

### § 6302. General provisions

(a) The days of leave provided by this subchapter are days on which an employee would otherwise work and receive pay and are exclusive of holidays and nonworkdays established by Federal statute, Executive order, or administrative order.

(b) For the purpose of this subchapter an employee is deemed employed for a full biweekly pay period if he is employed during the days within that period, exclusive of holidays and nonworkdays established by Federal statute, Executive order, or administrative order, which fall within his basic administrative workweek.

(c) A part-time employee, unless otherwise expected, is entitled to the benefits provided by subsection (d) of this section and sections 6303, 6304(a), (b), 6305(a), 6307, and 6310 of this title on a pro rata basis.

(d) The annual leave provided by this subchapter, including annual leave that will accrue to an employee during the year, may be granted at any time during the year as the head of the agency concerned may prescribe.

(e) If an officer excepted from this subchapter by section 6301(2)(x)–(xiii) of this title, without a break in service, again becomes subject to this subchapter on completion of his service as an excepted officer, the unused annual and sick leave standing to his credit when he was excepted from this subchapter is deemed to have remained to his credit.

(f) An employee who uses excess annual leave credited because of administrative error may elect to refund the amount received for the days of excess leave by lump-sum or installment payments or to have the excess leave carried forward as a charge against later-accruing annual leave, unless repayment is waived under section 5584 of this title.

(g) An employee who is being involuntarily separated from an agency due to a reduction in force or transfer of function under subchapter I of chapter 35 or section 3595 may elect to use annual leave to the employee's credit to remain on the agency's rolls after the date the employee would otherwise have been separated if, and only to the extent that, such additional time in a pay status will enable the employee to qualify for an immediate annuity under section 8336, 8412, 8414, or to qualify to carry health benefits coverage into retirement under section 8905(b).

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 517; Pub. L. 93–181, § 4, Dec. 14, 1973, 87 Stat. 706; Pub. L. 95–519, § 2, Oct. 25, 1978, 92 Stat. 1819; Pub. L. 104–208, div. A, title I, § 101(f) [title VI, § 634], Sept. 30, 1996, 110 Stat. 3009–314, 3009–363; Pub. L. 105–277, div. A, § 101(h) [title VI, § 653], Oct. 21, 1998, 112 Stat. 2681–480, 2681–528.)

#### HISTORICAL AND REVISION NOTES

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
(a)–(c) .....	5 U.S.C. 2064 (less (d), (e)).	Oct. 30, 1951, ch. 631, § 205 (less (d)), 65 Stat. 681.
(d) .....	5 U.S.C. 2062(h).	Oct. 30, 1951, ch. 631, § 203(h), 65 Stat. 681.
(e) .....	5 U.S.C. 2061a(b).	July 2, 1953, ch. 178, § 2(b), 67 Stat. 137.

In subsection (d), the words “the head of the agency concerned” are substituted for “the heads of the various departments and independent establishments”.

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

1998—Subsec. (g). Pub. L. 105–277 inserted “or section 3595” after “chapter 35”.

1996—Subsec. (g). Pub. L. 104–208 added subsec. (g).

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

1973—Subsec. (f). Pub. L. 93–181 added subsec. (f).

#### Statutory Notes and Related Subsidiaries

##### EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–519 effective beginning on first day of first applicable pay period beginning on or after Oct. 25, 1978, see section 4(a) of Pub. L. 95–519, set out as a note under section 5551 of this title.

##### TEMPORARY AUTHORITY TO TRANSFER LEAVE

Pub. L. 101–237, title II, § 206(b)(2), Dec. 18, 1989, 103 Stat. 2068, provided that: “The authority of the Department of Veterans Affairs under section 618 of the Treasury, Postal Service and General Government Appropriations Act, 1989 [Pub. L. 100–440, set out below], to operate a leave-transfer program for employees subject to section 4108 of title 38, United States Code, is extended until the programs provided for in subsection (e) of such section 4108 (as added by subsection (a) of this section) are implemented, but not later than October 1, 1990.”

Similar provisions were contained in the following acts:

Pub. L. 101–144, title V, § 518, Nov. 9, 1989, 103 Stat. 874.

Pub. L. 101–110, § 1(d), Oct. 6, 1989, 103 Stat. 682.

Pub. L. 100–440, title VI, § 618, Sept. 22, 1988, 102 Stat. 1755, provided that: “In order to ensure that the experimental use of voluntary leave transfers established under Public Laws 99–500, 99–591 [Pub. L. 99–500, § 101(m) [title VII], Oct. 18, 1986, 100 Stat. 1783–308, 1783–334, and Pub. L. 99–591, § 101(m) [title VII], Oct. 30, 1986, 100 Stat. 3341–308, 3341–334], and 100–202 [Pub. L. 100–202, § 101(m) [title VI, § 625], Dec. 22, 1987, 101 Stat. 1329–390, 1329–430] may continue and may cover additional employees in fiscal year 1989, the Office of Personnel Management may continue to operate by regulation, notwithstanding chapter 63 of title 5, United States Code, a program under which the unused accrued annual leave of officers or employees of the Federal Government may be transferred for use by other officers or employees who need such leave due to a personal emergency as defined in the regulations. The Office may provide by regulation for such exceptions from the provisions of section 7351 of title 5 as the Office may determine appropriate for the transfer of leave under this section. The Veterans' Administration may operate a similar program for employees subject to section 4108 of title 38, United States Code. The programs operated under this section shall expire at the end of fiscal year 1989, but any leave that has been transferred to an officer or employee under the programs shall remain available for use until the personal emergency has ended, and any remaining unused transferred leave shall, to the extent administratively feasible, be restored to the leave accounts of the officers or employees from whose accounts it was originally transferred.”

Similar provisions were contained in the following prior appropriations acts:

Pub. L. 100–202, § 101(m) [title VI, § 625], Dec. 22, 1987, 101 Stat. 1329–390, 1329–430.

For provisions ratifying any actions of the Secretary of Veterans Affairs in carrying out section 618 of Pub.

L. 100-440, set out above, during the period Dec. 1, 1989, to Dec. 18, 1989, see section 604 of Pub. L. 101-237, set out as a note under section 1720B of Title 38, Veterans' Benefits. Similar provisions for the period Oct. 1, 1989, to Oct. 6, 1989, were contained in section 3(b) of Pub. L. 101-110, set out as a note under section 1720B of Title 38.

### § 6303. Annual leave; accrual

(a) An employee is entitled to annual leave with pay which accrues as follows—

(1) one-half day for each full biweekly pay period for an employee with less than 3 years of service;

(2) three-fourths day for each full biweekly pay period, except that the accrual for the last full biweekly pay period in the year is one and one-fourth days, for an employee with 3 but less than 15 years of service; and

(3) one day for each full biweekly pay period for an employee with 15 or more years of service.

In determining years of service, an employee is entitled to credit for all service of a type that would be creditable under section 8332, regardless of whether or not the employee is covered by subchapter III of chapter 83, and for all service which is creditable by virtue of subsection (e). However, an employee who is a retired member of a uniformed service as defined by section 3501 of this title is entitled to credit for active military service only if—

(A) his retirement was based on disability—

(i) resulting from injury or disease received in line of duty as a direct result of armed conflict; or

(ii) caused by an instrumentality of war and incurred in line of duty during a period of war as defined by sections 101 and 1101 of title 38;

(B) that service was performed in the armed forces during a war, or in a campaign or expedition for which a campaign badge has been authorized; or

(C) on November 30, 1964, he was employed in a position to which this subchapter applies and thereafter he continued to be so employed without a break in service of more than 30 days.

The determination of years of service may be made on the basis of an affidavit of the employee. Leave provided by this subchapter accrues to an employee who is not paid on the basis of biweekly pay periods on the same basis as it would accrue if the employee were paid on the basis of biweekly pay periods.

(b) Notwithstanding subsection (a) of this section, an employee whose current employment is limited to less than 90 days is entitled to annual leave under this subchapter only after being currently employed for a continuous period of 90 days under successive appointments without a break in service. After completing the 90-day period, the employee is entitled to be credited with the leave that would have accrued to him under subsection (a) of this section except for this subsection.

(c) A change in the rate of accrual of annual leave by an employee under this section takes effect at the beginning of the pay period after the pay period, or corresponding period for an

employee who is not paid on the basis of biweekly pay periods, in which the employee completed the prescribed period of service.

(d) Leave granted under this subchapter is exclusive of time actually and necessarily occupied in going to or from a post of duty and time necessarily occupied awaiting transportation, in the case of an employee—

(1) to whom section 6304(b) of this title applies;

(2) whose post of duty is outside the United States; and

(3) who returns on leave to the United States, or to his place of residence, which is outside the area of employment, in its territories or possessions including the Commonwealth of Puerto Rico.

This subsection does not apply to more than one period of leave in a prescribed tour of duty at a post outside the United States.

(e)(1) Not later than 180 days after the date of the enactment of this subsection, the Office of Personnel Management shall prescribe regulations under which, for purposes of determining years of service under subsection (a), credit shall, in the case of a newly appointed employee, be given for any prior service of such employee that would not otherwise be creditable for such purposes, if—

(A) such service—

(i) was performed in a position the duties of which directly relate to the duties of the position to which such employee is so appointed; and

(ii) meets such other requirements as the Office may prescribe; and

(B) in the judgment of the head of the appointing agency, the application of this subsection is necessary in order to achieve an important agency mission or performance goal.

(2) Service described in paragraph (1)—

(A) shall be creditable, for the purposes described in paragraph (1), as of the effective date of the employee's appointment; and

(B) shall not thereafter cease to be so creditable, unless the employee fails to complete a full year of continuous service with the agency.

(3) An employee shall not be eligible for the application of paragraph (1) on the basis of any appointment if, within 90 days before the effective date of such appointment, such employee has held any position in the civil service.

(f) Notwithstanding any other provision of this section, the rate of accrual of annual leave under subsection (a) shall be 1 day for each full biweekly pay period in the case of any employee who holds a position which is subject to—

(1) section 5376 or 5383; or

(2) a pay system equivalent to either of the foregoing, as determined by the Office of Personnel Management.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 518; Pub. L. 93-181, §2, Dec. 14, 1973, 87 Stat. 705; Pub. L. 99-335, title II, §207(d), June 6, 1986, 100 Stat. 595; Pub. L. 102-83, §5(c)(2), Aug. 6, 1991, 105 Stat. 406; Pub. L. 102-378, §2(52), Oct. 2, 1992, 106 Stat. 1353; Pub. L. 108-411, title II, §202(a), (b), Oct. 30, 2004, 118 Stat. 2312.)