basis of an 80-hour biweekly tour of duty. One hour or an appropriate fraction thereof of leave is charged for each hour or appropriate fraction thereof of absence from the uncommon tour of duty. See 5 C.F.R. 630.210(c).

101609. Mandatory Separation

A firefighter, who is otherwise eligible for immediate retirement under [5 U.S.C. § 8336\(c\)](#) (CSRS) and [5 U.S.C. § 8412\(d\)](#) (FERS), must be separated from the federal service on the last day of the month in which the employee becomes 57 years of age unless he or she has not yet completed 20 years of service. In that case, the employee shall be separated on the last day of the month in which he or she completes 20 years of service. See 5 U.S.C. § 8335(b) and 5 U.S.C. § 8425(b).

101610. Retirement

Firefighters have a unique retirement deduction percentage for CSRS and FERS employees. These rates are published by OPM in the CSRS and FERS Handbook, Chapter 30. Percentages of basic pay for withholding and contributions for FERS employees are described in [5 U.S.C. § 8422\(a\)\(2\)\(B\)](#) and [5 U.S.C. § 8423\(a\)\(1\)\(B\)](#). Percentages of basic pay for withholdings and contributions for CSRS employees are described in [5 U.S.C. § 8334\(a\)](#). Additionally, a firefighter's special retirement coverage provides for an enhanced annuity formula and reduced age/service requirements as follows:

A. CSRS Coverage. Under 5 U.S.C. § 8336(c) once an employee reaches 50 years of age and completes 20 years of service as a firefighter or law enforcement officer, or any combination of such service totaling at least 20 years, they are entitled to a special annuity computation as provided under [5 U.S.C. § 8339\(d\)](#).

B. FERS Coverage. Under 5 U.S.C. § 8412(d), an employee is entitled to a special annuity computation as provided under [5 U.S.C. § 8415\(d\)](#) after:

1. Completing 25 years of service as an LEO or a firefighter, or any combination of such service totaling at least 25 years; or

2. Reaching the age of 50 and completing 20 years of service as an LEO or firefighter, or any combination of such service totaling at least 20 years.

1017 JUDGES

101701. Administrative Law Judges (ALJs)

A. Authority. Under [5 U.S.C. § 3105](#), the Department may appoint ALJs for proceedings conducted in accordance with administrative procedures under [5 U.S.C. § 556-557](#). These employees may not perform duties inconsistent with their duties and responsibilities as administrative law judges.

B. Pay for ALJs. There are [three](#) levels of basic pay for ALJs (designated as AL-1, AL-2, and AL-3, respectively), and each ALJ is paid at one of the levels as established under [5 U.S.C. § 5372](#). The ALJ positions are (lowest to highest): AL-3, Rate A; AL-3, Rate B; AL-3, Rate C; AL-3, Rate D; AL-3, Rate E; AL-3, Rate F; AL-2; and AL-1. The minimum rate for an ALJ (AL-3, Rate A) is set at 65 percent of Level IV of the Executive Schedule. The maximum rate for an ALJ (AL-1) is set at 100 percent of Level IV of the Executive Schedule.

101702. Judges of the U.S. Court of Appeals for the Armed Forces

The U.S. Court of Appeals for the Armed Forces (formerly the U.S. Court of Military Appeals) is established under [10 U.S.C. § 941-946](#). See [DoDI 1400.25-V805](#), Special Retirement and Survivor Benefits for Judges of the U.S. Court of Appeals for the Armed Forces. The President, with the advice and consent of the U.S. Senate, appoints the judges for a term of 15 years. The court, consisting of five judges, is located within the DoD for administrative purposes. Washington Headquarters Services (WHS) is the employing office for the judges. For pay purposes, the judges are civilian employees as defined in 5 C.F.R. 213. The judges are entitled to the same salaries and travel allowances as are provided to the judges of the U.S. Courts of Appeals (GS Salary Table, Schedule 7, for Judicial Salaries). The maximum annual salary is that of Level I of the Executive Schedule.

A. Entitlements. Judges are entitled only to regular base pay. Judges are excluded from the leave provisions of 5 U.S.C. § 6301(2). As Federal judges under [5 U.S.C. § 5541\(2\)\(i\)](#), they also are excluded from the provisions of premium pay under [5 U.S.C. Chapter 55, subchapter V](#).

B. Deductions

1. Judges under CSRS are required to contribute eight percent of basic pay for retirement. Judges under FERS have the same deduction rate as other FERS employees. See the CSRS and FERS Handbook, Chapter 30.

2. The FEGLI for the judges is based on Level II of the Executive Schedule.

3. Judges are subject to the Social Security tax wage base limit as published yearly by IRS. There is no wage base limit for Medicare tax, and all covered wages are subject to Medicare tax.

C. Special Retirement and Survivor Benefits for Judges of the U.S. Court of Appeals for the Armed Forces. Upon becoming eligible for retirement, judges may elect to receive a retirement annuity from the DoD Military Retirement Fund (MRF) in lieu of an annuity under CSRS or FERS. See [10 U.S.C. § 945](#). Survivor and former spouse annuities may also be elected. The DFAS-Indianapolis Site serves as the “payroll office” for retiree and survivor entitlements. DFAS shall perform functions such as:

1. Maintaining individual retirement records of individuals who elect annuity benefits under 10 U.S.C. § 945;
2. Issuing annuity payments from moneys in the DoD MRF, including the collection of applicable federal and state income taxes, and collections of debts owed the U.S. Government;
3. Arranging with OPM for transfer of moneys, including interest payments authorized under 10 U.S.C. § 945(a)(3)(A), from the Civil Service Retirement and Disability Fund (CSRDF) to the DoD MRF;
4. Withholding, as appropriate, contributions from the annuity for payment of FEHB, FEGLI, making correct agency contributions, and transmitting these moneys to the CSRDF;
5. Readjusting the annuity payment when events change the retiree or survivor entitlements;
6. Accounting for retirement moneys received from OPM and disbursing to benefit recipients, insurance carriers, and federal and state tax entities; and
7. Ceasing annuity payment if the employee elects judiciary retirement benefits under 10 U.S.C. § 945(g).

D. Notifications. Judges in receipt of an annuity under 10 U.S.C. § 945 are responsible for notifying WHS of any dual compensation issues that may arise under 10 U.S.C. § 945(f) and/or their election of judicial retirement benefits under 10 U.S.C. § 945(g).

E. Senior Judges of the U.S. Court of Appeals for the Armed Forces. Under [10 U.S.C. § 942\(e\)](#), a senior judge who formerly served on the Court of Appeals for the Armed Forces may perform judicial duties for the court. When performing duties, a senior judge is considered an employee or official of the government. A senior judge is paid for each day he or she performs judicial duties in an amount equal to that of a sitting judge. Payment for a senior judge’s service is made in lieu of any retired and annuity pay due the judge. However, a senior judge may continue to receive his or her retired and annuity pay if the senior judge performs non-judicial duties for the court and receives no pay other than per diem and travel expenses. See [U.S. Court of Appeals for the Armed Forces Rules of Practice and Procedure](#).

1018 AUXILIARY CHAPLAINS AND WEST POINT MILITARY ACADEMY CHAPLAIN

101801. Auxiliary Chaplains

Civilian clergy may be assigned to perform essential religious services of the chapel program that are beyond the staffing capabilities of the commissioned officer Armed Forces chaplains. Auxiliary chaplains normally perform their services on military installations. To serve as auxiliary chaplains, civilian clergy must be ordained or accredited by a faith group recognized by the [Armed Forces Chaplains Board](#). They must meet any additional qualifications required by the Armed Forces.

101802. Appointing and Paying Auxiliary Chaplains

A. Auxiliary chaplains may be appointed by the HRO on an intermittent basis. They are paid on a fee basis from the employing activity's appropriated funds for civilian personnel such as Operation and Maintenance funds. The HRO may appoint auxiliary chaplains under the excepted service authority in 5 C.F.R. 213.3101.

B. Work Schedules. Auxiliary chaplains employed on an intermittent basis have no work schedule. They are paid for religious services performed.

C. Absence and Leave. There is no entitlement for leave.

D. Entitlements. The pay scale for auxiliary chaplains is determined by the employing activity's HRO. Social Security, Medicare, federal and state income tax withholdings are made in accordance with the tax documents filed by the chaplain. Social Security, Medicare, federal and state income tax withholdings do not apply to chaplains under non-personal service contracts.

101803. West Point Military Academy Chaplain

Under [10 U.S.C. § 4337](#), the President may appoint a chaplain to serve at the Military Academy at West Point. The civilian chaplain is entitled to a monthly housing allowance, in the same amount as the basic allowance for housing (BAH) allowed to a lieutenant colonel and to fuel and light for quarters. However, because utility costs are already factored into the BAH rate, no separate allowance for fuel and light should be paid. The chaplain's salary is taxable and is subject to the withholding of income, Social Security, and Medicare taxes. The BAH is not subject to the withholding of income taxes under [26 U.S.C. § 107](#) which excludes from a minister's gross income the value of rental allowances he/she receives for a home. However, Social Security and Medicare taxes must be withheld from the BAH.

1019 SERVICE SECRETARIES

101901. General

Effective the pay period beginning November 30, 2003, [5 U.S.C. § 5504](#) was amended to allow the Cabinet Secretaries (e.g. the Secretary of Defense) and the Secretaries of the Military Departments to be paid on a biweekly basis.

101902. Time and Attendance

Time and attendance is not reported for Service Secretaries. Accrual or usage of annual and sick leave is not authorized. Military Department Secretaries are not eligible for premium pay.

1020 ADDITIONAL PAY FOR CERTAIN HEALTHCARE PROFESSIONALS

102001. General

OPM has delegated to DoD the discretionary use of certain Title 38 provisions that are primarily available to the Department of Veterans Affairs (VA). If DoD uses one of these authorities in the delegation agreement, the comparable authority in Title 5 is waived. The following Title 38 provisions as provided in [5 U.S.C. § 5371](#) have been delegated:

- A. Special Salary Rate Authority ([38 U.S.C. § 7455\(a\)\(2\)\(A\)](#)) and (B), (b), (c), and (d));
 - B. Baylor Plan and Alternate Work Schedules ([38 U.S.C. § 7456](#) and 7456A);
 - C. Premium Pay ([38 U.S.C. § 7454](#) and 38 U.S.C. § 7456(a) and (b));
 - D. Authority to Establish Qualifications ([38 U.S.C. § 7402\(a\)](#), (b), (d), and (f));
 - E. Qualification-based Grading System ([38 U.S.C. § 7403\(a\)](#), (b)(4), (c), (e), and (f)(1));
 - F. Head Nurse Pay and Nurse Executive Special Pay ([38 U.S.C. § 7452\(a\)\(2\)](#) and (g));
 - G. Hours of Employment ([38 U.S.C. § 7421\(a\)](#));
 - H. Pay for Physicians and Dentists ([38 U.S.C. § 7431\(a\)](#), (b), (c), (d)(1)-(5), (e)(2)-(4), (f) and (h); [38 U.S.C. § 7432](#) and [7433\(a\)](#));
 - I. Nurse Locality Pay System ([38 U.S.C. § 7451\(a\)](#), (b), (c), (d), (e), and (f));
- and

J. Special Incentive Pay for Pharmacist Executives ([38 U.S.C 7410 \(b\)](#)).

102002. Premium Pay

The authority to compensate certain DoD healthcare professionals with additional pay is used to recruit and retain qualified employees in specific medical fields. For additional guidance, see [DoDI 1400.25-V540](#), Pay Pursuant to Title 38--Additional Pay for Certain Healthcare Professionals.

102003. Baylor Plan Nurses

Baylor Plan nurses work at DoD Health facilities and are hired to work a “Baylor workweek” consisting of two regularly-scheduled 12-hour tours of duty. The tours are worked entirely between the last day and the first day of the administrative workweek (Friday midnight to Sunday midnight) authorized under 38 U.S.C. § 7456. The Baylor workweek is considered to be a full 40-hour workweek for pay and leave accrual purposes. For additional guidance on the Baylor Plan nurses see [DoDI 1400.25-V541](#), Pay Pursuant to Title 38--Special Rules for Nurses Pursuant to the Baylor Plan.

102004. On-Call Employees

Health care professionals are eligible to receive on-call pay when assigned to a work unit that has been officially designated as requiring employees to be on-call. On-call pay is a premium paid to certain professionals for working under circumstances or conditions authorized by [38 U.S.C. § 7457](#). The employee must be officially scheduled to be on-call outside of his or her regular duty hours. An employee, who is excused from regular duty on a holiday, or “in lieu of” a holiday, may be scheduled to be on-call and receive on-call pay.

102005. Physicians and Dentists Pay Plan (PDPP).

A. General. The [DoDI 1400.25-V543](#), DoD Civilian Personnel Management System: Pay Plan for DoD Civilian Physicians and Dentists Covered by the General Schedule, establishes policy and provides guidance to establish the PDPPs for eligible DoD civilian physicians and dentists who:

1. Work full-time or part-time with tours of at least 20 hours per pay period at grade GS-15 equivalent or below, and

2. Provide direct patient care and services.

B. Pay. Every 2 years, the VA publishes the minimum and maximum amounts of annual pay for the PDPP in the Federal Register. Under the PDPP, a physician or dentist’s annual pay is the sum of base pay plus market pay. Base pay is the GS rate for the physician or dentist before any deductions and without additional pay of any kind. Market pay reflects the recruitment and retention needs for the specialty or assignment of a particular physician or dentist.

Annual pay is basic pay for all purposes, including the computation of retirement benefits, lump-sum annual leave payments, life insurance, TSP, and other benefits. See 38 U.S.C. § 7431(f).

C. Pay Limitation. Section 7431(e) of Title 38 provides that in no instance should the total amount of compensation paid in any year to a physician or dentist under Title 38 exceed the salary of the President of the United States as in effect on the last day of that calendar year. Section 7431 does not allow pay over the cap to be deferred and paid the next calendar year. Payments that exceed the salary of the President may not be made at any time. For further information and a discussion of limitations on market pay, see DoDI 1400.25-V543 and Chapter 3.

1021 LAW ENFORCEMENT OFFICERS (LEOs)

102101. General

LEOs as defined by 5 U.S.C. § 8331(20), are employees whose primary responsibility is the investigation, apprehension, or detention of individuals suspected or convicted of offenses against the U.S.

102102. Premium Pay

The majority of LEOs are covered by the standard premium pay provisions established in 5 U.S.C. Chapter 55, subchapter V (including provisions that reflect overtime pay entitlements under FLSA for covered nonexempt employees). Premium pay with specific implications for LEOs includes:

A. Availability Pay. LEOs, as defined by 5 U.S.C. § 8331(20) and 5 C.F.R. 550.103, are authorized to receive premium pay in the form of availability pay in accordance with 5 U.S.C. § 5545a and 5 C.F.R. 550.185. Availability pay was established to compensate the employee for unscheduled duty in excess of a 40-hour workweek based on the needs of the employing agency. An exception under 5 C.F.R. 550.181(b) allows any Office of Inspector General employing less than five investigators to elect not to cover their employees under the provisions of 5 U.S.C. § 5545a. Availability pay recipients are not covered by FLSA. Availability pay is subject to a biweekly limitation under 5 C.F.R. 550.107. Under 5 C.F.R. 550.186, LEOs receiving availability pay are not entitled to other types of premium pay based on unscheduled duty hours.

B. Annual Premium Pay for Standby Duty. The rate of annual premium pay for standby duty is determined by the HRO and forwarded to the PRO via SF 50. (See Chapter 4, Table 4-1 for a list of deductions withheld). Standby duty pay is generally not used for Federal law enforcement employees however, for more information concerning standby duty pay, refer to Chapter 3. Standby duty pay under 5 C.F.R. 550.141 may not be paid to an LEO, who is receiving availability pay. See 5 C.F.R. 550.163.

C. Overtime Computation. Overtime work scheduled in advance of the administrative workweek on a day containing part of a criminal investigator's basic 40-hour workweek must be compensated under 5 C.F.R. 550.111.

D. Administratively Uncontrollable Overtime (AUO). Information concerning AUO for LEOs is located in Chapter 3 and on the OPM website for pay and leave.

102103. Leave Accrual

Leave accrual guidance for LEOs is based on the guidelines published in 5 C.F.R. 630.

102104. Mandatory Separation

LEOs eligible for immediate retirement must separate from the federal service on the last day of the month in which the employee becomes 57 years of age unless he or she has not yet completed 20 years of service. In that case, the employee separates on the last day of the month in which he or she completes 20 years of service. See 5 U.S.C. § 8335(b), 5 U.S.C. § 8425(b), 5 U.S.C. § 8336(c), and 5 U.S.C. § 8412(d).

102105. Retirement

LEOs have a unique retirement deduction percentage rate for CSRS and FERS employees, which are published by OPM in the CSRS and FERS Handbook, Chapter 30.

1022 MILITARY SEALIFT COMMAND (MSC)

The pay of officers and members of crews of vessels shall be fixed and adjusted from time to time as nearly as is to be consistent with the public interest in accordance with prevailing rates and practices in the maritime industry. See 5 U.S.C. § 5348. Hours of work and premium pay policy for MSC civil service mariners are covered by Department of the Navy Civilian Marine Personnel Instruction 610, Hours of Work and Premium Pay, which has been approved by the Department of the Navy's Office of Civilian Human Resources. Base wage and premium pay scales for MSC civil service mariners are approved by the DoD Wage Setting Authority, in coordination with OPM.

*1023 DE FACTO EMPLOYEES

102301. General

A de facto employee is an individual who, in good faith, renders services to the government but who was never properly appointed or never actually appointed as an employee. There are four common de facto employment situations:

A. When an individual performed services, but was not recorded as an employee in the pay system because either the record was not yet established or the individual began working prior to their official starting date.

B. When a current employee received pay for an erroneous promotion.

C. When an employee performed services after their official separation date or after the end date of their service appointment.

D. When an individual was hired and performed services under an erroneous appointment, but is not expected to receive a legal appointment.

102302. Payment of De Facto Employees

A. General. Under the principles of quantum meruit (i.e., the actual value of services performed) an individual whose appointment is found to be improper or erroneous is entitled to receive compensation earned, service credit for purposes of accrual of annual leave, and lump-sum payment for unused leave upon separation, unless:

1. The appointment was made in violation of an absolute statutory prohibition, or

2. The employee was guilty of fraud in regard to the appointment or deliberately misrepresented or falsified a material matter.

See 58 Comp. Gen. 734 [B-191977, August 17, 1979](#) and 61 Comp. Gen. 127 [B-197400](#) December 10, 1981.

B. De Facto Determination and Payment Processing. Payment of de facto employees for services rendered to the government will depend on the facts of each individual's situation. The employing agency must make a determination identifying the employee as a de facto employee who acted in good faith and must convey that determination to DFAS. The employing agency must submit a payroll processing request to initiate the payment of a de facto employee. A de facto determination from the agency will invalidate any debt that may have been established for wages paid.

C. De Facto Guidance. The payment of de facto employees has been addressed in the following Comptroller General opinions:

1. Individual Serving before Appointment. Individuals serving in a de facto status before officially appointed should be compensated for the reasonable value of their services performed during that period. Payment is established at the rate of basic compensation set for the positions to which they are ultimately appointed. See Comp. Gen. [B-191397, September 6 1978](#) and [B-189741, April 4, 1978](#).

2. Individual Never Appointed. The reasonable value of the services of an individual who was never in fact appointed to the position which the individual purportedly filled, should be established at the rate of basic compensation for the position that was ultimately advertised and filled. Comp. Gen. [B-193605, January 8, 1979](#).

3. Premium Pay. The rule that a de facto employee is entitled to the reasonable value of his or her services does not limit the employee to receipt of basic compensation only. The reasonable value of his services includes premium pay, including holiday pay. Comp. Gen. [B-188574, December 29, 1977](#).

4. Termination and Reemployment. In the event an individual is terminated from employment after the appointment was found to be erroneous and is then reemployed after a break in service, the individual is entitled to compensation earned, lump-sum payment for accrued annual leave, service credit for annual leave accrual purposes, and recredit of accrued sick leave. If OPM denies service credit for the period of the improper appointment, the employee would be entitled to a refund of the retirement deductions made from his or her salary during the period of the erroneous appointment, less any necessary Social Security deductions. Comp. Gen. *B-197400, December 10, 1981.*

5. Dual Compensation Prohibition. De facto status may not be applied to nullify the effect of a statutory provision that prohibits dual compensation. See Comp. Gen. *B-157983, December 13, 1965.*

6. Erroneous Promotions. A current employee who receives an erroneous promotion may be regarded as a de facto employee. For example, an employee is regarded as a de facto employee if the employee is promoted but it is later determined the employee did not meet the general requirements of the higher position. The employee is entitled to retain the compensation received for the services performed in good faith as a de facto employee during the period of the erroneous promotion unless there is a statutory bar prohibiting such payment. See Comp. Gen. *B-221745, April 28, 1986.*

C. Tax Reporting. Pay to a de facto employee should be reported as if the individual had been a correctly appointed employee during the de facto period. De facto status has no impact on how pay is reported. Any pay that includes wages should be reported on a W-2 form for the year in which payment is made.

1. Example: An employee was erroneously promoted and performed duties and received pay associated with the erroneous promotion in 2013. The error was not discovered until 2014. The payments for the de facto employment were reported as taxable income on the 2013 W-2 form. There should be no adjustment to the 2013 W-2 even though the error was discovered in 2014.

2. Example: An employee was erroneously promoted and performed duties and received pay associated with the erroneous promotion in 2013. The error was discovered in 2013 and the full amount paid was collected as a debt from the employee in 2013. A de facto determination was submitted in 2014, which authorized the employee to be paid for the services performed as a de facto employee. The wages for the de facto period were repaid to the employee in 2014. The wages for the de facto period are reported in the year actually paid, or 2014.

D. FEHB and FEGLI Deductions

1. FEHB. Under the Affordable Care Act, health insurers may not cancel coverage retroactively if premiums have already been paid, even when an employer has

erroneously allowed an ineligible employee to enroll in FEHB. Premiums should not be refunded to the de facto employee.

2. FEGLI. If the error is discovered before 2 years have passed, incontestability does not apply and the erroneous coverage is not valid. Any erroneous coverage should be voided and the premiums should be refunded. See FEGLI Handbook and chapter 11 of this volume.

E. TSP. The regulations at 5 C.F.R. 1605.12 set out procedures for removing erroneous contributions received by TSP from employees and employers.

F. Retirement Credit. The question of whether a de facto employee is entitled to service credit for retirement purposes should be referred to OPM. If OPM denies service credit for the period the de facto employee worked, the de facto employee is entitled to a refund of retirement contributions made during the de facto period, less any Social Security deductions. See 61 Comp. Gen. 127 (1981).

102303. Variations

OPM assists Federal agencies with correcting errors made during the competitive hiring process. Variations are used to correct errors made in the competitive hiring process when no other remedy exists within the regulation. See OPM Guidance, Hiring Authorities and 5 C.F.R. 5.1.

*1024 HIGHLY QUALIFIED EXPERTS (HQEs) AND HIGHLY QUALIFIED EXPERTS-SENIOR MENTORS (HQEs-SMs)

102401. General

Employees appointed as an HQE must possess an uncommon level of expertise and recognition. Such expertise, with the exception of HQE-SMs, is generally not available within the Federal workforce at the time of need, nor is it typically gained within the civil service or uniformed services. HQE-SMs, by nature, have the expertise and experience required to fulfill their intended roles, having been recruited from former or retired civil service or uniformed service personnel. See 5 U.S.C. 9903; DoDI 1400.25, V922.

102402. Appointments

Employees hired as HQEs will be given “Excepted Not to Exceed” appointments (up to 5 years) under an Experts Other (EE) pay plan. The HQE or HQE-SM must sign a written service agreement.

102403. Pay

Compensation for an HQE or HQE-SM should reflect the salary paid in the labor market for comparable positions, taking into account such factors as applicant’s skills, professional and educational accomplishments, and the complexity of the work the applicant is asked to perform.

See DoDI 1400.25, V922 for other relevant factors. Basic pay for an HQE or HQE-SM typically will be within the range from GS-15, step 1 (or equivalent) up to the statutory limit of Level IV of the Executive Schedule. In addition to basic pay, HQEs and HQE-SMs may receive locality-based comparability payments applicable to the geographic location of their position of record as prescribed by section 5 U.S.C. § 5304. When added to the rate of basic pay, locality-based comparability payments may not exceed Level III of the Executive Schedule as described in 5 U.S.C. § 5304(g)(2)(C). See DoDI 1400.25, V922 for additional pay information.

102404. Performance Awards

HQEs and HQE-SMs are not eligible to receive performance awards.

102405. Leave

HQEs and HQE-SMs are subject to the annual leave accrual provisions of 5 U.S.C. § 6304(a), which sets the maximum number of annual leave hours carried forward from one leave year to another at 240 hours. Full-time HQEs and HQE-SMs accrue 8 hours of annual leave per pay period and at a prorated rate for other eligible part-time employees.