§ 5541. Definitions

For the purpose of this subchapter—

(1) “agency” means—

(A) an Executive agency;

(B) a military department;

(C) an agency in the judicial branch;

(D) the Library of Congress;

(E) the Botanic Garden;

(F) the Office of the Architect of the Capitol; and

(G) the government of the District of Columbia;

(2) “employee” means—

(A) an employee in or under an Executive agency;

(B) an individual employed by the government of the District of Columbia; and

(C) an employee in or under the judicial branch, the Library of Congress, the Botanic Garden, and the Office of the Architect of the Capitol, who occupies a position subject to chapter 51 and subchapter III of chapter 53 of this title;

but does not include—

(i) a justice or judge of the United States;

(ii) the head of an agency other than the government of the District of Columbia;

(iii) a teacher, school official, or employee of the Board of Education of the District of Columbia, whose pay is fixed under chapter 15 of title 31, District of Columbia Code;

(iv) a member of—

(I) the Metropolitan Police or the Fire Department of the District of Columbia; or

(II) a member of the United States Park Police, other than for purposes of section 1

(v) a student-employee as defined by section 5531 of this title;


(vii) an employee outside the continental United States or in Alaska who is paid in accordance with local native prevailing wage rates for the area in which employed;

(viii) an employee of the Tennessee Valley Authority;

(ix) an individual to whom section 1291(a) of title 50, appendix, applies;

(x) an employee of a Federal land bank, a Federal intermediate credit bank, or a bank for cooperatives;

(xi) an employee whose pay is fixed and adjusted from time to time in accordance with prevailing rates under subchapter IV of chapter 53 of this title, or by a wage board or similar administrative authority serving the same purpose, except as provided by section 5544 or 5560b of this title;

(xii) an employee of the Transportation Corps of the Army on a vessel operated by the United States, a vessel employee of the Environmental Science Services Administration, or a vessel employee of the Department of the Interior;

(xiii) a “teacher” or an individual holding a “teaching position” as defined by section 901 of title 20;

(xiv) a Foreign Service officer;

(xv) a member of the Senior Foreign Service;

(xvi) member of the Senior Executive Service; or

(xvii) a member of the Federal Bureau of Investigation and Drug Enforcement Administration Senior Executive Service; and

(3) “law enforcement officer” means an employee who—

(A) is a law enforcement officer within the meaning of section 8331(20) or 8401(17); and

(B) in the case of an employee who holds a supervisory or administrative position and is subject to subchapter III of chapter 83, but

1So in original. Probably should be “sections”.

SUBCHAPTER V—PREMIUM PAY

Effective Date

Pub. L. 111–117, div. C, title VII, §751(c), Mar. 11, 2009, 123 Stat. 695, provided that: “The amendments made by this section (amending 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 [Mar. 11, 2009].”
who does not qualify to be considered a law enforcement officer within the meaning of section 8331(20), would so qualify if such employee had transferred directly to such position after serving as a law enforcement officer within the meaning of section 8401(17), would so qualify if such employee had transferred directly to such position after performing duties described in section 8401(17)(A) and (B) for at least 3 years; and (D) in the case of an employee who is not subject to subchapter III of chapter 83 or chapter 84—

(i) holds a position that the Office of Personnel Management determines would satisfy subparagraph (A), (B), or (C) if the employee were subject to subchapter III of chapter 83 or chapter 84; or

(ii) is a special agent in the Diplomatic Security Service.


Historical and Revision Notes

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<tr>
<th>Derivation</th>
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<td>§ 5 U.S.C. 901(a), (d), (e)</td>
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<td>June 30, 1945, ch. 212 §10(a), (d), (e), 59 Stat. 295, 296.</td>
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<td>§ 5 U.S.C. 901(b)</td>
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<td>June 30, 1945, ch. 212 §102 (less clause (1) and last sentence of (a)), 59 Stat. 296.</td>
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<td>May 24, 1946, ch. 270, §8(a), 60 Stat. 218.</td>
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<td>§ 5 U.S.C. 2358(a)</td>
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The section is revised as a definition section. The provisions of former section 901(d) are omitted as unnecessary because the sections referred to state their application and there is no need to restate the application here.

In paragraph (1), the terms "Executive agency" and "military department" are substituted for the references in former section 901(a) and (e) to the executive branch, including Government-owned or controlled corporations, and the General Accounting Office in view of the definitions in sections 105 and 102.

In paragraph (2)(i), the words "chapter 15 of title 31, District of Columbia Code" are substituted for the reference in former section 902(a)(4) to "the Teachers Salary Act of June 4, 1924, as amended" on authority of the provisions contained therein. Enumeration of the individuals to which the provisions apply are added.

In paragraph (2)(iv), the provisions of former section 902(a)(5) and (b)(6) are combined.

In paragraph (2)(v), the words "student-employee as defined by section 5551 of this title" are coextensive with and substituted for the enumeration of the employees in former section 902(a)(b).

In paragraph (2)(vi), (vii), (viii), (ix), (xi), and (xii), the reference to former section 947 is omitted as that section was repealed by the Act of Sept. 12, 1950, ch. 946, §301(85), 64 Stat. 843.

In paragraph (2)(xii), the reference to former section 946 is omitted as unnecessary since that section is not carried into this subchapter. The words "Panama Canal Company" are substituted for "Panama Railroad Company" on authority of the Act of Sept. 2, 1950, ch. 1049, §2(a)(2), 64 Stat. 1036.

In paragraph (2)(xiii), the words "as defined by section 901 of title 29" are added on authority of former section 2351, which section is scheduled for transfer to section 901 of title 29.


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

Amendments


1996—Par. (2)(xii). Pub. L. 104–201 inserted “or” after “Services Administration,” and struck out “, or a vessel employee of the Panama Canal Commission” after “Interior”.


1990—Par. (2)(iv). Pub. L. 101–509 amended cl. (iv) generally. Prior to amendment, cl. (iv) read as follows: “a member of the Metropolitan Police, the Fire Department of the District of Columbia, the United States Park Police, or the Executive Protective Service”.


1986—Par. (2)(xv). Pub. L. 96–465 struck out “member of the Senior Foreign Service” for “a ‘Foreign Service information officer’ as provided for by the first section of the Act entitled ‘An Act to promote the foreign policy of the United States by strengthening and improving the Foreign Service personnel system of the International Communication Agency through establishment of a Foreign Service Information Officer Corps’, approved August 20, 1968”.


1970—Par. (2)(vi). Pub. L. 91–375 repealed cl. (vi) which excluded an employee in the postal field service from definition of "employee".


**Effective Date of 2010 Amendment**


**Effective Date of 2008 Amendment**


**Transfer of Functions**

Environmental Science Services Administration in Department of Commerce, including offices of Administrator and Deputy Administrator thereof, abolished by Reorg. Plan No. 4 of 1970, eff. July 12, 1970, 35 F.R. 15627, 84 Stat. 2090, set out in the Appendix to this title, which created National Oceanic and Atmospheric Administration in Department of Commerce and transferred personnel, programs, and unexpended balances of funds of Environmental Science Services Administration to such newly created National Oceanic and Atmospheric Administration. Components of Environmental Science Services Administration thus transferred included Weather Bureau [now National Weather Service], Coast and Geodetic Survey [now National Ocean Survey], Environmental Data Service, National Environmental Satellite Center, and ESSA Research Laboratories.

**Availability of Premium Pay for Attorneys Employed in Department of Justice**

Pub. L. 106–113, div. B, §1000(a)(1) [title I, §115], Nov. 29, 1999, 113 Stat. 1535, 1501A–21, provided that:

(a) None of the funds made available by this or any other Act may be used to pay premium pay under title 5, United States Code, sections 5542–5549, to any individual employed as an attorney, including an Assistant United States Attorney, in the Department of Justice for any work performed on or after the date of the enactment of this Act [Nov. 29, 1999],

(b) Notwithstanding any other provision of law, neither the United States nor any individual or entity acting on its behalf shall be liable for premium pay under title 5, United States Code, sections 5542–5549, for any work performed on or after the date of the enactment of this Act [Nov. 29, 1999] by any individual employed as an attorney in the Department of Justice, including an Assistant United States Attorney.

[Pub. L. 106–553, §1(a)(2) [title I, §111], Dec. 21, 2000, 114 Stat. 2762, 2762A–68, provided that: "Section 115 of...shall apply hereafter."]

**Sense of Congress Relating to Law Enforcement Officer Provisions**

Section 2(40)(D) of Pub. L. 102–378 provided that: "It is the sense of the Congress that—

(i) the provisions of section 5541(b) of title 5, United States Code (as added by section 2(40)(C) of this Act)—

(II) do not affect any intent of the Congress to change retirement eligibility standards for law enforcement officers; and

(ii) law enforcement officers in primary positions have different retirement eligibility standards than employees in supervisory or administrative positions because of the different requirements in their responsibilities."

**Payment of Bonuses for Foreign Language Capacities**

“(a) IN GENERAL.—Notwithstanding any other provision of law, the Drug Enforcement Administration and the Federal Bureau of Investigation are authorized on and after October 1, 1988, to pay bonuses up to 25 percent of base pay to employees of the Drug Enforcement Administration and the Federal Bureau of Investigation who possess and make substantial use of one or more languages, other than English, in the performance of their official duties. The Administrator of the Drug Enforcement Administration and the Director of the Federal Bureau of Investigation shall develop such policies as necessary to implement the payment of these bonuses.

“(b) LIMITATION.—The provisions of this section shall apply only to an employee who has received a bonus under this section before January 1, 1992. The provisions of subsection III of chapter 45 of title 5, United States Code, shall apply to any employee who would otherwise be eligible to receive a bonus under this section, on and after such date.”

§ 5542. Overtime rates; computation

(a) For full-time, part-time and intermittent tours of duty, hours of work officially ordered or approved in excess of 40 hours in an administrative workweek, or with the exception of an employee engaged in professional or technical engineering or scientific activities for whom the first 40 hours of duty in an administrative workweek is the basic workweek and an employee whose basic pay exceeds the minimum rate for GS–10 (including any applicable locality-based comparability payment under section 5304 or similar provision of law and any applicable special rate of pay under section 5305 or similar provision of law) for whom the first 40 hours of duty in an administrative workweek is the basic workweek) in excess of 8 hours in a day, performed by an employee are overtime work and shall be paid for, except as otherwise provided by this subchapter, at the following rates:

(1) For an employee whose basic pay is at a rate which does not exceed the minimum rate of basic pay for GS–10 (including any applicable locality-based comparability payment under section 5304 or similar provision of law and any applicable special rate of pay under section 5305 or similar provision of law), the overtime hourly rate of pay is an amount equal to one and one-half times the hourly rate of basic pay of the employee, and all that amount is premium pay.

(2) For an employee whose basic pay is at a rate which exceeds the minimum rate of basic pay for GS–10 (including any applicable locality-based comparability payment under section 5304 or similar provision of law and any applicable special rate of pay under section 5305 or similar provision of law), the overtime hourly rate of pay is an amount equal to the greater of one and one-half times the hourly rate of basic pay of the employee, and all that amount is premium pay.

(3) Notwithstanding paragraphs (1) and (2) of this subsection for an employee of the Department of Transportation who occupies a nonmanagerial position in GS–14 or under and, as determined by the Secretary of Transportation,

(A) the duties of which are critical to the immediate daily operation of the air traffic control system, directly affect aviation safety, and involve physical or mental strain or hardship;

(B) in which overtime work is therefore unusually taxing; and

(C) in which operating requirements cannot be met without substantial overtime work;

the overtime hourly rate of pay is an amount equal to one and one-half times the hourly rate of basic pay of the employee, and all that amount is premium pay.

(4) Notwithstanding paragraph (2) of this subsection, for an employee who is a law enforcement officer, and whose basic pay is at a rate which exceeds the minimum rate of basic pay for GS–10 (including any applicable locality-based comparability payment under section 5304 or similar provision of law and any applicable special rate of pay under section 5305 or similar provision of law), the overtime hourly rate of pay is an amount equal to the greater of—

(A) one and one-half times the minimum hourly rate of basic pay for GS–10 (including any applicable locality-based comparability payment under section 5304 or similar provision of law and any applicable special rate of pay under section 5305 or similar provision of law); or

(B) the hourly rate of basic pay of the employee,

and all that amount is premium pay.

(5) Notwithstanding paragraphs (1) and (2), for an employee of the Department of the Interior or the United States Forest Service in the Department of Agriculture engaged in emergency wildland fire suppression activities, the overtime hourly rate of pay is an amount equal to one and one-half times the hourly rate of basic pay of the employee, and all that amount is premium pay.

(6)(A) Notwithstanding paragraphs (1) and (2), for an employee of the Department of the Navy who is assigned to temporary duty to perform work aboard, or dockside in direct support of, the nuclear aircraft carrier that is forward deployed in Japan and who would be nonexempt under the Fair Labor Standards Act but for the application of the foreign area exemption in section 13(f) of that Act (29 U.S.C. 213(f)), the overtime hourly rate of pay is an amount equal to one and one-half times the hourly rate of basic pay of the employee, and all that amount is premium pay.

(B) Subparagraph (A) shall expire on September 30, 2014.

(b) For the purpose of this subchapter—

(1) unscheduled overtime work performed by an employee on a day when work was not scheduled for him, or for which he is required to return to his place of employment, is deemed at least 2 hours in duration; and

(2) time spent in a travel status away from the official-duty station of an employee is not hours of employment unless—
(A) the time spent is within the days and hours of the regularly scheduled administrative workweek of the employee, including regularly scheduled overtime hours; or

(B) the travel (i) involves the performance of work while traveling, (ii) is incident to travel that involves the performance of work while traveling, (iii) is carried out under arduous conditions, or (iv) results from an event which could not be scheduled or controlled administratively, including travel by an employee to such an event and the return of such employee from such event to his or her official-duty station.

(c) Subsection (a) shall not apply to an employee who is subject to the overtime pay provisions of section 7 of the Fair labor Standards Act of 1938. In the case of an employee who would, were it not for the preceding sentence, be subject to this section, the Office of Personnel Management shall by regulation prescribe what hours of work shall be deemed to be over-time by reason of the preceding sentence.

As to ensure that no employee receives less pay for all other overtime work under section 5545b—

(1) such investigator shall be compensated under such subsection (a), at the rates there provided, for overtime work which is scheduled in advance of the administrative workweek—

(A) in excess of 10 hours on a day during such investigator’s basic 40 hour workweek; or

(B) on a day outside such investigator’s basic 40 hour workweek; and

(2) such investigator shall be compensated for all other overtime work under section 5545a.

(e) Notwithstanding subsection (d)(1) of this section, all hours of overtime work scheduled in advance of the administrative workweek shall be compensated under subsection (a) if that work involves duties as authorized by section 3056(a) of title 18 or section 37(a)(3) of the State Department Basic Authorities Act of 1956, and if the investigator performs, on that same day, at least 2 hours of overtime work not scheduled in advance of the administrative workweek.

(f) In applying subsection (a) of this section with respect to a firefighter who is subject to section 5545b—

(1) such subsection shall be deemed to apply to hours of work officially ordered or approved in excess of 106 hours in a biweekly pay period, or, if the agency establishes a weekly basis for overtime pay computation, in excess of 53 hours in an administrative workweek; and

(2) the overtime hourly rate of pay is an amount equal to one and one-half times the hourly rate of basic pay under section 5545(b)(1)(A) or (c)(1)(B), as applicable, and such overtime hourly rate of pay may not be less than such hourly rate of basic pay in applying the limitation on the overtime rate provided in paragraph (2) of such subsection (a).


HISTORICAL AND REVISED NOTES

1966 ACT

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In subsection (a)(1), and (2), the word “officer” is omitted as included in “employee”. The word “scheduled” is omitted since section 663 of the Act of Oct. 11, 1962, Pub. L. 87–793, 76 Stat. 447, probably means the Fair Labor Standards Act of 1938, as amended. The word “scheduling” is omitted since referring to rates as scheduled or longevity. References to the “Classification Act of 1949, as amended” are omitted as unnecessary.

In subsection (b), former sections 912a and 912b are combined and restated.

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

1967 ACT

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The words “of the Classification Act of 1949, as amended” are omitted as unnecessary.

REFERENCES IN TEXT

GS–10 and GS–14, referred to in subsec. (a), are contained in the General Schedule which is set out under section 5332 of this title. The Fair Labor Standards Act, referred to in subsec. (a)(6)(A), probably means the Fair Labor Standards Act of 1938, as act June 25, 1938, ch. 676, 52 Stat. 1060, which is classified generally to chapter 8 (§ 201 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see section 201 of Title 29 and Tables.

Section 7 of the Fair Labor Standards Act of 1938, referred to in subsec. (c), is classified to section 207 of Title 29, Labor.

Section 37(a)(3) of the State Department Basic Authorities Act of 1956, referred to in subsec. (e), is classified to section 2709(a)(3) of Title 22, Foreign Relations and Intercourse.

1 So in original. Probably should be capitalized.
**AMENDMENTS**

2003—Subsec. (a)(2). Pub. L. 108–160 inserted “the greater of” before “one and one-half” and “or the hourly rate of basic pay of the employee” before “; and all that amount”.
Subsec. (c). Pub. L. 102–378, §2(a)(1), amended second sentence generally. Prior to amendment, second sentence read as follows: “In the case of an employee who would, were it not for the preceding sentence, be subject to this section, hours of work in excess of 8 hours in a day shall be deemed to be overtime hours for the purposes of such section 7 and hours in a paid nonwork status shall be deemed to be hours of work.”
1990—Subsec. (a). Pub. L. 101–509, §529 [title I, §101(b)(3)(E)], inserted “including any applicable locality-based comparability payment under section 5304 or similar provision of law and any applicable special rate of pay under section 5305 or similar provision of law” after “GS–10” wherever appearing.
1984—Subsec. (b)(2)(B)(iv). Pub. L. 98–473 inserted “including travel by an employee to such an event and the return of such employee from such event to his or her official-duty station”.
1967—Subsec. (b)(2)(B). Pub. L. 90–206 designated existing provisions as cl. (i) and (ii) and added cl. (ii) and (iv).

**EFFECTIVE DATE OF 2000 AMENDMENT**

**EFFECTIVE DATE OF 1998 AMENDMENT**
“(1) which begins on or after the 90th day following the date of the enactment of this Act [Oct. 21, 1998]; and
“(2) on which date all regulations necessary to carry out such amendments are (in the judgment of the Director of the Office of Personnel Management and the Secretary of State) in effect.” [Jan. 29, 1999, see 64 F.R. 4317.]
Amendment by section 101(h) [title VI, §628(a)(1)] of Pub. L. 105–277 effective on first day of first applicable pay period which begins on or after Oct. 1, 1998, see section 101(h) [title VI, §628(e)] of Pub. L. 105–277, set out as a note under section 4109 of this title.

**EFFECTIVE DATE OF 1994 AMENDMENT**
Amendment by Pub. L. 103–329 effective first day of first applicable pay period beginning on or after 30th day following Sept. 30, 1994, with exceptions relating to criminal investigators employed in Offices of Inspectors General, see section 633(e) of Pub. L. 103–329, set out as an Effective Date note under section 5545a of this title.

**EFFECTIVE DATE OF 1992 AMENDMENT**

**EFFECTIVE DATE OF 1990 AMENDMENT**
Amendment by section 529 [title I, §101(b)(3)(E), title II, §210(1)] of Pub. L. 101–509 effective on such date as the President shall determine, but not earlier than 90 days, and not later than 180 days, after Nov. 5, 1990, see section 529 [title III, §305] of Pub. L. 101–509, set out as a note under section 5301 of this title.

**EFFECTIVE DATE OF 1968 AMENDMENT**
Section 3 of Pub. L. 90–556 provided that: “The amendments made by this Act [amending this section and section 5545 of this title] shall take effect on the first day of the first pay period which begins on or after the thirtieth day after the date of enactment of this Act [Oct. 10, 1968].”

**EFFECTIVE DATE OF 1967 AMENDMENT**
Section 220(a)(4) of title II of Pub. L. 90–206 provided that, except as otherwise expressly provided: “Sections 222 [enacting section 5733 of this title and amending this section, section 5544 of this title, section 3571 of Title 39, The Postal Service], and 223 [enacting section 5545 of this title] shall become effective thirty days after the date of enactment of this title [Dec. 16, 1967].”

**$5543. Compensatory time off**

(a) The head of an agency may—
(1) on request of an employee, grant the employee compensatory time off—
(A) where the employee has been scheduled for overtime work instead of payment under section 5542 or section 7 of the Fair Labor Standards Act of 1938 for an equal amount of time spent in irregular or occasional overtime work; and
(B) provide that an employee whose rate of basic pay is in excess of the maximum rate of basic pay for GS–10 (including any applicable locality-based comparability payment under section 5304 or similar provision of law and any applicable special rate of pay under section 5305 or similar provision of law) shall be granted compensatory time off from his scheduled tour of duty equal to the amount of time spent in irregular or occasional overtime work instead of being paid for that work under section 5542 of this title.

(b) The head of an agency may, on request of an employee, grant the employee compensatory time off from the employee’s scheduled tour of duty instead of payment under section 5542 or section 7 of the Fair Labor Standards Act of 1938 for an equal amount of time spent in irregular or occasional overtime work. An agency head may not require an employee to be compensated for overtime work with an equivalent amount of compensatory time-off from the employee’s tour of duty.

(c) The Architect of the Capitol may grant an employee paid on an annual basis compensatory time off from duty instead of overtime pay for overtime work.
(d)(1) The appropriate Secretary may, on request of an employee of a nonappropriated fund instrumentality of the Department of Defense or the Coast Guard described in section 2105(c), grant such employee compensatory time off from duty instead of overtime pay for overtime work.

(2) For purposes of this subsection, the term ‘‘appropriate Secretary’’ means—

(A) with respect to an employee of a nonappropriated fund instrumentality of the Department of Defense, the Secretary of Defense; and

(B) with respect to an employee of a nonappropriated fund instrumentality of the Coast Guard, the Secretary of the Executive department in which it is operating.


HISTORICAL AND REVISION NOTES

1966 ACT

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In subsection (a), the words ‘‘head of an agency’’ are substituted for ‘‘head of any department, independent establishment, or agency, including Government-owned or controlled corporations, or of the municipal government of the District of Columbia, or the head of any legislative or judicial agency to which this subchapter applies’’ because of the definition of ‘‘agency’’ and the application stated in section 5541.

In subsection (a)(1), the word ‘‘officer’’ is omitted as included in ‘‘employee’’. In subsection (a)(2), the words ‘‘at his own discretion’’ are omitted as unnecessary in view of the permissive nature of the authority. The word ‘‘officer’’ is omitted as included in ‘‘employee’’. The word ‘‘scheduled’’ is omitted since section 603 of the Act of Oct. 11, 1962, Pub. L. 88–793, 76 Stat. 847, eliminated the necessity of referring to rates as scheduled or longevity. Reference to the ‘‘Classification Act of 1949, as amended’’ is omitted as unnecessary.

In subsection (b), the words ‘‘in his discretion’’ are omitted as unnecessary in view of the permissive nature of the authority. The words ‘‘overtime work’’ are substituted for ‘‘any work in excess of forty hours in any regularly scheduled administrative workweek’’ because of the definition of ‘‘overtime work’’ in section 5542(a).

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

1967 ACT

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REFERENCES IN TEXT

Section 7 of the Fair Labor Standards Act of 1938, referred to in subsecs. (a)(1) and (b), is classified to section 207 of Title 29, Labor.

GS-10, referred to in subsec. (a)(2), is contained in the General Schedule which is set out under section 5332 of this title.

AMENDMENTS


1996—Subsecs. (b), (c). Pub. L. 104–201 added subsec. (b) and redesignated former subsec. (b) as (c).


Subsec. (a)(2). Pub. L. 101–509, §529 (title I, §101(b)(3)(E)), inserted ‘‘(including any applicable locality-based comparability payment under section 5304 or similar provision of law and any applicable special rate of pay under section 5305 or similar provision of law’’ after ‘‘GS–10’’.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–509 effective on such date as the President shall determine, but not earlier than 90 days, and not later than 180 days, after Nov. 5, 1990, see section 529 (title III, §305) of Pub. L. 101–509, set out as a note under section 5301 of this title.

§ 5544. Wage-board overtime and Sunday rates; computation

(a) An employee whose pay is fixed and adjusted from time to time in accordance with prevailing rates under section 5343 or 5349 of this title, or by a wage board or similar administrative authority serving the same purpose, is entitled to overtime pay for overtime work in excess of 8 hours a day or 40 hours a week. However, an employee subject to this subsection who regularly is required to remain at or within the confines of his post of duty in excess of 8 hours a day in a standby or on-call status is entitled to overtime pay only for hours of duty, exclusive of eating and sleeping time, in excess of 40 a week. The overtime hourly rate of pay is computed as follows:

(1) If the basic rate of pay of the employee is fixed on a basis other than an annual or monthly basis, multiply the basic hourly rate of pay by not less than one and one-half.

(2) If the basic rate of pay of the employee is fixed on an annual basis, multiply the basic annual rate of pay by 2,087, and multiply the quotient by one and one-half.

(3) If the basic rate of pay of the employee is fixed on a monthly basis, multiply the basic monthly rate of pay by 12 to derive a basic annual rate of pay, divide the basic annual rate of pay by 2,087, and multiply the quotient by one and one-half.

An employee subject to this subsection whose regular work schedule includes an 8-hour period of service a part of which is on Sunday is entitled to additional pay at the rate of 25 percent of his hourly rate of basic pay for each hour of work performed during that 8-hour period of service. For employees serving outside the United States in areas where Sunday is a routine workday and another day of the week is officially recognized as the day of rest and worship, the Secretary of State may designate the officially recognized day of rest and worship as the day with respect to which the preceding sentence shall apply instead of Sunday. Time spent in a travel status away from the official duty station of an employee subject to this sub-
section is not hours of work unless the travel (i) involves the performance of work while traveling, (ii) is incident to travel that involves the performance of work while traveling, (iii) is carried out under arduous conditions, or (iv) results from an event which could not be scheduled or controlled administratively (including travel by the employee to such event and the return of the employee from such event to the employee’s official duty station). The first and third sentences of this subsection shall not be applicable to an employee who is subject to the overtime pay provisions of section 7 of the Fair Labor Standards Act of 1938. In the case of an employee who would, were it not for the preceding sentence, be subject to the first and third sentences of this subsection, the Office of Personnel Management shall by regulation prescribe what hours shall be deemed to be hours of work and what hours of work shall be deemed to be overtime hours for the purpose of such section 7 so as to ensure that no employee receives less pay by reason of the preceding sentence.

(b) An employee under the Office of the Architect of the Capitol who is paid on a daily or hourly basis and who is not subject to chapter 51 and subchapter III of chapter 53 of this title is entitled to overtime pay for overtime work in accordance with subsection (a) of this section. The overtime hourly rate of pay is computed in accordance with subsection (a)(1) of this section.

(c) The provisions of this section, including the last two sentences of subsection (a) and the provisions of section 5543(b), shall apply to a prevailing rate employee described in section 5342(a)(2)(B).


HISTORICAL AND REVISION NOTES

1967 ACT

Section of Title Source (U.S. Code) Source (Statutes at Large)

5544(a) ...... 5 U.S.C. 673c (last proviso of 1st par.).


The words “a part of which is on Sunday” are coextensive with and substituted for “any part of which is within the period commencing at midnight Saturday and ending at midnight Sunday.” The words “is entitled to additional pay” are coextensive with and substituted for “shall be paid extra compensation.”

REFERENCES IN TEXT

Section 7 of the Fair Labor Standards Act of 1938, referred to in subsec. (a), is classified to section 207 of Title 29, Labor.

AMENDMENTS

1996—Subsec. (c). Pub. L. 104–201 inserted “and the provisions of section 5543(b)” after “the last two sentences of subsection (a)”.

1992—Subsec. (a). Pub. L. 102–378, §2(42)(B), amended last two sentences generally. Prior to amendment, last two sentences read as follows: “This section, other than the sixth sentence, shall not be applicable to an employee who is subject to the overtime pay provisions of section 7 of the Fair Labor Standards Act of 1938. In the case of an employee who would, were it not for the preceding sentence, be subject to this section, hours of work in excess of 8 hours in a day shall be deemed to be overtime hours for the purposes of such section 7 and hours in a paid nonwork status shall be deemed to be hours of work.”


1990—Subsec. (a). Pub. L. 101–509 inserted at end “This section, other than the sixth sentence, shall not be applicable to an employee who is subject to the overtime pay provisions of section 7 of the Fair Labor Standards Act of 1938. In the case of an employee who would, were it not for the preceding sentence, be subject to this section, hours of work in excess of 8 hours in a day shall be deemed to be overtime hours for the purposes of such section 7 and hours in a paid nonwork status shall be deemed to be hours of work.”

1967—Subsec. (a). Pub. L. 90–206 provided that time spent in a travel status away from the official duty station could not qualify as hours of work unless the trav-
§ 5545

TITLE 5—GOVERNMENT ORGANIZATION AND EMPLOYEES

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el involved the performance of work while traveling, was incident to travel involving the performance of work while traveling, carried out under arduous conditions, or resulting from an event which could not be scheduled or controlled administratively.

Effective Date of 1992 Amendment
Amendment by Pub. L. 102-378 effective as of first day of first applicable pay period beginning on or after Oct. 2, 1992, see section 9(b)(9) of Pub. L. 102-378, set out as a note under section 5303 of this title.

Effective Date of 1990 Amendment
Amendment by Pub. L. 101-509 effective on such date as the President shall determine, but not earlier than 90 days, and not later than 180 days, after Nov. 5, 1990, see section 529 [title III, §305] of Pub. L. 101-509, set out as a note under section 5301 of this title.

Effective Date of 1972 Amendment
Amendment by Pub. L. 92-392 effective on first day of first applicable pay period beginning on or after 90th day after Aug. 19, 1972, see section 15(a) of Pub. L. 92-392, set out as an Effective Date note under section 5541 of this title.

Effective Date of 1967 Amendment

Canal Zone Employees
Section 17(3) of Pub. L. 85-550, July 25, 1958, 72 Stat. 411, provided that nothing in Pub. L. 85-550, which related to wage and employment practices of the Government of the United States in the Canal Zone, should affect the applicability of former sections 673c and 913 of this title [covered by this section] to those classes of employees, within the scope of former sections 673c and 913 of this title [covered by this section] on July 25, 1958.

§ 5545. Night, standby, irregular, and hazardous duty differential

(a) Except as provided by subsection (b) of this section, nightwork is regularly scheduled work between the hours of 6:00 p.m. and 6:00 a.m., and includes—

(1) periods of absence with pay during these hours due to holidays; and
(2) periods of leave with pay during these hours if the periods of leave with pay during a pay period total less than 8 hours.

Except as otherwise provided by subsection (c) of this section, an employee is entitled to pay for nightwork at his rate of basic pay plus premium pay amounting to 10 percent of that basic rate. This subsection and subsection (b) of this section do not modify section 5141 of title 31, or other statute authorizing additional pay for nightwork.

(b) The head of an agency may designate a time after 6:00 p.m. and a time before 6:00 a.m. as the beginning and end, respectively, of nightwork for the purpose of subsection (a) of this section, at a post outside the United States where the customary hours of business extend into the hours of nightwork provided by subsection (a) of this section.

(c) The head of an agency, with the approval of the Office of Personnel Management, may provide that—

(1) an employee in a position requiring him regularly to remain at, or within the confines of, his station during longer than ordinary periods of duty, a substantial part of which consists of remaining in a standby status rather than performing work, shall receive premium pay for this duty on an annual basis instead of premium pay provided by other provisions of this subchapter, except for irregular, unscheduled overtime duty in excess of his regularly scheduled weekly tour. Premium pay under this paragraph is determined as an appropriate percentage, not in excess of 25 percent, of such part of the rate of basic pay for the position as does not exceed the minimum rate of basic pay for GS-10 (including any applicable locality-based comparability payment under section 5304 or similar provision of law and any applicable special rate of pay under section 5305 or similar provision of law), or

(d) The Office shall establish a schedule or schedules of pay differentials for duty involving unusual physical hardship or hazard, and for any hardship or hazard related to asbestos, such differentials shall be determined by applying occupational safety and health standards consistent with the permissible exposure limit promulgated by the Secretary of Labor under the Occupational Safety and Health Act of 1970. Under such regulations as the Office may prescribe, and for such minimum periods as it determines appropriate, an employee to whom chapter 51 and subchapter III of chapter 53 of this title applies is entitled to be paid the appropriate differential for any period in which he is subjected to physical hardship or hazard not usually involved in carrying out the duties of his position. However, the pay differential—

(1) does not apply to an employee in a position the classification of which takes into account the degree of physical hardship or hazard involved in the performance of the duties thereof, except in such circumstances as the Office may by regulation prescribe; and
(2) may not exceed an amount equal to 25 percent of the rate of basic pay applicable to the employee.


**HISTORICAL AND REVISION NOTES**

**1966 ACT**

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<th>Derivation</th>
<th>U.S. Code</th>
<th>Revised Statutes and Statutes at Large</th>
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<td>May 24, 1946, ch. 276, §10, 60 Stat. 218.</td>
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In subsection (b), the words “head of an agency” are substituted for “head of any department, independent establishment, or agency, including Government-owned or controlled corporations” because of the definition of “agency” and the application stated in section 5541. The words “the United States” are substituted for “shall not . . . (2) may not exceed an amount equal to 25 percent of the rate of basic pay applicable to the employee.” The definitions of “agency” and the application stated in section 5541. The word “officer” is omitted as included in “employee.”

**Table**

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In the second sentence of subsection (d), the words “under such regulations as the Commission may prescribe, and for such minimum periods as it determines appropriate” are substituted for clauses (3) and (4) of the third sentence of 5 App. U.S.C. 1134. That requirement in clause (4) that the Commission prescribe regulations is codified in 5 U.S.C. 5545(b) by section 1(32) of this bill. The words “an employee to whom chapter 51 and subchapter III of chapter 53 of this title applies is entitled to be paid the appropriate differential” are substituted for “The appropriate differential shall be paid to any officer or employee to whom this Act applies” to reflect the codification of that act (Classification Act of 1949 in title 5, United States Code, and to conform with the definitions applicable.

In subsection (d)(1), the words “does not apply to an employee” are substituted for “shall not be applicable with respect to any officer or employee.”

In subsection (d)(2), the words “may not . . . applicable to the employee” are substituted for “shall not . . . applicable with respect to such officer or employee.”

**REFERENCES IN TEXT**

GS-10, referred to in subsec. (c)(1), is contained in the General Schedule which is set out under section 5332 of this title.


**AMENDMENTS**

2003—Subsec. (d). Pub. L. 108–136 inserted before period at end of first sentence “, and for any hardship or hazard related to asbestos, such differentials shall be determined by applying occupational safety and health standards consistent with the permissible exposure limit promulgated by the Secretary of Labor under the Occupational Safety and Health Act of 1970”.


1990—Subsec. (c)(1). Pub. L. 101–509, §529 (title I, §101(b)(3)(E)), inserted “(including any applicable locality-based comparability payment under section 5304 or similar provision of law and any applicable special rate of pay under section 5303 or similar provision of law)” after “GS–10”.

Subsec. (d). Pub. L. 101–509, §529 (title II, §203), as amended by Pub. L. 102–378, struck out “irregular or intermittent” before “duty involving unusual” in first sentence and inserted “, except in such circumstances as the Office may by regulation prescribe” after “thereof” in par. (1).

1989—Subsec. (c)(2). Pub. L. 101–173 amended par. (2) generally. Prior to amendment, par. (2) read as follows: “an employee in a position in which the hours of duty cannot be controlled administratively, and which requires substantial amounts of irregular, unscheduled, overtime duty with the employee generally being responsible for recognizing, without supervision, circumstances which require him to remain on duty, shall receive premium pay for this duty on an annual basis instead of premium pay provided by other provisions of this subchapter, except for regularly scheduled overtime, night, and Sunday duty, and for holiday duty. Premium pay under this paragraph is determined as an appropriate percentage, not less than 10 percent nor more than 25 percent, of such part of the rate of basic pay for the position as does not exceed the minimum rate of basic pay for GS–10, by taking into consideration the frequency and duration of irregular unscheduled overtime duty required in the position.”


1979—Subsec. (c)(2). Pub. L. 96–54 substituted “percent” for “per centum” wherever appearing.


1970—Subsec. (c)(2). Pub. L. 91–231 corrected the system of premium compensation of employees whose work schedules cannot be administratively controlled
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by providing for separate treatment for irregular, unscheduled, and overtime duty on one hand and for duty at night, on Sundays, and on holidays on the other. 1968—Subsec. (c)(1). Pub. L. 90–206 inserted “(or, for a position described in section 5542(a)(3) of this title, of the basic pay of the position)” after “‘GS–10’.” 1967—Subsec. (e)(2), Pub. L. 90–206 substituted “not less than 10 percent nor more than 25 percent” for “not in excess of 15 percent”.

Effective Date of 2003 Amendment  
Subject to any vested constitutional property rights, any administrative or judicial determination after Nov. 24, 2003, concerning backpay for a differential established under subsec. (d) of this section to be based on occupational safety and health standards described in the amendments made by subsections (a) and (b) of section 1122 of Pub. L. 108–136, amending this section and section 5343 of this title, see section 1122(c) of Pub. L. 108–136, set out as a note under section 5343 of this title.

Effective Date of 2000 Amendment  
Section 1(b) of Pub. L. 101–173 provided that: “The amendment made by subsection (a) [amending this section] shall apply with respect to overtime duty performed on or after the first day of the first applicable pay period beginning after September 30, 1999.”

Effective Date of 1990 Amendment  
Amendment by Pub. L. 101–509 effective on such date as the President shall determine, but not earlier than 90 days, and not later than 180 days, after Nov. 5, 1990, see section 529 (title III, §305) of Pub. L. 101–509, set out as a note under section 5301 of this title.

Effective Date of 1989 Amendment  
Amendment by Pub. L. 96–54 effective on such date as the President shall determine, but not earlier than 90 days and not later than 180 days, after Nov. 5, 1979, see section 529 (title III, §305) of Pub. L. 96–54, set out as a note under section 5301 of this title.

Effective Date of 1979 Amendment  
Amendment by Pub. L. 95–454 effective July 12, 1979, see section 907 of Pub. L. 95–454, set out as a note under section 1101 of this title.

Effective Date of 1978 Amendment  
Amendment by Pub. L. 96–54 effective on such date as the President shall determine, but not earlier than 90 days and not later than 180 days, after Nov. 5, 1978, see section 907 of Pub. L. 96–54, set out as a note under section 1101 of this title.

Effective Date of 1970 Amendment  

Effective Date of 1968 Amendment  
Amendment by Pub. L. 90–206 effective on first day of first pay period beginning on or after Dec. 16, 1967, see section 233(a)(3) of Pub. L. 90–206, set out as a note under section 603 of Title 28, Judiciary and Judicial Procedure.

§ 5545a. Availability pay for criminal investigators  
(a) For purposes of this section—  
(1) the term “available” refers to the availability of a criminal investigator and means that an investigator shall be considered generally and reasonably accessible by the agency employing such investigator to perform unscheduled duty based on the needs of an agency;  
(2) the term “criminal investigator” means a law enforcement officer as defined under section 5541(3) (other than an officer occupying a position under title II of Public Law 99–399, subject to subsection (k)) who is required to—  
(A) possess a knowledge of investigative techniques, laws of evidence, rules of criminal procedure, and precedent court decisions concerning admissibility of evidence, constitutional rights, search and seizure, and related issues;  
(B) recognize, develop, and present evidence that reconstructs events, sequences and time elements for presentation in various legal hearings and court proceedings;  
(C) demonstrate skills in applying surveillance techniques, undercover work, and advising and assisting the United States Attorney in and out of court;  
(D) demonstrate the ability to apply the full range of knowledge, skills, and abilities necessary for cases which are complex and unfold over a long period of time (as distinguished from certain other occupations that require the use of some investigative techniques in short-term situations that may end in arrest or detention);  
(E) possess knowledge of criminal laws and Federal rules of procedure which apply to cases involving crimes against the United States, including—  
(i) knowledge of the elements of a crime;  
(ii) evidence required to prove the crime;  
(iii) decisions involving arrest authority;  
(iv) methods of criminal operations; and  
(v) availability of detection devices; and  
(F) possess the ability to follow leads that indicate a crime will be committed rather than initiate an investigation after a crime is committed;  
(3) the term “unscheduled duty” means hours of duty a criminal investigator works, or is determined to be available for work, that are not—  
(A) part of the 40 hours in the basic work week of the investigator; or  
(B) overtime hours paid under section 5542; and  
(4) the term “regular work day” means each day in the investigator’s basic work week during which the investigator works at least 4 hours that are not overtime hours paid under section 5542 or hours considered part of section 5545a.  
(b) The purpose of this section is to provide premium pay to criminal investigators to ensure the availability of criminal investigators for unscheduled duty in excess of a 40 hour work week based on the needs of the employing agency.  
(c) Each criminal investigator shall be paid availability pay as provided under this section. Availability pay shall be paid to ensure the availability of the investigator for unscheduled duty. The investigator is generally responsible for recognizing, without supervision, circumstances which require the investigator to be on duty or be available for unscheduled duty based on the needs of the agency. Availability pay provided to a criminal investigator for such unscheduled duty shall be paid instead of premium pay provided by other provisions of this sub-
chapter, except premium pay for regularly scheduled overtime work as provided under section 5542, night duty, Sunday duty, and holiday duty.

(d)(1) A criminal investigator shall be paid availability pay, if the average of hours described under paragraph (2)(A) and (B) is equal to or greater than 2 hours.

(2) The hours referred to under paragraph (1) are—

(A) the annual average of unscheduled duty hours worked by the investigator in excess of each regular work day; and

(B) the annual average of unscheduled duty hours such investigator is available to work on each regular work day upon request of the employing agency.

(3) Unscheduled duty hours which are worked by an investigator on days that are not regular work days shall be considered in the calculation of the annual average of unscheduled duty hours worked or available for purposes of certification.

(4) An investigator shall be considered to be available when the investigator cannot reasonably and generally be accessible due to a status or assignment which is the result of an agency direction, order, or approval as provided under subsection (f)(1).

(e)(1) Each criminal investigator receiving availability pay under this section and the appropriate supervisory officer, to be designated by the head of the agency, shall make an annual availability report for the head of the agency that the investigator has met, and is expected to meet, the requirements of subsection (d). The head of a law enforcement agency may prescribe regulations necessary to administer this subsection.

(2) Involuntary reduction in pay resulting from a denial of certification under paragraph (1) of subsection (a) (applied disregarding the parenthetical matter before subparagraph (a) thereof); and

(B) such special agent satisfies the requirements of subsection (d) without taking into account any hours described in paragraph (2)(B) thereof.

(f)(1) A criminal investigator who is eligible for availability pay shall receive such pay during any period such investigator is—

(A) attending agency sanctioned training;

(B) on agency approved sick leave or annual leave;

(C) on agency ordered travel status; or

(D) on excused absence with pay for relocation purposes.

(2) In applying subsection (h) with respect to a special agent under this subsection—

(A) any reference in such subsection to “basic pay” shall be considered to include amounts designated as “salary”;

(B) paragraph (2)(A) of such subsection shall be considered to include (in addition to the provisions of law specified therein) sections 609(b)(1), 805, 806, and 856 of the Foreign Service Act of 1980; and

(C) paragraph (2)(B) of such subsection shall be applied by substituting for “Office of Personnel Management” the following: “Office of Personnel Management or the Secretary of State (to the extent that matters exclusively within the jurisdiction of the Secretary are concerned)”.


REFERENCES IN TEXT

Title II of Public Law 99–399, referred to in subsecs. (a)(2) and (k)(1), is title II of Pub. L. 99–399, Aug. 27, 1986, 100 Stat. 456, as amended, which is classified generally to subchapter II (§4821 et seq.) of chapter 58 of Title 22, Foreign Relations and Intercourse. For complete classification of this Act to the Code, see Short Title note set out under section 4801 of Title 22 and Tables.

Sections 609(b)(1), 805, 806, and 856 of the Foreign Service Act of 1980, referred to in subsec. (k)(2)(B), are
classified to sections 4009(b)(1), 4045, 4046, and 4071, respectively, of Title 22, Foreign Relations and Intercourse.

Amendments


Subsec. (k). Pub. L. 105–277, § 101(b) [title IV, § 407(a)] and § 2316(a), amended section identically, adding subsec. (k).


Effective Date of 1998 Amendment

For effective date of amendment by Pub. L. 105–277, see section 101(b) [title IV, § 407(d)] and section 2316(d) ofPub. L. 105–277, set out as a note under section 5542 of this title.

Effective Date of 1996 Amendment

Section 101(f) [title VI, § 659 [title II, § 207]] of Pub. L. 104–208 provided that: ‘‘This title [title II §§ 201–207] of section 659 of section 101(f) of Pub. L. 104–208, amending this section and sections 8351, 8401, 8433, 8435, and 8440a to 8440c of this title, enacting provisions set out as notes under sections 8401 and 8433 of this title, and amending provisions set out as a note under section 5431 of this section shall be made at the earliest practicable date as determined by the Executive Director in regulations.’’

Effective Date of 1995 Amendment

Section 902(b) of Pub. L. 104–19 provided that: ‘‘The amendment made by subsection (a) of this section [amending this section] shall take effect on the first day of the first applicable pay period which begins on or after the 30th day following the date of enactment of this Act [July 27, 1995].’’

Effective Date

Section 633(e) of Pub. L. 103–329 provided that: ‘‘The amendments made by this section (enacting this section and amending sections 5542 and 5547 of this title and section 213 of Title 29, Labor) shall take effect on the first day of the first applicable pay period which begins on or after the later of October 1, 1994, or the 30th day following the date of enactment of this Act [Sept. 30, 1994], except that:

1. Criminal investigators, employed in Offices of Inspectors General, who are not receiving administratively uncontrollable overtime compensation or who are receiving such premium pay at a rate less than 25 percent prior to the date of enactment of this Act, may implement availability pay at any time prior to September 30, 1995, after which date availability pay as authorized under this section shall be provided to such criminal investigators.

2. Criminal investigators employed in Offices of Inspectors General, who are receiving administratively uncontrollable overtime at a rate less than 25 percent, shall continue to receive this compensation at the same rate or higher until availability pay compensation is provided, which shall be no later than the last pay period ending on or before September 30, 1995.’’

§ 5545b. Pay for firefighters

(a) This section applies to an employee whose position is classified in the firefighter occupation in conformance with the GS–081 standard published by the Office of Personnel Management, and whose normal work schedule, as in effect throughout the year, consists of regular tours of duty which average at least 106 hours per biweekly pay period.

(b)(1) If the regular tour of duty of a firefighter subject to this section generally consists of 24-hour shifts, rather than a basic 40-hour workweek (as determined under regulations prescribed by the Office of Personnel Management), section 5504(b) shall be applied as follows in computing pay—

(A) paragraph (1) of such section shall be deemed to require that the annual rate be divided by 2756 to derive the hourly rate; and

(B) the computation of such firefighter’s daily, weekly, or biweekly rate shall be based on the hourly rate under subparagraph (A).

(2) For the purpose of sections 5595(c), 5941, 8331(3), and 8704(c), and for such other purposes as may be expressly provided for by law or as the Office of Personnel Management may by regulation prescribe, the basic pay of a firefighter subject to this subsection shall include an amount equal to the firefighter’s basic hourly rate (as computed under paragraph (1)(A)) for all

Implementation

Pub. L. 105–277, div. A, § 101(b) [title IV, § 407(b)], div. G, subdiv. B, title XXIII, § 2316(b), Oct. 21, 1998, 112 Stat. 2681–50, 2681–102, 2681–828, provided that: ‘‘Not later than the date on which the amendments made by this section [amending this section and section 5542 of this title] take effect [see Effective Date of 1998 Amendment note set out above], each special agent of the Diplomatic Security Service who satisfies the requirements of subsection (k)(1) of section 5545a of title 5, United States Code, as amended by this section, and the appropriate supervisory officer, to be designated by the Secretary of State, shall make an initial certification to the Secretary of State that the special agent is expected to meet the requirements of subsection (d) of such section 5545a. The Secretary of State may prescribe procedures necessary to administer this subsection.’’

Transfer of Functions

For transfer of functions, personnel, assets, and liabilities of the United States Customs Service of the Department of the Treasury, including functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 2031(1), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

Certification of Criminal Investigators

Section 633(f) of Pub. L. 103–329 provided that: ‘‘Not later than the effective date of this section (see Effective Date note above), each criminal investigator under section 5545a of title 5, United States Code, as added by this section, and the appropriate supervisory officer, to be designated by the head of the agency, shall make an initial certification to the head of the agency that the criminal investigator is expected to meet the requirements of subsection (d) of such section 5545a. The head of a law enforcement agency may prescribe procedures necessary to administer this paragraph.’’

§ 5545b. Pay for firefighters

(a) This section applies to an employee whose position is classified in the firefighter occupation in conformance with the GS–081 standard published by the Office of Personnel Management, and whose normal work schedule, as in effect throughout the year, consists of regular tours of duty which average at least 106 hours per biweekly pay period.

(b)(1) If the regular tour of duty of a firefighter subject to this section generally consists of 24-hour shifts, rather than a basic 40-hour workweek (as determined under regulations prescribed by the Office of Personnel Management), section 5504(b) shall be applied as follows in computing pay—

(A) paragraph (1) of such section shall be deemed to require that the annual rate be divided by 2756 to derive the hourly rate; and

(B) the computation of such firefighter’s daily, weekly, or biweekly rate shall be based on the hourly rate under subparagraph (A).

(2) For the purpose of sections 5595(c), 5941, 8331(3), and 8704(c), and for such other purposes as may be expressly provided for by law or as the Office of Personnel Management may by regulation prescribe, the basic pay of a firefighter subject to this subsection shall include an amount equal to the firefighter’s basic hourly rate (as computed under paragraph (1)(A)) for all
hours in such firefighter’s regular tour of duty (including overtime hours).

(c)(1) If the regular tour of duty of a firefighter subject to this section includes a basic 40-hour workweek (as determined under regulations prescribed by the Office of Personnel Management), section 5504(b) shall be applied as follows in computing pay—

(A) the provisions of such section shall apply to the hours within the basic 40-hour workweek;

(B) for hours outside the basic 40-hour workweek, such section shall be deemed to require that the hourly rate be derived by dividing the annual rate by 2756; and

(C) the computation of such firefighter’s daily, weekly, or biweekly rate shall be based on subparagraphs (A) and (B), as each applies to the hours involved.

(2) For purposes of sections 5595(c), 5941, 8331(3), and 8704(c), and for such other purposes as may be expressly provided for by law or as the Office of Personnel Management may by regulation prescribe, the basic pay of a firefighter subject to this subsection shall include—

(A) an amount computed under paragraph (1)(A) for the hours within the basic 40-hour workweek; and

(B) an amount equal to the firefighter’s basic hourly rate (as computed under paragraph (1)(B)) for all hours outside the basic 40-hour workweek that are within such firefighter’s regular tour of duty (including overtime hours).

(d)(1) A firefighter who is subject to this section shall receive overtime pay in accordance with section 5542, but shall not receive premium pay provided by other provisions of this subchapter.

(2) For the purpose of applying section 7(k) of the Fair Labor Standards Act of 1938 to a firefighter who is subject to this section, no violation referred to in such section 7(k) shall be deemed to have occurred if the requirements of section 5542(a) are met, applying section 5542(a) as provided in subsection (f) of that section: Provided, That the overtime hourly rate of pay for such firefighter shall in all cases be an amount equal to one and one-half times the firefighter’s regular rate of pay which includes overtime hours.

(3) The Office of Personnel Management may prescribe regulations, with respect to firefighters subject to this section, that would permit an agency to reduce or eliminate the variation in the amount of firefighters’ biweekly pay caused by work scheduling cycles that result in varying hours in the regular tours of duty from pay period to pay period. Under such regulations, the pay that a firefighter would otherwise receive for regular tours of duty over the work scheduling cycle shall, to the extent practicable, remain unaffected.

(4) Notwithstanding section 8114(e)(1), overtime pay for a firefighter subject to this section for hours in a regular tour of duty shall be included in any computation of pay under section 8114.


References in Text

Section 7(k) of the Fair Labor Standards Act of 1938, referred to in subsec. (d)(2), is classified to section 207(k) of Title 29, Labor.

Amendments


Effective Date of 2000 Amendment

Pub. L. 106–554, § 1(a)(3) [title VI, § 641(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–169, provided that: ‘‘The amendment in subsection (a) [amending this section] shall be effective as if it had been enacted as part of the Federal Firefighters Overtime Pay Reform Act of 1998 [Pub. L. 105–277, div A, §101(b) [title VI, § 628]] (112 Stat. 2681–519).’’

Effective Date

Section effective on first day of first applicable pay period which begins on or after Oct. 1, 1998, see section 101(h) [title VI, § 628(e)] of Pub. L. 105–277, set out as an Effective Date of 1998 Amendment note under section 4109 of this title.

Regulations

Pub. L. 105–277, div. A, §101(h) [title VI, §628(f)], Oct. 21, 1998, 112 Stat. 2681–480, 2681–521, provided that: ‘‘Under regulations prescribed by the Office of Personnel Management, a firefighter subject to section 5545b of title 5, United States Code, as added by this section, whose regular tours of duty average 60 hours or less per workweek and do not include a basic 40-hour workweek, shall, upon implementation of this section, be granted an increase in basic pay equal to 2 step-increases of the applicable General Schedule grade, and such increase shall not be an equivalent increase in pay. If such increase results in a change to a longer waiting period for the firefighter’s next step increase, the firefighter shall be credited with an additional year of service for the purpose of such waiting period. If such increase results in a rate of basic pay which is above the maximum rate of the applicable grade, such resulting pay rate shall be treated as a retained rate of basic pay in accordance with section 5863 of title 5, United States Code.’’

Eligibility for Pay Increase


‘‘(1) on the effective date of section 5545b of title 5, United States Code [see Effective Date note above]—

‘‘(A) was subject to such section; and

‘‘(B) had a regular tour of duty that averaged more than 60 hours per week; and

‘‘(2) before December 31, 1999, is involuntarily moved without a break in service from the regular tour of duty under paragraph (1) to a regular tour of duty that—

‘‘(A) averages 60 hours or less per week; and

‘‘(B) does not include a basic 40-hour workweek.

‘‘(b) Subsection (a) shall apply to firefighters described under that subsection as of the effective date of section 5545b of title 5, United States Code.

‘‘(c) The Office of Personnel Management may prescribe regulations necessary to implement this section.’’

No Reduction in Regular Pay

§ 5546. Pay for Sunday and holiday work

(a) An employee who performs work during a regularly scheduled 8-hour period of service which is not overtime work as defined by section 5542(a) of this title a part of which is performed on Sunday is entitled to pay for the entire period of service at the rate of his basic pay, plus premium pay at a rate equal to 25 percent of his rate of basic pay. For employees serving outside the United States in areas where Sunday is a routine workday and another day of the week is officially recognized as the day of rest and worship, the Secretary of State may designate the officially recognized day of rest and worship as the day with respect to which the preceding sentence shall apply instead of Sunday.

(b) An employee who performs work on a holiday designated by Federal statute, Executive order, or with respect to an employee of the government of the District of Columbia, by order of the District of Columbia Council, is entitled to pay at the rate of his basic pay, plus premium pay at a rate equal to the rate of his basic pay, for that holiday work which is not—

1. in excess of 8 hours; or
2. overtime work as defined by section 5542(a) of this title.

(c) An employee who is required to perform any work on a designated holiday is entitled to pay for at least 2 hours of holiday work.

(d) An employee who performs overtime work as defined by section 5542(a) of this title on a Sunday or a designated holiday is entitled to pay for that overtime work in accordance with section 5542(a) of this title.

(e) Premium pay under this section is in addition to premium pay which may be due for the same work under section 5545(b) and (c) of this title, providing premium pay for nightwork.


HISTORICAL AND REVISION NOTES

1966 ACT

In subsections (a) and (b), the word “officer” is omitted as included in “employee”.

In subsections (b) and (c), the word “designated” is substituted for “such a” and “such” in former section 922(b) and (c) to identify the holiday as one designated by statute, Executive order, or the Board of Commissioners of the District of Columbia.

In subsection (a), the words “An employee who performs work . . . is entitled to pay . . . at the rate of his basic pay” are coextensive with and substituted for “Any . . . service . . . performed . . . shall be compensated . . . at the rate of basic compensation of the officer or employee performing such work.” The words “section 5542(a) of this title” are substituted for the preceding sentence shall apply instead of Sunday.”


Subsec. (d). Pub. L. 90–623, §113(B), substituted “5542(a)” for “5442(a)”.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–623 intended to restate without substantive change the law in effect on Oct. 22, 1968, but amendment of subsec. (d) of this section by Pub. L. 90–623, effective as of Sept. 6, 1966, for all purposes, see section 6 of Pub. L. 90–623, set out as a note under section 5334 of this title.

TRANSFER OF FUNCTIONS


CONSTRUCTION OF ACT

Amendment by Pub. L. 105–277, div. A, §101(h), title VI, §624, Oct. 21, 1998, 112 Stat. 2801–480, 2801–518, provided that “Notwithstanding any other provision of law, no part of any funds provided by this Act or any other Act beginning in fiscal year 1999 and thereafter shall be available for paying Sunday premium pay to any employee unless such employee actually performed work during the time corresponding to such premium pay.”

Similar provisions were contained in the following prior appropriations acts:


§ 5546a. Differential pay for certain employees of the Federal Aviation Administration and the Department of Defense

(a) The Administrator of the Federal Aviation Administration (hereafter in this section referred to as the “Administrator”) and the Secretary of Defense (hereafter in this section referred to as the “Secretary”) may pay premium Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

1967 ACT

<table>
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<th>Section of title</th>
<th>Source (U.S. Code)</th>
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In subsection (a), the words “An employee who performs work . . . is entitled to pay . . . at the rate of his basic pay” are coextensive with and substituted for “Any . . . service . . . performed . . . shall be compensated . . . at the rate of basic compensation of the officer or employee performing such work.” The words “section 5542(a) of this title” are substituted for “section 201 of this Act” to reflect the codification of that section in title 5, United States Code. The words “between midnight Saturday and midnight Sunday” are coextensive with and substituted for “within the period commencing at midnight Saturday and ending at midnight Sunday”.

AMENDMENTS

1968—Subsec. (a). Pub. L. 90–277 inserted at end “For employees serving outside the United States in areas where Sunday is a routine workday and another day of the week is officially recognized as the day of rest and worship, the Secretary of State may designate the officially recognized day of rest and worship as the day with respect to which the preceding sentence shall apply instead of Sunday.”


Subsec. (d). Pub. L. 90–623, §113(B), substituted “5542(a)” for “5442(a)”.

In subsection (a), the words “An employee who performs work . . . is entitled to pay . . . at the rate of his basic pay” are coextensive with and substituted for “Any . . . service . . . performed . . . shall be compensated . . . at the rate of basic compensation of the officer or employee performing such work.” The words “section 5542(a) of this title” are substituted for “section 201 of this Act” to reflect the codification of that section in title 5, United States Code. The words “between midnight Saturday and midnight Sunday” are coextensive with and substituted for “within the period commencing at midnight Saturday and ending at midnight Sunday”.

Similar provisions were contained in the following prior appropriations acts:

pay at the rate of 5 per centum of the applicable rate of basic pay to—

(1) any employee of the Federal Aviation Administration or the Department of Defense who is—

(A) occupying a position in the air traffic controller series classified not lower than GS–9 and located in an air traffic control center or terminal or in a flight service station;

(B) assigned to a position classified not lower than GS–12 located in a region or center, the duties of whose position are determined by the Administrator or the Secretary to be unusually taxing, physically or mentally, and to be critical to the advancement of aviation safety; and

(C) assigned to a flight inspection crew-member position classified not lower than GS–11 located in a flight inspection field office,

the duties of whose position are determined by the Administrator or the Secretary to be directly involved in or responsible for the operation and maintenance of the air traffic control system; and

(2) any employee of the Federal Aviation Administration or the Department of Defense who is assigned by the Administrator or the Secretary to provide on-the-job training to another air traffic controller while such other air traffic controller is directly involved in the separation and control of live air traffic.

(2) Premium pay paid under paragraph (1) of this subsection shall be paid at the rate of 10 per centum of the applicable hourly rate of basic pay times the number of hours and portion of an hour during which the air traffic controller of the Federal Aviation Administration or the Department of Defense provides on-the-job training.

(e)(1) The Administrator or the Secretary may pay premium pay to any air traffic controller or flight service station specialist of the Federal Aviation Administration or the Department of Defense who, while working a regularly scheduled eight-hour period of service, is required by his supervisor to work during the fourth through sixth hour of such period without a break of thirty minutes for a meal.

(2) Premium pay paid under paragraph (1) of this subsection shall be paid at the rate of 50 per centum of one-half of the applicable hourly rate of basic pay.

(f)(1) The Administrator or the Secretary shall prescribe standards for determining which air traffic controllers and other employees of the Federal Aviation Administration or the Department of Defense are to be paid premium pay under this section.


AMENDMENTS


Subsec. (a). Pub. L. 98–525, § 1537(c)(1)(A), inserted “and the Secretary of Defense (hereafter in this section referred to as the ‘Secretary’)” in provisions preceding par. (1).

Subsec. (a)(1). Pub. L. 98–525, § 1537(c)(1)(B), inserted “or the Department of Defense” in provisions preceding subpar. (A) and “or the Secretary” in provisions following subpar. (C).

Subsec. (a)(2). Pub. L. 98–525, § 1537(c)(1)(C), inserted “or the Department of Defense” and “or the Secretary”.

Subsecs. (c)(1), (d), (e)(1), (f)(1). Pub. L. 98–525, § 1537(c)(2)–(5)(A), inserted “or the Secretary” after “Administrator” wherever appearing, and “or the Department of Defense” after “Administration” wherever appearing.

Subsec. (f)(2). Pub. L. 98–525, § 1537(c)(5)(B), inserted “and the Secretary”.


EFFECTIVE DATE OF 1984 AMENDMENT


EFFECTIVE DATE OF 1982 AMENDMENT

vided that: "The amendment made by subsection (a) of this section [amending this section] shall be effective as of 5 o’clock ante meridian eastern daylight time, August 3, 1981."

**Effective Date**

Section 151(h)(1), (2) of Pub. L. 97–276 provided that:

"(1) The amendments made by subsections 152 [151] (b), (c), (e), and (g) of this joint resolution [enacting subsecs. (a) and (b) of this section and amending sections 5532, 5547, and 5444 of this title] shall take effect at 5 o’clock ante meridian eastern daylight time, August 3, 1981.

"(2) The amendments made by subsection 152 [151] (a) and subsection 152 [151] (d) of this joint resolution [enacting subsec. 4109 of this title] shall take effect at 5 o’clock ante meridian eastern daylight time, August 3, 1981."

§ 5547. Limitation on premium pay

(a) An employee may be paid premium pay under sections 5542, 5545(a), (b), and (c), 5545a, and 5546(a) and (b) only to the extent that the payment does not cause the aggregate of basic pay and such premium pay for any pay period for such employee to exceed the greater of—

(1) the maximum rate of basic pay payable for GS–15 (including any applicable locality-based comparability payment under section 5304 or similar provision of law and any applicable special rate of pay under section 5305 or similar provision of law); or

(2) the rate payable for level V of the Executive Schedule.

(b)(1) Subject to regulations prescribed by the Office of Personnel Management, subsection (a) shall not apply to an employee who is paid premium pay by reason of work in connection with an emergency (including a wildfire emergency) that involves a direct threat to life or property, including work performed in the aftermath of such an emergency.

(2) Notwithstanding paragraph (1), no employee referred to in such paragraph may be paid premium pay under the provisions of law cited in subsection (a) if, or to the extent that, the aggregate of the basic pay and premium pay under those provisions for such employee would, in any calendar year, exceed the greater of—

(A) the maximum rate of basic pay payable for GS–15 in effect at the end of such calendar year (including any applicable locality-based comparability payment under section 5304 or similar provision of law and any applicable special rate of pay under section 5305 or similar provision of law); or

(B) the rate payable for level V of the Executive Schedule in effect at the end of such calendar year.

(3) Subject to regulations prescribed by the Office of Personnel Management, the head of an agency may determine that subsection (a) shall not apply to an employee who is paid premium pay to perform work that is critical to the mission of the agency. Such employees may be paid premium pay under the provisions of law cited in subsection (a) if, or to the extent that, the aggregate of the basic pay and premium pay under those provisions for such employee would not, in any calendar year, exceed the greater of—

(A) the maximum rate of basic pay payable for GS–15 in effect at the end of such calendar year (including any applicable locality-based comparability payment under section 5304 or similar provision of law and any applicable special rate of pay under section 5305 or similar provision of law); or

(B) the rate payable for level V of the Executive Schedule in effect at the end of such calendar year.

(c) The Office of Personnel Management shall prescribe regulations governing the methods of applying subsection (b)(2) and (b)(3) to employees who receive premium pay under section 5545(c) or 5545a, or to firefighters covered by section 5545b who receive overtime pay for hours in their regular tour of duty, and the method of payment to such employees. Such regulations may limit the payment of such premium pay on a biweekly basis.

(d) This section shall not apply to any employee of the Federal Aviation Administration or the Department of Defense who is paid premium pay under section 5546a.


**Historical and Revision Notes**

1966 Act

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<tr>
<th>Derivation</th>
<th>U.S. Code</th>
<th>Revised Statutes and Statutes at Large</th>
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<td>May 24, 1946, ch. 270, §7(a), 60 Stat. 218.</td>
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Former section 943(a), (b) is combined and restated for clarity and conciseness. The word ‘‘officer’’ is omitted as included in ‘‘employee’’. The word ‘‘scheduled’’ is omitted since section 603 of the Act of Oct. 11, 1962, Pub. L. 87–793, 76 Stat. 847, eliminated the necessity of referring to rates as scheduled or longevity. Reference to the “Classification Act of 1949, as amended” is omitted as unnecessary. Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

1967 Act

In the codification of 5 U.S.C. 5547, the words “premium pay under this subchapter” were substituted for “premium compensation provided by this Act” appearing in the source statute—section 603 of the Federal Employees Pay Act of 1945, as amended (former 5 U.S.C. 943). This amendment of 5 U.S.C. 5547 is made for clarity and precision of reference and in recognition that the source statutes for certain sections of subchapter V of chapter 55 of title V include statutes that were not a part of the Federal Employees Pay Act of 1949. Specifically, 5 U.S.C. 5544(a) is based in part on section 23 (2d proviso) of the act of March 28, 1934, as amended by 76

REFERENCES IN TEXT

GS–15, referred to in subsecs. (a)(1) and (b)(2)(A), (3)(A), is contained in the General Schedule which is set out under section 5332 of this title.
Level V of the Executive Schedule, referred to in subsecs. (a)(2) and (b)(2)(B), (3)(B), is set out in section 5316 of this title.

AMENDMENTS

2001—Pub. L. 107–107 reenacted section catchline without change and amended text generally. Prior to amendment, text read as follows:

“(a) An employee may be paid premium pay under sections 5542, 5545(a), (b), and (c), 5545a, and 5546(a) and (b) of this title only to the extent that the payment does not cause his aggregate rate of pay for any pay period to exceed the maximum rate for GS–15 (including any applicable locality-based comparability payment under section 5304 or similar provision of law and any applicable special rate of pay under section 5305 or similar provision of law). The first sentence of this subsection shall not apply to any employee of the Federal Aviation Administration or the Department of Defense who is paid premium pay under section 5546a of this title.

“(b)(1) Subject to regulations prescribed by the Office of Personnel Management, the first sentence of subsection (a) shall not apply to an employee who is paid premium pay by reason of work in connection with an emergency which involves a direct threat to life or property, including a forest wildfire emergency.

“(2) Notwithstanding paragraph (1), no employee referred to in such paragraph may be paid premium pay under the provisions of law cited in the first sentence of subsection (a) if, or to the extent that, the aggregate of such employee’s basic pay and premium pay under those provisions would, in any calendar year, exceed the maximum rate payable for GS–15 in effect at the end of such calendar year.

“(c)(1) Subsections (a) and (b) shall not apply to a law enforcement officer.

“(2) A law enforcement officer may be paid premium pay under the provisions of law cited in the first sentence of subsection (a) only to the extent that the payment does not cause the officer’s aggregate rate of pay for any pay period to exceed the lesser of—

“(A) 150 percent of the minimum rate payable for GS–15 (including any applicable locality-based comparability payment under section 5304 or similar provision of law and any applicable special rate of pay under section 5305 or similar provision of law); or

“(B) the rate payable for level V of the Executive Schedule.

1994—Subsec. (a). Pub. L. 103–329 inserted “5545a,” after “5545(a), (b), and (c),”.

1992—Subsec. (c)(3). Pub. L. 102–378 struck out par. (3) which read as follows: “For the purposes of this subsection, ‘law enforcement officer’ means any law enforcement officer within the meaning of section 8331(20) or section 8401(7).”

1990—Subsec. (a). Pub. L. 101–509, § 529 [title II, § 204(1)], inserted “(including any applicable locality-based comparability payment under section 5304 or similar provision of law and any applicable special rate of pay under section 5305 or similar provision of law)” after “GS–15”.

Subsec. (b). Pub. L. 101–509, § 529 [title II, § 204(2)], amended subsec. (b) generally, substituting present provisions for former provisions consisting of pars. (1) to (3) that related to pay of forest firefighters working on forest wildfire emergencies.


1988—Pub. L. 100–523 amended section generally, designating existing provisions as subsec. (a) and adding subsec. (b).

1984—Pub. L. 98–325 inserted “or the Department of Defense”.

1982—Pub. L. 97–276 inserted provision directing that first sentence of this section not apply to any employee of Federal Aviation Administration who is paid premium pay under section 5546a of this title.

EFFECTIVE DATE OF 2001 AMENDMENT

Pub. L. 107–107, div. A, title XI, § 1114(c), Dec. 28, 2001, 115 Stat. 1240, provided that: “The amendments made by subsections (a) and (b) [amending this section and provisions set out as a note under this section] shall take effect on the first day of the first pay period beginning on or after the date that is 120 days following the date of enactment of this Act [Dec. 28, 2001].”

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–329 effective first day of first applicable pay period beginning on or after 30th day following Sept. 30, 1994, with exceptions relating to criminal investigators employed in Offices of Inspectors General, see section 633(e) of Pub. L. 103–329, set out as an Effective Date note under section 5545a of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–378 effective as of first day of first applicable pay period beginning on or after Oct. 1, 1992, see section 9(b)(8) of Pub. L. 102–378, set out as a note under section 5303 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–509, § 525, set out as a note under section 5546a of this title.

EFFECTIVE DATE OF 1984 AMENDMENT


EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–276 effective at 5 o’clock ante meridiem eastern daylight time, Aug. 3, 1981, see section 151(h)(1) of Pub. L. 97–276, set out as an Effective Date note under section 5546a of this title.

SHORT TITLE OF 1988 AMENDMENT

Section 1 of Pub. L. 100–523 provided: “That this Act [amending this section] may be cited as the ‘Forest Wildfire Emergency Pay Equity Act of 1988’.

PREMIUM PAY FOR PROTECTIVE SERVICES OF UNITED STATES SECRET SERVICE

Pub. L. 106–554, § 1(a)(3) [title I, § 118], Dec. 21, 2000, 114 Stat. 2763, 2763A–134, as amended by Pub. L. 107–107, div. A, title XI, § 1114(b), Dec. 28, 2001, 115 Stat. 1240, provided that: “Hereafter, funds made available by this or any other Act may be used to pay premium pay for protective services authorized by section 3056(a) of title 18, United States Code, without regard to the restrictions contained in section 5547 of title 5, United States Code, except that such premium pay shall not be payable to an employee to the extent that the aggregate of the employee’s basic pay and premium pay for the year would otherwise exceed the annual equivalent of that limitation. The term premium pay refers to the provisions of law cited in the first sentence of section 5547(a) of title 5, United States Code. Payment of additional premium pay payable under this section may be made in a lump sum on the last payday of the calendar year.”

Similar provisions were contained in Pub. L. 106–58, title I, § 118, Sept. 29, 1999, 113 Stat. 441.
§ 5548. Regulations

(a) The Office of Personnel Management may prescribe regulations, subject to the approval of the President, necessary for the administration of this subchapter, except section 5545(d), insofar as this subchapter affects employees in or under an Executive agency.

(b) The Office shall prescribe regulations necessary for the administration of section 5545(d).

The words “an Executive agency” are substituted for “the executive branch of the Government” to conform to the definition in section 105. Applicability of this section to employees of the General Accounting Office is based on former section 933a.

Amendments

1992—Subsec. (b). Pub. L. 102–378 substituted “section 5545(d)” for “sections 5545(d) and 5550 of this title”.


Effective Date of 1978 Amendment


Effective Date of 1972 Amendment

Amendment by Pub. L. 92–392 effective on first day of first applicable pay period beginning on or after 90th day after Aug. 19, 1972, see section 15(a) of Pub. L. 92–392, set out as an Effective Date note under section 5541 of this title.

Delegation of Functions

Function vested in Office of Personnel Management under this section to be performed without approval of President, see section 1(d) of Ex. Ord. No. 11228, June 14, 1965, 30 F.R. 7739, set out as a note under section 301 of Title 3, The President.

§ 5549. Effect on other statutes

This subchapter does not prevent payment for overtime services or for Sunday or holiday work under any of the following statutes—

(1) the Farm Security and Rural Investment Act of 2002;
(2) sections 1353a and 1353b of title 8;
(3) sections 261, 267, 1450, 1451, 1451a, and 1452 of title 19;
(4) sections 2111 and 2112 of title 46; and
(5) section 154(f)(3) of title 47.

However, an employee may not receive premium pay under this subchapter for the same services for which he is paid under one of these statutes.

The words “‘section 804(4) (6th words)’”, 80 Stat. 265, are substituted for “‘section 154(f)(2) of title 47’” on Oct. 19, 1949, ch. 782, §1101 (as applicable to §804, 59 Stat. 304).

[For transfer of the functions, personnel, assets, and obligations of the United States Secret Service, including the functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 318, 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.]

HISTORICAL AND REVISION NOTES

1966 ACT

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<tr>
<th>Section of Title</th>
<th>Revised Statutes and Statutes at Large</th>
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<td>5548(b)</td>
<td>U.S.C. 945.</td>
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In paragraph (2), the words “sections 1353a and 1353b of title 8” are substituted for “sections 342c and 342d of this title” to reflect the scheduled transfer of those sections to title 8.

In paragraph (5), the words “section 154(f)(3) of title 47” are substituted for “section 154(f)(2) of title 47” on authority of the Act of July 16, 1952, ch. 879, §3(b), 66 Stat. 711, which redesignated subsection (f)(2) as (f)(3). Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

REFERENCES IN TEXT


In paragraph (2), the words “sections 1353a and 1353b of title 8” are substituted for “sections 942c and 342d of this title” to reflect the scheduled transfer of those sections to title 8.

In paragraph (5), the words “section 154(f)(3) of title 47” are substituted for “section 154(f)(2) of title 47” on authority of the Act of July 16, 1952, ch. 879, §3(b), 66 Stat. 711, which redesignated subsection (f)(2) as (f)(3). Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

1See References in Text note below.
AMENDMENTS
2002—Par. (1), Pub. L. 107–171 added par. (1) and struck out former par. (1) which read as follows: “section 394 of title 7.”.
1969—Par. (4), Pub. L. 98–89 substituted “sections 2111 and 2112 of title 46” for “section 382b of title 46”.


§ 5550a. Compensatory time off for religious observances
(a) Not later than 30 days after the date of the enactment of this section, the Office of Personnel Management shall prescribe regulations providing for work schedules under which an employee whose personal religious beliefs require the abstention from work during certain periods of time, may elect to engage in overtime work for time lost for meeting those religious requirements. Any employee who so elects such overtime work shall be granted equal compensatory time off from his scheduled tour of duty (in lieu of overtime pay) for such religious reasons, notwithstanding any other provision of law.
(b) In the case of any agency described in subparagraphs (C) through (G) of section 5541(1) of this title, the head of such agency (in lieu of the Office) shall prescribe the regulations referred to in subsection (a) of this section.
(c) Regulations under this section may provide for such exceptions as may be necessary to efficiently carry out the mission of the agency or agencies involved.


REFERENCES IN TEXT
The date of enactment of this section, referred to in subsec. (a), is the date of enactment of Pub. L. 95–390, which was approved Sept. 29, 1978.

AMENDMENTS
1979—Subsecs. (a), (b), Pub. L. 96–54 substituted “Office of Personnel Management” for “Civil Service Commission” and “Office” for “Commission”.

EFFECTIVE DATE OF 1979 AMENDMENT
Amendment by Pub. L. 96–54 effective July 12, 1979, see section 2(b) of Pub. L. 96–54, set out as a note under section 306 of this title.

§ 5550b. Compensatory time off for travel
(a) Notwithstanding any provision of section 5542(b)(2) or 5544(a), each hour spent by an employee in travel status away from the official duty station of the employee, that is not otherwise compensable, shall be treated as an hour of work or employment for purposes of calculating compensatory time off.
(b) An employee who has any hours treated as hours of work or employment for purposes of calculating compensatory time under subsection (a), shall not be entitled to payment for any such hours that are unused as compensatory time.


AMENDMENTS
2008—Subsec. (a). Pub. L. 110–181 substituted “any provision of section 5542(b)(2) or 5544(a),” for “section 5542(b)(2),.”

EFFECTIVE DATE OF 2008 AMENDMENT
Amendment by Pub. L. 110–181 effective on the earlier of the effective date of any regulations prescribed to carry out amendments by section 1111 of Pub. L. 110–181 or the 90th day after Jan. 28, 2008, see section 1111(c) of Pub. L. 110–181, set out as a note under section 5541 of this title.

EFFECTIVE DATE
“(1) the effective date of any regulations prescribed to carry out such amendments; or
“(2) the 90th day after the date of the enactment of this Act (Oct. 30, 2004).”

COMPENSATORY TIME OFF FOR TRAVEL FOR DEPARTMENT OF JUSTICE ATTORNEYS
Pub. L. 109–425, § 1, Dec. 20, 2006, 120 Stat. 2910, provided that:
“(a) In General.—Attorneys employed by the Department of Justice (including assistant United States attorneys) shall be eligible for compensatory time off for travel under section 5550b of title 5, United States Code, without regard to any provision of section 110 of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 2000 (as enacted into law by section 1000(a)(1) of Public Law 106–113 and reenacted by section 111 of the Department of Justice Appropriations Act, 2001 (as enacted into law by appendix B of Public Law 106–553) [set out as a note under section 5541 of this title]).
“(b) Applicability.—Subsection (a) shall apply with respect to time spent in travel status on or after the date of the enactment of this Act [Dec. 20, 2006].”

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 5926 of the employee or individual who 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