



UNITED STATES OFFICE OF PERSONNEL MANAGEMENT

Washington, DC 20415

APR 3 2009

The Director

**MEMORANDUM FOR HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES**

**FROM: KATHIE ANN WHIPPLE**  
**ACTING DIRECTOR**

A handwritten signature in black ink, appearing to read "Kathie Ann Whipple", written over the typed name and title.

**SUBJECT: Nonreduction in Pay for Certain Federal Civilian Employees on Active Duty in the Uniformed Services or National Guard**

This is to inform you of a new Federal civilian employee entitlement to supplemental payments resulting from the enactment of the Omnibus Appropriations Act, 2009 (Public Law 111-8, March 11, 2009). Section 751 of the Act (attached) adds a new section 5538 to title 5, United States Code. This new section covers certain Federal civilian employees who are (1) absent from employment with the Federal Government because they are ordered to perform active duty in the uniformed services under 10 U.S.C. 101(a)(13)(B) and (2) entitled to reemployment rights under 38 U.S.C. chapter 43 based on such absence.

Eligible civilian employees will receive for each covered biweekly pay period a supplemental payment equal to the amount by which civilian basic pay exceeds (if at all) military pay and allowances allocable to the given period. Civilian basic pay is the basic pay (including locality-based comparability payments under 5 U.S.C. 5304 and special rate supplements under 5 U.S.C. 5305) the employee would have received for his or her civilian employment if such employment had not been interrupted. Military pay and allowances are payments payable to the employee for active duty service allocable to the given pay period, as determined by the U.S. Office of Personnel Management (OPM) in consultation with the Secretary of Defense.

This law is effective prospectively for civilian biweekly pay periods beginning on March 15, 2009. OPM is consulting with the Department of Defense (DOD) and plans to issue additional guidance and regulations as soon as possible. For example, for the purpose of determining the difference between an employee's civilian "basic pay" and active duty "pay and allowances," we must determine what types of pay should be included in each. In addition, we must determine how to reconcile differences in military and civilian pay periods, determine how military payroll information will be shared with civilian payroll providers, determine the need for any special payroll processing instructions, determine the impact on benefits (if any), determine how the new statute interacts with the existing authority for income replacement payments under 37 U.S.C. 910, etc.

Please note that section 5538(b)(1) provides a supplemental payment for each period during which the employee-reservist "does not otherwise receive basic pay (including by taking any annual, military, or other paid leave) to which such employee is entitled by virtue of such employee's civilian employment with the Government." OPM will provide guidance and regulations on this provision. Notwithstanding this new provision, employees called to active

duty service should be advised that the civilian leave provisions (such as military leave, annual or sick leave, compensatory time off, or other forms of paid leave) remain available for their use, if they are otherwise eligible. However, the supplemental payment provisions will not be applied during any period for which the employee receives any kind of paid leave or other paid time off.

For additional information, agency Chief Human Capital Officers and/or Human Resources Directors should contact their assigned OPM Human Capital Officer. Employees should contact their agency human resources office for assistance.

cc: Human Resources Directors

Attachment

**Section 751 of Omnibus Appropriations Act, 2009**  
**(Public Law 111-8, March 11, 2009)**

**SEC. 751. NONREDUCTION IN PAY WHILE FEDERAL EMPLOYEE IS PERFORMING ACTIVE SERVICE IN THE UNIFORMED SERVICES OR NATIONAL GUARD.**

(a) IN GENERAL.—Subchapter IV of chapter 55 of title 5, United States Code, is amended by adding at the end the following:

**“§ 5538. Nonreduction in pay while serving in the uniformed services or National Guard** “(a) An employee who is absent from a position of employment with the Federal Government in order to perform active duty in the uniformed services pursuant to a call or order to active duty under a provision of law referred to in section 101(a)(13)(B) of title 10 shall be entitled, while serving on active duty, to receive, for each pay period described in subsection (b), an amount equal to the amount by which—“(1) the amount of basic pay which would otherwise have been payable to such employee for such pay period if such employee’s civilian employment with the Government had not been interrupted by that service, exceeds (if at all)“(2) the amount of pay and allowances which (as determined under subsection (d))—“(A) is payable to such employee for that service; and “(B) is allocable to such pay period.

“(b)(1) Amounts under this section shall be payable with respect to each pay period (which would otherwise apply if the employee’s civilian employment had not been interrupted)—“(A) during which such employee is entitled to reemployment rights under chapter 43 of title 38 with respect to the position from which such employee is absent (as referred to in subsection (a)); and “(B) for which such employee does not otherwise receive basic pay (including by taking any annual, military, or other paid leave) to which such employee is entitled by virtue of such employee’s civilian employment with the Government.

“(2) For purposes of this section, the period during which an employee is entitled to reemployment rights under chapter 43 of title 38—“(A) shall be determined disregarding the provisions of section 4312(d) of title 38; and“(B) shall include any period of time specified in section 4312(e) of title 38 within which an employee may report or apply for employment or reemployment following completion of service on active duty to which called or ordered as described in subsection (a).

“(c) Any amount payable under this section to an employee shall be paid—“(1) by such employee’s employing agency; “(2) from the appropriation or fund which would be used to pay the employee if such employee were in a pay status; and “(3) to the extent practicable, at the same time and in the same manner as would basic pay if such employee’s civilian employment had not been interrupted.

“(d) The Office of Personnel Management shall, in consultation with Secretary of Defense, prescribe any regulations necessary to carry out the preceding provisions of this section.

“(e)(1) The head of each agency referred to in section 2302(a)(2)(C)(ii) shall, in consultation with the Office, prescribe procedures to ensure that the rights under this section apply to the employees of such agency.

“(2) The Administrator of the Federal Aviation Administration shall, in consultation with the Office, prescribe procedures to ensure that the rights under this section apply to the employees of that agency.

“(f) For purposes of this section—“(1) the terms ‘employee’, ‘Federal Government’, and ‘uniformed services’ have the same respective meanings as given those terms in section 4303 of title 38; “(2) the term ‘employing agency’, as used with respect to an employee entitled to any payments under this section, means the agency or other entity of the Government (including an agency referred to in section 2302(a)(2)(C)(ii)) with respect to which such employee has reemployment rights under chapter 43 of title 38; and “(3) the term ‘basic pay’ includes any amount payable under section 5304.”

(b) TECHNICAL AND CONFORMING AMENDMENT.—

The table of sections for chapter 55 of title 5, United States Code, is amended by inserting after the item relating to section 5537 the following:

“5538. Nonreduction in pay while serving in the uniformed services or National Guard.”

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to pay periods (as described in section 5538(b) of title 5, United States Code, as amended by this section) beginning on or after the date of enactment of this Act.