UNDER SECRETARY OF DEFENSE
4000 DEFENSE PENTAGON
WASHINGTON, D.C. 20301-4000

PERSONNEL AND READINESS

OCT 28 2020

MEMORANDUM FOR SENIOR PENTAGON LEADERSHIP (SEE DISTRIBUTION)
DEFENSE AGENCY AND DOD FIELD ACTIVITY DIRECTORS

SUBJECT: Scheduling of Annual Leave by Employees Performing Services Determined to be Essential for the Response to Certain National Emergencies

References: (a) Director of the Office of Personnel Management Memorandum, "Interim Regulations on Scheduling of Annual Leave by Employees Performing Services Determined to be Essential for the Response to Certain National Emergencies, and Notice of the Determination that the National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak Constitutes an Exigency of the Public Business for the Purpose of Restoring Forfeited Annual Leave," August 27, 2020
(b) Title 5, Code of Federal Regulations, Part 630
(c) Department of Defense Instruction 1400.25, Volume 630, "DoD Civilian Personnel Management System: Leave," May 8, 2015
(d) Department of Defense Instruction 1400.25, Volume 1406, "DoD Civilian Personnel Management System: Nonappropriated Fund (NAF) Attendance and Leave," March 20, 2015

The Office of Personnel Management (OPM) updated and issued new regulations at reference (a), which provide streamlined authority to assist agencies in restoring annual leave for employees who forfeit such leave in excess of the maximum allowable carryover because of their work to support the nation during a national emergency. The regulations provide that the Director of OPM may deem a specific national emergency declared by the President to be an exigency of the public business for the purpose of restoring forfeited annual leave.

The Director of OPM deemed the National Emergency Concerning the Novel Coronavirus Disease (COVID–19) Outbreak to be an exigency of the public business for the purpose of restoring forfeited annual leave, pursuant to 5 CFR § 630.310, at reference (b). As such, agencies are now authorized to determine that employees who would forfeit annual leave in excess of their maximum allowable carryover rate due to their services being considered essential for the response to the COVID-19 national emergency are deemed to have scheduled the annual leave in advance, and such leave is subject to restoration.

For the purposes of administering and implementing this authority, I have determined that employees or groups of employees in positions with duties that directly support the DoD response to the COVID-19 national emergency, such as (but not limited to) medical or health professions, acquisition, engineering, and installation infrastructure, are performing essential services that qualify for coverage under the regulations.

Enclosure 2 to reference (c) delegates, to the lowest practical level, responsibility for administering certain OPM regulations concerning an exigency of public business. Effective the date of this memorandum, this responsibility includes administering 5 CFR § 630.310 to include:

- Designating specific employees or groups of employees performing essential Services that directly support the DoD response to COVID-19 as qualified for coverage under the regulations;

- Informing designated employees in writing;

- Monitoring the response to COVID-19 to determine whether the services of designated employees are still required in such a manner that the employees are prevented from scheduling and using their annual leave; and

- Fixing a termination date of the exigency of the public business, pursuant to 5 CFR § 630.310(f)(2), and informing designated employees and agency payroll providers of the termination date pursuant to 5 CFR § 630.310(f).

This authority may be further delegated; however, pursuant to 5 CFR § 630.310(b)(ii)(2), the determination of whether employees qualify for coverage may not be made by an official whose leave would be affected by the determination.

Enclosure 3 of reference (d) administratively extends certain OPM regulations concerning the exigency of public business to Nonappropriated Fund activities and employees. Effective the date of this memorandum, this administrative extension includes application of 5 CFR § 630.310.

These changes will be incorporated into references (c) and (d) as soon as practicable, but not later than January 1, 2022.

For more information, my point of contact is Ms. Carlene Wilson, Acting Associate Director, Employment and Compensation, Defense Civilian Personnel Advisory Service, whom you may reach at (571) 372-2258 or at carlene.d.wilson2.civ@mail.mil. The attached guidance provides additional information for DoD Components.

Matthew P. Donovan

Attachment:
As stated

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SCHEDULING OF ANNUAL LEAVE BY EMPLOYEES DETERMINED NECESSARY TO RESPOND TO CERTAIN NATIONAL EMERGENCIES

INTRODUCTION

The Office of Personnel Management (OPM) issued interim regulations on August 10, 2020, by amending section 630.306(a) of title 5, Code of Federal Regulations (C.F.R.) and replacing the previously reserved section 630.310 of title 5, C.F.R. The regulations provide that employees who would forfeit annual leave in excess of the maximum annual leave allowable carryover because of their work to support the nation during a national emergency will have their excess annual leave subject to leave restoration. The new leave regulations will assist employees who are unable to use sufficient leave due to the Department's response to the Novel Coronavirus Disease (COVID-19) pandemic, as well as future national emergencies.

BACKGROUND

In accordance with section 6304(d)(1) of title 5, United States Code, excess annual leave lost because of "exigencies of the public business when the annual leave was scheduled in advance...shall be restored to the employee." OPM has determined that an exigency of the public business occurs when the employing agency determines there is a pressing need for an employee's service, and the employee cannot use his or her annual leave because there are no other practical alternatives available to accomplish the work by a given deadline.

During a national emergency, many employees may be faced with possible "use or lose" annual leave if they must remain on the job to work to respond to the national emergency. Normally, in order for annual leave to be considered for restoration, it must have been scheduled before the start of the third biweekly pay period, prior to the end of the leave year. This requirement means that agencies and employees would face the administrative burden of scheduling, canceling, and restoring leave during a time when all attention should be focused on the national emergency.

The new regulations at section 630.310 of title 5, C.F.R., remove the administrative burden of leave scheduling and canceling. They provide a streamlined process and allow for employees who would forfeit annual leave because of their work to support the nation during a national emergency will have their excess annual leave deemed to be scheduled in advance and subject to leave restoration.

ANNUAL LEAVE RESTORATION UNDER 5 C.F.R. 630.310

OPM will first make a declaration that a specific national emergency, as declared by the President, is considered to be an exigency of the public business for the purposes of restoring forfeited annual leave. OPM will notify agencies that they may utilize the authority in section 630.310 of title 5, C.F.R., to restore annual leave to employees whose work is considered essential for the particular national emergency.

Following OPM's notification, the Department of Defense (DoD) will notify the DoD Components of OPM's designation and identify the types of services and/or positions that may be considered essential in response to the particular national emergency.

The DoD Components are responsible for designating individuals or groups of employees whose services are so essential to the national emergency that they are prevented from using their annual leave. The DoD Component must inform designated employees of this determination in writing.

Designated employees whose annual leave would normally be forfeited at the end of a leave year are eligible for leave restoration under section 6304(d)(1)(B) of title 5, U.S.C. Annual leave restored under this authority will be subject to the same time limits as those applicable to DoD employees covered by section 630.306(b) of title 5, C.F.R.

FREQUENTLY ASKED QUESTIONS

Q1. Will this leave restoration apply to all national emergencies?

A1. No. OPM must first deem a specific national emergency, as declared by the President, to be an exigency of the public business for the purposes of restoring annual leave forfeited under section 6304(d)(1)(B) of title 5, U.S.C.

Q2. Once OPM has designated a national emergency to be an exigency of the public business for the purposes of annual leave restoration, will employees' leave automatically be restored?

A2. No. The DoD Component must determine which employees or groups of employees are performing services essential to the response to the national emergency which prevent them from using annual leave. These employees will be notified in writing of this designation and their eligibility to have annual leave restored pursuant to section 630.310 of title 5, C.F.R.

Q3. Who is responsible for determining whether the work of an employee or group of employee is essential to the national emergency such that they are prevented from taking annual leave?

A3. The DoD Components are responsible for determining which employees or groups of employees are performing services that are essential in responding to the national emergency such that they are prevented from taking annual leave. In order for work to be considered essential to the national emergency, the work must be in direct support of the Department's response to the national emergency and prevent the employees from taking annual leave. Such determinations may not be made by an official whose leave would be affected by the determination.

Q4. Under other circumstances, in order to have annual leave restored, an employee would have to have scheduled the leave in advance, in writing, before the start of the third biweekly pay period prior to the end of the current leave year. Does the same apply under this authority?

A4. No. The normal requirement to schedule annual leave in writing before the start of the third biweekly pay period prior to the end of the leave year (as required by section 630.308 of title 5, C.F.R.) is not applicable for employees who have been designated as covered by this authority.

Q5. If an employee is not designated as covered by this authority, are there other authorities that may be used to restore annual leave?

A5. Agencies have separate authority to determine that employees cannot use their excess annual leave due to an exigency of the public business. Covered employees may have their leave restored in accordance with section 6304(d)(1)(B) of title 5, C.F.R., but, unlike an exigency of public business declared by the Director of OPM, the annual leave must have been scheduled in advance and canceled.

Q6. How much time will designated employees have to use restored annual leave?

A6. Full-time employees must schedule and use excess annual leave amounts totaling 416 hours or less by the end of the leave year in progress 2 years after the date set as the termination date of the exigency of the public business. The agency will extend that period by 1 leave year for each additional 208 hours of excess annual leave or any portion thereof. Refer to sections 630.310(d) and 630.306(b) of title 5, C.F.R. This amount will be prorated for part-time employees.

Q7. What if a designated employee works an uncommon tour of duty?

A7. The formula contained in section 630.210(d) of title 5, C.F.R., will be used to apply the provisions of section 630.310(d) of title 5, C.F.R., relating to uncommon tours of duty.

Q8. When may a designated employee resume scheduling and using annual leave?

A8. The DoD Component will determine and advise designated employees when the Department's response to the declared national emergency no longer prevents them from using normal leave scheduling procedures.

Q9. When must an exigency of the public business be terminated?

A9. An exigency of the public business, for purposes of using this authority, must be terminated at the earliest of one of the following events:

- The President declares an end to the national emergency;
- The Director of OPM determines that the national emergency is no longer an exigency of the public business under this authority;
- The DoD Component determines that designated employees, individually or in groups, are no longer essential to the national response to the emergency or that employees designated as essential can resume normal scheduling and use of annual leave as stated in section 630.308(a) of title 5, C.F.R.;

- On the day that is 12 months after the national emergency has been declared; or
- When an employee whose services were determined to be essential moves to a position not involving services determined by the agency to be essential to the response to the emergency.

REFERENCES

5 U.S.C. Chapter 63, Subchapter I – Annual and Sick Leave
5 CFR Part 630, Subpart C – Annual Leave

CONTACT

For additional information: 703-545-7487 or dodhra.mc-alex.dcpas.list.ec-field-advisory--support@mail.mil