

SUBCHAPTER VI—PAYMENT FOR
ACCUMULATED AND ACCRUED LEAVE

§ 5551. Lump-sum payment for accumulated and accrued leave on separation

(a) An employee as defined by section 2105 of this title or an individual employed by the government of the District of Columbia, who is separated from the service, is transferred to a position described under section 6301(2)(B)(xiii) of this title, or elects to receive a lump-sum payment for leave under section 5552 of this title, is entitled to receive a lump-sum payment for accumulated and current accrued annual or vacation leave to which he is entitled by statute. The lump-sum payment shall equal the pay (excluding any differential under section 5925 and any allowance under section 5928) the employee or individual would have received had he remained in the service until expiration of the period of the annual or vacation leave. The lump-sum payment is considered pay for taxation purposes only. The period of leave used for calculating the lump-sum payment shall not be extended due to any holiday occurring after separation. For the purposes of this subsection, movement to employment described in section 2105(c) shall not be deemed separation from the service in the case of an employee whose annual leave is transferred under section 6308(b).

(b) The accumulated and current accrued annual leave to which an officer excepted from subchapter I of chapter 63 of this title by section 6301(2)(x)–(xiii) of this title, is entitled immediately before the date he is excepted under that section shall be liquidated by a lump-sum payment in accordance with subsection (a) of this section or subchapter VIII of this chapter, except that the payment is based on the rate of pay which he was receiving immediately before the date on which section 6301(2)(x)–(xiii) of this title became applicable to him.

(c)(1) Annual leave that is restored to an employee of the Department of Defense under section 6304(d) of this title by reason of the operation of paragraph (3) of such section and remains unused upon the transfer of the employee to a position described in paragraph (2) shall be liquidated by payment of a lump-sum for such leave to the employee upon the transfer.

(2) A position referred to in paragraph (1) is a position in a department or agency of the Federal Government outside the Department of Defense or a Department of Defense position that is not located at a Department of Defense installation being closed or realigned as described in section 6304(d)(3) of this title.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 488; Pub. L. 93–181, §1, Dec. 14, 1973, 87 Stat. 705; Pub. L. 95–519, §2, Oct. 25, 1978, 92 Stat. 1819; Pub. L. 96–499, title IV, §402(a), Dec. 5, 1980, 94 Stat. 2605; Pub. L. 101–508, title VII, §7202(g), Nov. 5, 1990, 104 Stat. 1388–336; Pub. L. 102–138, title I, §147(b)(1), Oct. 28, 1991, 105 Stat. 669; Pub. L. 104–201, div. A, title XVI, §1611(a), Sept. 23, 1996, 110 Stat. 2738; Pub. L. 106–518, title III, §310, Nov. 13, 2000, 114 Stat. 2420.)

HISTORICAL AND REVISION NOTES

| <i>Derivation</i> | <i>U.S. Code</i> | <i>Revised Statutes and Statutes at Large</i> |
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| (a) | 5 U.S.C. 61b (1st, 2d, and 6th sentences). | Dec. 21, 1944, ch. 632, §1 (less 1st proviso, and less so much of last sentence as precedes 2d proviso), 58 Stat. 845. July 2, 1953, ch. 178, §4(a) (1st and 5th sentences), 67 Stat. 137. |
| (b) | 5 U.S.C. 2061a(a). | July 2, 1953, ch. 178, §2(a), 67 Stat. 136. |

In subsection (a), the words “An employee as defined by section 2105 of this title” are coextensive with and substituted for “civilian officer or employee of the Federal Government”. Reference to “section 1474 of Appendix to Title 50, is omitted in view of the repeal of that section by the Act of July 24, 1956, ch. 671, §5(a)(3), 70 Stat. 606. The words “and shall not be subject to retirement deductions” are omitted and carried into section 8331(3).

In subsection (b)(2), reference to the limitation imposed by section 5 of the Act of July 2, 1953, ch. 178, 67 Stat. 138, is omitted as obsolete since the limitation was eliminated by the Act of Sept. 2, 1958, Pub. L. 85–914, §1, 72 Stat. 1761.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

Editorial Notes

AMENDMENTS

2000—Subsec. (a). Pub. L. 106–518 substituted “, is transferred to a position described under section 6301(2)(B)(xiii) of this title, or elects” for “or elects” in first sentence.

1996—Subsec. (c). Pub. L. 104–201 added subsec. (c).

1991—Subsec. (a). Pub. L. 102–138 inserted “(excluding any differential under section 5925 and any allowance under section 5928)” after “pay” in second sentence.

1990—Subsec. (a). Pub. L. 101–508 inserted at end “For the purposes of this subsection, movement to employment described in section 2105(c) shall not be deemed separation from the service in the case of an employee whose annual leave is transferred under section 6308(b).”

1980—Subsec. (a). Pub. L. 96–499 provided that the period of leave used for calculating the lump-sum payment was not to be extended due to any holiday occurring after separation.

1978—Subsec. (b). Pub. L. 95–519 substituted “6301(2)(x)–(xiii)” for “6301(2)(x)–(xii)” in two places.

1973—Subsec. (a). Pub. L. 93–181 struck out exception clause that the lump-sum payment may not exceed pay for a period of annual or vacation leave in excess of 30 days or the number of days carried over to his credit at the beginning of the leave year in which entitlement to payment occurs, whichever is greater.

Subsec. (b). Pub. L. 93–181 struck out second exception clause that the payment is made without regard to the limitation in subsec. (a) of this section on the amount of leave compensable.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104–201, div. A, title XVI, §1611(b), Sept. 23, 1996, 110 Stat. 2739, provided that: “Subsection (c) of section 5551 of title 5, United States Code (as added by subsection (a)), shall apply with respect to transfers described in such subsection (c) that take effect on or after the date of the enactment of this Act [Sept. 23, 1996].”

EFFECTIVE DATE OF 1991 AMENDMENT

Pub. L. 102–138, title I, §147(b)(2), Oct. 28, 1991, 105 Stat. 669, provided that: “The amendment made by

paragraph (1) [amending this section] shall apply with respect to service as part of a tour of duty or extension thereof commencing on or after the date of enactment of this Act [Oct. 28, 1991].”

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101-508 applicable with respect to any individual who, on or after Jan. 1, 1987, moves from employment in nonappropriated fund instrumentality of Department of Defense or Coast Guard, that is described in section 2105(c) of this title, to employment in Department or Coast Guard, that is not described in section 2105(c), or who moves from employment in Department or Coast Guard, that is not described in section 2105(c), to employment in nonappropriated fund instrumentality of Department or Coast Guard, that is described in section 2105(c), see section 7202(m)(1) of Pub. L. 101-508, set out as a note under section 2105 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Pub. L. 96-499, title IV, § 402(b), Dec. 5, 1980, 94 Stat. 2605, provided that: “The amendment made by subsection (a) [amending this section] shall take effect on the date of the enactment of this Act [Dec. 5, 1980] and shall apply to employees separating from the service on or after such date.”

EFFECTIVE DATE OF 1978 AMENDMENT

Pub. L. 95-519, § 4, Oct. 25, 1978, 92 Stat. 1819, provided that:

“(a) The amendments made by the first section and section 2 of this Act [amending this section and sections 6301, 6302, and 6306 of this title] shall take effect beginning on the first day of the first applicable pay period beginning on or after the date of the enactment of this Act [Oct. 25, 1978].

“(b) The amendment made by section 3 of this Act [amending section 8339 of this title] shall apply only with respect to employees who retire or die on or after the date of the enactment of this Act [Oct. 25, 1978].”

§ 5552. Lump-sum payment for accumulated and accrued leave on entering active duty; election

An employee as defined by section 2105 of this title or an individual employed by a territory or possession of the United States or the government of the District of Columbia who enters on active duty in the armed forces is entitled to—

- (1) receive, in addition to his pay and allowances from the armed forces, a lump-sum payment for accumulated and current accrued annual or vacation leave in accordance with section 5551 of this title; or
- (2) elect to have the leave remain to his credit until his return from active duty.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 489.)

HISTORICAL AND REVISION NOTES

| Derivation | U.S. Code | Revised Statutes and Statutes at Large |
|------------|---------------|--|
| | 5 U.S.C. 61a. | Aug. 1, 1941, ch. 348, 55 Stat. 616. Apr. 7, 1942, ch. 220, 56 Stat. 200. |

The words “An employee as defined by section 2105 of this title” are coextensive with and substituted for “Employees of the United States Government, . . . (including employees of any corporation created under authority of an Act of Congress which is either wholly controlled or wholly owned by the United States Government, or any corporation, all the stock of which is owned or controlled by the United States Government,

or any department, agency, or establishment thereof, whether or not the employees thereof are paid from funds appropriated by Congress)”.

The words “subsequent to May 1, 1940” are omitted as obsolete. The words “active duty in the armed forces” and “active duty” are substituted for “active military or naval service in the land or naval forces of the United States” and “active military or naval service”, respectively, on authority of the National Security Act of 1947, 61 Stat. 495, as amended. The words “by voluntary enlistment or otherwise” are omitted as unnecessary.

In paragraph (1), the words “in accordance with section 5551 of this title” are added on authority of former section 61b, which is carried into section 5551.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

§ 5553. Regulations

The Office of Personnel Management may prescribe regulations necessary for the administration of this subchapter.

(Added Pub. L. 102-378, § 2(45)(A), Oct. 2, 1992, 106 Stat. 1353.)

SUBCHAPTER VII—PAYMENTS TO MISSING EMPLOYEES

§ 5561. Definitions

For the purpose of this subchapter—

(1) “agency” means an Executive agency and a military department;

(2) “employee” means an employee in or under an agency who is a citizen or national of the United States or an alien admitted to the United States for permanent residence, but does not include a part-time or intermittent employee or native labor casually hired on an hourly or daily basis. However, such an employee who enters a status listed in paragraph (5)(A)–(E) of this section—

(A) inside the continental United States; or

(B) who is a resident at or in the vicinity of his place of employment in a territory or possession of the United States or in a foreign country and who was not living there solely as a result of his employment;

is an employee for the purpose of this subchapter only on a determination by the head of the agency concerned that this status is the proximate result of employment by the agency;

(3) “dependent” means—

(A) a wife;

(B) an unmarried child (including an unmarried dependent stepchild or adopted child) under 21 years of age;

(C) a dependent mother or father;

(D) a dependent designated in official records; and

(E) an individual determined to be dependent by the head of the agency concerned or his designee;

(4) “active service” means active Federal service by an employee;

(5) “missing status” means the status of an employee who is in active service and is officially carried or determined to be absent in a status of—