

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 531 and 550

RIN 3206-AL09

Locality-Based Comparability Payments and Evacuation Payments

AGENCY: Office of Personnel Management.

ACTION: Interim rule with request for comments.

SUMMARY: The Office of Personnel Management (OPM) is issuing interim regulations concerning pay actions for employees affected by a pandemic health crisis. The interim regulations clarify the rules for determining an employee's official worksite when he or she teleworks from an alternative worksite during an emergency situation, such as a pandemic health crisis. In addition, the interim regulations permit an agency to provide evacuation payments to an employee who is ordered to evacuate from his or her regular worksite and directed to work from home (or an alternative location mutually agreeable to the agency and the employee) during a pandemic health crisis. These regulations are issued as part of OPM's efforts to provide agencies with guidance to ensure they are able to fulfill their critical missions while at the same time protect their employees should a pandemic health crisis occur.

DATES: *Effective Date:* The interim regulations are effective on September 18, 2006.

Comment Date: Comments must be received on or before October 16, 2006.

ADDRESSES: Send or deliver written comments to Jerome D. Mikowicz, Acting Deputy Associate Director for Pay and Performance Policy, Strategic Human Resources Policy Division, Office of Personnel Management, Room 7H31, 1900 E Street, NW., Washington, DC 20415-8200; by fax at (202) 606-0824; or by e-mail at pay-performance-policy@opm.gov.

FOR FURTHER INFORMATION CONTACT: Vicki Draper by telephone at (202) 606-2858; by fax at (202) 606-0824; or by e-mail at pay-performance-policy@opm.gov.

SUPPLEMENTARY INFORMATION: The Office of Personnel Management (OPM) is issuing interim regulations concerning pay actions for employees affected by a pandemic health crisis. These interim regulations (1) clarify the rules for determining an employee's official worksite for the purpose of identifying his or her location-based pay entitlements when the employee

teleworks from an alternative worksite during an emergency situation such as a pandemic health crisis and (2) authorize agencies to provide evacuation payments to an employee who is ordered to evacuate from his or her regular worksite and directed to work from the employee's home (or an alternative location mutually agreeable to the agency and the employee) during a pandemic health crisis.

Official Worksite

On May 31, 2005, OPM issued interim regulations to define the requirements for determining an employee's official worksite to identify an employee's location-based pay entitlements, including special rate supplements and locality payments (70 FR 31278). Generally, an employee's official worksite is the location of the position of record where the employee regularly performs his or her duties and the employee is entitled to the locality rate (or special rate supplement) designated for the official worksite. If the employee is covered by a telework agreement and if the employee is scheduled (while in duty status) to report at least once a week, on a regular and recurring basis, to the regular worksite for the employee's position of record, then the regular worksite is the employee's official worksite. The employee is entitled to the locality rate designated for the regular worksite. However, if a telework employee is not scheduled to report at least once a week on a regular and recurring basis to the regular worksite, the telework site is the official worksite and the employee is entitled to the locality rate designated for the telework site. (See 5 CFR 531.605(d)(1) and (2).) Under 5 CFR 531.605(d)(3), an agency may make a temporary exception to these rules in appropriate situations, such as an employee recovering from an injury or medical condition that prevents commuting to the regular worksite.

During an emergency situation, such as a pandemic health crisis, an agency may direct a telework employee to work from his or her telework site for the duration of the emergency, and the employee may be prevented from reporting at least once a week on a regular and recurring basis to the regular worksite. In these interim regulations, we are amending 5 CFR 531.605(d)(3) to clarify that an agency may make a temporary exception to the requirement that a telework employee must report at least once a week on a regular and recurring basis to the regular worksite. An agency may make a temporary exception when the telework employee is affected by an emergency situation

(such as a pandemic health crisis), which temporarily prevents him or her from commuting to the regular worksite. In such emergency situations, the employee would continue to be entitled to the locality rate for the regular worksite.

Evacuation Payments

Executive agencies may authorize evacuation payments under sections 5522 and 5523 of title 5, United States Code, to employees whose departure from a place inside or outside the United States is officially authorized or ordered from any place where there is imminent danger to the lives of the employees. Section 5523(b) of title 5, United States Code, and OPM's regulations at 5 CFR 550.403(c), also provide that additional special allowances may be granted to evacuated employees to offset the direct added expenses incident to their evacuation.

These interim regulations add a new section at 5 CFR 550.409 to permit an agency to order its employees to evacuate from their worksites and perform work at home during a pandemic health crisis. The agency may designate an employee's residence (or an alternative location mutually agreeable to the agency and the employee) as a safe haven and provide evacuation payments under 5 U.S.C. 5523. Evacuated employees may be assigned to perform any work considered necessary or required to be performed during the period of evacuation without regard to the grades, levels, or titles of the employees. However, the employee must have the necessary knowledge and skills to perform the assigned work. An employee's failure or refusal to perform assigned work may be a basis for terminating evacuation payments, in addition to disciplinary action.

Currently, additional special allowances, including travel expenses and per diem, may be paid to an evacuated employee to offset any direct added expenses incurred as a result of the employee's evacuation under 5 U.S.C. 5523(b) and 5 CFR 550.403(c). OPM has determined similar authority is appropriate during a pandemic health crisis. The interim regulations at 5 CFR 550.409(b) permit the head of an agency, in his or her sole and exclusive discretion, to grant special allowance payments, based upon a case-by-case analysis, to offset the direct added expenses incident to performing work from home (or an alternative location mutually agreeable to the agency and the employee) during a pandemic health crisis.

Waiver of Notice of Proposed Rule Making and Delayed Effective Date

Pursuant to 5 U.S.C. 553(b)(3)(B), I find that good cause exists for waiving the general notice of proposed rulemaking. In response to a potential pandemic influenza event, the President recently issued the Federal Government's *Implementation Plan for the National Strategy for Pandemic Influenza*. This proposal has been fashioned in furtherance of that plan. In light of the imminence of the potential threat, providing an advance notice and comment period, before these regulations become effective, would be both impracticable and against the public interest. Accordingly, a waiver of the requirements for proposed rulemaking is justified under these circumstances.

E.O. 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with E.O. 12866.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they will apply only to Federal agencies and employees.

List of Subjects in 5 CFR 531 and 550

Administrative practice and procedure; Claims; Government employees; Reporting and recordkeeping requirements; Wages.

Office of Personnel Management.

Linda M. Springer,

Director.

■ Accordingly, OPM is amending parts 531 and 550 of title 5 of the Code of Federal Regulations as follows:

PART 531—PAY UNDER THE GENERAL SCHEDULE

■ 1. The authority citation for part 531 continues to read as follows:

Authority: 5 U.S.C. 5115, 5307, and 5338; sec. 4 of Public Law 103–89, 107 Stat. 981; and E.O. 12748, 56 FR 4521, 3 CFR, 1991 Comp., p. 316; Subpart B also issued under 5 U.S.C. 5303(g), 5305, 5333, 5334(a) and (b), and 7701(b)(2); Subpart D also issued under 5 U.S.C. 5335(g) and 7701(b)(2); Subpart E also issued under 5 U.S.C. 5336; Subpart F also issued under 5 U.S.C. 5304, 5305, and 5338; and E.O. 12883, 58 FR 63281, 3 CFR, 1993 Comp., p. 682 and E.O. 13106, 63 FR 68151, 3 CFR, 1998 Comp., p. 224.

Subpart F—Locality-Based Comparability Payments

■ 2. In § 531.605, revise paragraph (d)(3) to read as follows:

§ 531.605 Determining an employee's official worksite.

* * * * *

(d) * * *

(3) An authorized agency official may make a temporary exception to the requirements in paragraphs (d)(1) and (2) of this section in appropriate situations of a temporary nature, such as the following:

(i) An employee is recovering from an injury or medical condition; or

(ii) An employee is affected by an emergency situation, which temporarily prevents the employee from commuting to his or her regular official worksite.

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PART 550—PAY ADMINISTRATION (GENERAL)

■ 3. The authority citation for subpart D of part 550 continues to read as follows:

Authority: 5 U.S.C. 5527; E.O. 10982, 3 CFR parts 1959–1963, p. 502.

■ 4. In subpart D, add § 550.409 to read as follows:

§ 550.409 Evacuation payments during a pandemic health crisis.

(a) An agency may order one or more employees to evacuate from their worksite and perform work from their home (or an alternative location mutually agreeable to the agency and the employee) during a pandemic health crisis. Under these circumstances, an agency may designate the employee's home (or an alternative location mutually agreeable to the agency and the employee) as a safe haven and provide evacuation payments to the employee. An agency must compute the evacuation payments and determine the time period during which such payments will be made in accordance with § 550.404. An evacuated employee at a safe haven may be assigned to perform any work considered necessary or required to be performed during the period of evacuation without regard to his or her grade, level, or title. The employee must have the necessary knowledge and skills to perform the assigned work. Failure or refusal to perform assigned work may be a basis for terminating evacuation payments, as well as disciplinary action.

(b) The head of an agency, in his or her sole and exclusive discretion, may grant special allowance payments, based upon a case-by-case analysis, to offset the direct added expenses incidental to performing work from home (or an alternative location mutually agreeable to the agency and the employee) during a pandemic health crisis.

(c) An agency may terminate evacuation payments under the

conditions listed in § 550.407. An agency must make any necessary adjustments in pay consistent with § 550.408 after the evacuation is terminated.

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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 630

RIN 3206–AK61

Absence and Leave

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing final regulations concerning the use of sick leave. The final rules remove the requirement for an employee to maintain a minimum sick leave balance in his or her sick leave account in order to use the maximum amount of sick leave provided for family care and bereavement purposes. These regulations are being issued as part of OPM's effort to standardize leave policies and provide agencies with guidance on leave programs available to assist employees in the event of a pandemic health crisis.

DATES: *Effective date:* These regulations are effective on September 18, 2006.

Applicability date: These regulations apply on the first day of the first applicable pay period beginning on or after September 18, 2006.

FOR FURTHER INFORMATION CONTACT: Sharon Dobson by telephone at (202) 606–2858; by fax at (202) 606–0824; or by e-mail at pay-performance-policy@opm.gov.

SUPPLEMENTARY INFORMATION: The Office of Personnel Management (OPM) is issuing final regulations to revise the rules concerning the use of sick leave to provide care for a family member, make arrangements necessitated by the death of a family member, or attend the funeral of a family member. The revised regulations will assist employees in balancing their work and family responsibilities and needs. These final regulations will be issued to standardize and simplify leave programs and policies to support consolidating agency human resources and payroll systems, and to continue OPM's efforts to provide agencies with timely guidance on leave programs and policies available to employees in the event of a pandemic health crisis.