



## UNITED STATES OFFICE OF PERSONNEL MANAGEMENT

Washington, DC 20415

The Director

June 18, 2020

### MEMORANDUM FOR HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

FROM: MICHAEL J. RIGAS  
ACTING DIRECTOR

Subject: Annual Leave and Other Paid Time Off Guidance

This memorandum provides guidance for Federal agencies on how annual leave and other paid time off balances and limitations continue to be applied during the Coronavirus Disease 2019 (COVID-19) period. There are no changes to the normal rules for any of the authorities outlined below. The guidance under each heading below merely synthesizes those normal rules. Agencies must work with their employees to ensure that they continue to take any annual leave or other paid time off before it expires. The U.S. Office of Personnel Management (OPM) does not have the authority to change statutory limitations.

However, please know that OPM plans to issue regulations in the near future that will streamline the leave restoration process for agencies that have employees with “use or lose” annual leave who are unable to use this leave because of work-related requirements related to the COVID-19 national emergency. The regulations will deem the COVID-19 national emergency to be an exigency of the public business for the purpose of restoring forfeited annual leave. The regulations will provide that employees who would forfeit annual leave in excess of the maximum annual leave allowable carryover because of their essential work during the national emergency will have their excess annual leave deemed to have been scheduled in advance and subject to leave restoration. Agency heads will be required to identify any employees covered under this annual leave restoration authority and inform them in writing of this designation. This means that agencies and their employees will not be faced with the administrative burden of scheduling, canceling, and restoring such leave for these employees at a time when all available attention and energy should be focused on the national emergency.

#### **Annual Leave (“Use or Lose”)**

Employees may not carryover to the next leave year more than 240, 360, or 720 hours of annual leave, as applicable. The limitation on annual leave that may be carried over to the next leave year is established within section 6304 of title 5, United States Code. "Use or lose" annual leave is the amount of annual leave that is in excess of the employee's applicable annual leave ceiling. Any accrued annual leave in excess of an employee's annual leave ceiling will be forfeited if not used by the final day of the leave year. An agency may restore forfeited annual leave under certain conditions (see 5 U.S.C. 6304(d)).

## Restoration of Annual Leave

Agencies may restore annual leave that was forfeited because it was in excess of the applicable leave ceilings described above if the leave was forfeited because of an administrative error, exigency of the public business, or sickness of the employee. An agency must restore the annual leave in a separate leave account.

For the purpose of Federal leave administration, an exigency of the public business occurs when there is a pressing need for an employee's service and the agency must cancel the employee's pre-approved annual leave because there are no other practical alternatives available to accomplish the work by a given deadline. An employee's decision to cancel annual leave he or she had previously scheduled or to not schedule annual leave due to the cancellation of vacation or travel plans because of COVID-19 restrictions, **does not constitute an exigency of the public for the purposes of restoration of annual leave.**

### *Importance of Scheduling "Use or Lose" Leave in Advance*

An agency may restore annual leave that was forfeited due to an exigency of the public business or sickness of the employee **only** if the annual leave was scheduled in writing before the start of the third biweekly pay period prior to the end of the leave year. (See fact sheet on [Leave Year Beginning and Ending Dates](#) for dates for scheduling "use or lose" leave.)

Any annual leave scheduled after that date will be forfeited if not used by the final day of the leave year. Annual leave that was not scheduled in advance may be restored only under very limited conditions such as employees affected by the Defense Base Closure and Realignment Act (5 U.S.C. 6304(d)(3)), administrative error, or prolonged sickness of the employee.

### *Leave Year Beginning and Ending Dates*

A leave year begins on the first day of the first full biweekly pay period in a calendar year and ends on the day immediately before the first day of the first full biweekly pay period in the following calendar year.

### Relevant Fact Sheets

Annual Leave – <https://www.opm.gov/policy-data-oversight/pay-leave/leave-administration/fact-sheets/annual-leave/>

Leave Year Beginning and Ending Dates – <https://www.opm.gov/policy-data-oversight/pay-leave/leave-administration/fact-sheets/leave-year-beginning-and-ending-dates/>

Restoration of Annual Leave – <https://www.opm.gov/policy-data-oversight/pay-leave/leave-administration/fact-sheets/restoration-of-annual-leave/>

## **Compensatory Time Off for Travel**

Compensatory time off for travel is forfeited if not used by the end of the 26th pay period after the pay period during which it was earned. There is no payout for forfeited compensatory time off for travel (i.e., unused hours will expire after the 26 pay period limitation). An agency may extend the pay period in which to use compensatory time off for travel under very specific circumstances (see below).

*Uniformed service or an on-the-job injury with entitlement to injury compensation (see 5 CFR 550.1407(a)(2))*

Unused compensatory time off for travel will be held in abeyance for an employee who separates, or is placed in a leave without pay status, and later returns following:

- (1) separation or leave without pay to perform service in the uniformed services (as defined in 38 U.S.C. 4303 and 5 CFR 353.102) and a return to service through the exercise of a reemployment right, or
- (2) separation or leave without pay due to an on-the-job injury with entitlement to injury compensation under 5 U.S.C. chapter 81.

The employee must use all of the compensatory time off for travel held in abeyance by the end of the 26th pay period following the pay period in which the employee returns to duty, or such compensatory time off will be forfeited.

*Exigency of the service beyond the employee's control (see 5 CFR 550.1407(e))*

If an employee fails to use his or her accrued compensatory time off for travel before the end of the 26th pay period after the pay period during which it was earned due to an exigency of the service beyond the employee's control, the head of an agency, at his or her sole and exclusive discretion, may extend the time limit for up to an additional 26 pay periods.

### Relevant Fact Sheet and Resources

Compensatory Time Off for Travel – <https://www.opm.gov/policy-data-oversight/pay-leave/pay-administration/fact-sheets/compensatory-time-off-for-travel/>

See Q24 and Q25, FAQs – <https://www.opm.gov/policy-data-oversight/pay-leave/pay-administration/fact-sheets/compensatory-time-off-for-travel-questions-answers-to-fact-sheet/>

## **Compensatory Time Off for Overtime**

Compensatory time off for overtime is forfeited if not used by the end of the 26th pay period after the pay period during which it was earned. This forfeiture rule applies to Fair Labor Standards Act (FLSA)-exempt and FLSA non-exempt earned compensatory time off. There is no authority to extend the pay period limitation in which to use compensatory time off for

overtime. However, there are very specific rules that apply to the treatment of forfeited compensatory time off depending upon the FLSA status of the employee (see below).

*FLSA-exempt employees (see 5 CFR 550.114)*

An agency may provide that an FLSA-exempt employee who (1) fails to take earned compensatory time off within 26 pay periods or (2) transfers to another agency or separates from Federal service before the expiration of the 26 pay period time limit–

- Receive payment for the unused compensatory time off at the overtime rate in effect when earned, or
- Forfeit the unused compensatory time off, unless failure to use the compensatory time off is due to an exigency of the service beyond the employee's control.

*FLSA-nonexempt employees (see 5 CFR 551.531)*

If accrued compensatory time off is not used by an FLSA-nonexempt employee (i.e., FLSA covered) within 26 pay periods or if the FLSA-nonexempt employee transfers to another agency or separates from Federal service before the expiration of the 26 pay period time limit, the employee must be paid for the earned compensatory time off at the overtime rate in effect when earned.

Relevant Fact Sheet

Compensatory Time Off for Overtime – <https://www.opm.gov/policy-data-oversight/pay-leave/pay-administration/fact-sheets/compensatory-time-off/>

**Credit Hours**

Credit hours are hours worked voluntarily under a flexible work schedule. Only 1 credit hour is earned for each hour of voluntary work in excess of the basic work requirement. (See 5 U.S.C. 6126(a).) For a full-time employee, only 24 credit hours may be carried over to the next pay period. For a part-time employee, not more than one-fourth of the hours in the employee's biweekly basic work requirement may be carried over to the next pay period. There is no limitation on when the accrued hours must be used (i.e., no pay period usage limitation) as there are for compensatory time off for travel and overtime. Credit hours are only subject to the 24-hour per pay period carryover threshold described above.

Relevant Fact Sheet and Resources

Credit Hours Under a Flexible Work Schedule – <https://www.opm.gov/policy-data-oversight/pay-leave/work-schedules/fact-sheets/credit-hours-under-a-flexible-work-schedule/>

Handbook on Alternative Work Schedules – <https://www.opm.gov/policy-data-oversight/pay-leave/reference-materials/handbooks/alternative-work-schedules/>

## **Disabled Veteran Leave**

Disabled Veteran Leave (DVL) has an established 12-month period in which to use the credited DVL (up to 104 hours) for the purposes of undergoing medical treatment for a qualifying service-connected disability rating of 30 percent or more. Leave not used within the 12-month period is forfeited. There are no carryover or payment provisions. Although OPM understands that the U.S. Department of Veterans Affairs has canceled some non-essential appointments for treatment of veterans' service-connected disabilities, OPM has no authority to extend the statutory 12-month period in which to use DVL (see 5 U.S.C. 6329).

### Relevant Fact Sheet

Disabled Veteran Leave – <https://www.opm.gov/policy-data-oversight/pay-leave/leave-administration/fact-sheets/disabled-veteran-leave/>

### **Additional Information**

Agency headquarters-level human resources offices may contact OPM at [pay-leave-policy@opm.gov](mailto:pay-leave-policy@opm.gov) with additional questions or requests for clarifications. Agency field offices should contact their appropriate headquarters-level agency human resources office. Individual employees should contact their agency human resources office.

cc: Chief Human Capital Officers (CHCOs), Deputy CHCOs, Human Resources Directors, and Work-Life Coordinators