

1970—Pub. L. 91-563 substituted “jury and witness service” for “jury service in courts of the United States” in section catchline, designated existing provisions as subsec. (a), inserted provisions prohibiting payment of fees for jury service in a court of the District of Columbia or for service as a witness on behalf of the United States or the District of Columbia and excepting employees whose pay is disbursed by the Secretary of the Senate or the Clerk of the House of Representatives, and added subsections (b) and (c).

1968—Pub. L. 90-623 inserted “, who is entitled to leave under section 6322 of this title,” after “individual employed by the government of the District of Columbia”.

CHANGE OF NAME

Words “magistrate judge” substituted for “magistrate” in subsec. (b) pursuant to section 321 of Pub. L. 101-650, set out as a note under section 631 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111-145 effective as though enacted as part of section 1018 of Pub. L. 108-7, see section 7(d) of Pub. L. 111-145, set out as a note under section 2107 of this title.

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, see section 6 of Pub. L. 90-623, set out as a note under section 5334 of this title.

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

(a) An employee who is absent from a position of employment with the Federal Government in order to perform active duty in the uniformed services pursuant to a call or order to active duty under a provision of law referred to in section 101(a)(13)(B) of title 10 shall be entitled, while serving on active duty, to receive, for each pay period described in subsection (b), an amount equal to the amount by which—

(1) the amount of basic pay which would otherwise have been payable to such employee for such pay period if such employee’s civilian employment with the Government had not been interrupted by that service, exceeds (if at all)

(2) the amount of pay and allowances which (as determined under subsection (d))—

(A) is payable to such employee for that service; and

(B) is allocable to such pay period.

(b) Amounts under this section shall be payable with respect to each pay period (which would otherwise apply if the employee’s civilian employment had not been interrupted)—

(1) during which such employee is entitled to re-employment rights under chapter 43 of title 38 with respect to the position from which such employee is absent (as referred to in subsection (a)); and

(2) for which such employee does not otherwise receive basic pay (including by taking any annual, military, or other paid leave) to which such employee is entitled by virtue of such employee’s civilian employment with the Government.

(c) Any amount payable under this section to an employee shall be paid—

(1) by such employee’s employing agency;

(2) from the appropriation or fund which would be used to pay the employee if such employee were in a pay status; and

(3) to the extent practicable, at the same time and in the same manner as would basic pay if such employee’s civilian employment had not been interrupted.

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

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

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

(f) For purposes of this section—

(1) the terms “employee”, “Federal Government”, and “uniformed services” have the same respective meanings as given those terms in section 4303 of title 38;

(2) the term “employing agency”, as used with respect to an employee entitled to any payments under this section, means the agency or other entity of the Government (including an agency referred to in section 2302(a)(2)(C)(ii)) with respect to which such employee has reemployment rights under chapter 43 of title 38; and

(3) the term “basic pay” includes any amount payable under section 5304.

(Added Pub. L. 111-8, div. D, title VII, §751(a), Mar. 11, 2009, 123 Stat. 693; amended Pub. L. 111-117, div. C, title VII, §745(a), Dec. 16, 2009, 123 Stat. 3219.)

AMENDMENTS

2009—Subsec. (b). Pub. L. 111-117 added subsec. (b) and struck out former subsec. (b), which read as follows:

“(b)(1) Amounts under this section shall be payable with respect to each pay period (which would otherwise apply if the employee’s civilian employment had not been interrupted)—

“(A) during which such employee is entitled to re-employment rights under chapter 43 of title 38 with respect to the position from which such employee is absent (as referred to in subsection (a)); and

“(B) for which such employee does not otherwise receive basic pay (including by taking any annual, military, or other paid leave) to which such employee is entitled by virtue of such employee’s civilian employment with the Government.

“(2) For purposes of this section, the period during which an employee is entitled to reemployment rights under chapter 43 of title 38—

“(A) shall be determined disregarding the provisions of section 4312(d) of title 38; and

“(B) shall include any period of time specified in section 4312(e) of title 38 within which an employee may report or apply for employment or reemployment following completion of service on active duty to which called or ordered as described in subsection (a).”

EFFECTIVE DATE OF 2009 AMENDMENT

Pub. L. 111-117, div. C, title VII, §745(b), Dec. 16, 2009, 123 Stat. 3219, provided that: “The amendments made by this section [amending this section] shall take effect

on the first day of the first applicable pay period beginning on or after the date of the enactment of this Act [Dec. 16, 2009].”

EFFECTIVE DATE

Pub. L. 111–8, div. D, title VII, §751(c), Mar. 11, 2009, 123 Stat. 695, provided that: “The amendments made by this section [enacting 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].”

SUBCHAPTER V—PREMIUM PAY

§ 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 section¹ 5545(a) and 5546;
- (v) a student-employee as defined by section 5351 of this title;
- [(vi) Repealed. Pub. L. 91–375, §6(c)(16), Aug. 12, 1970, 84 Stat. 776;]
- (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)² 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 5550b 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);

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

(C) in the case of an employee who holds a supervisory or administrative position and is subject to chapter 84, but who does not qualify to be considered 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.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 485; Pub. L. 90–83, §1(4), Sept. 11, 1967, 81 Stat. 196; Pub. L. 91–375, §6(c)(16), Aug. 12, 1970, 84 Stat. 776; Pub. L. 92–392, §4, Aug. 14, 1972, 86 Stat. 573; Pub. L. 94–183, §2(22), Dec. 31, 1975, 89 Stat. 1058; Pub. L. 95–105, title IV, §412(a)(1), Aug. 17, 1977, 91 Stat. 855; Pub. L. 95–426, title II, §204(b)(5)(B), Oct. 7, 1978, 92 Stat. 974; Pub. L. 95–454, title IV, §408(a)(2), Oct. 13, 1978, 92 Stat. 1173; Pub. L. 96–70, title III, §3302(e)(1), Sept. 27, 1979, 93 Stat. 498; Pub. L. 96–465, title II, §2304, Oct. 17, 1980, 94 Stat. 2165; Pub. L. 100–325, §2(i)(1), May 30, 1988, 102 Stat. 582; Pub. L. 101–509, title V, §529 [title IV, §411(a)], Nov. 5, 1990, 104 Stat. 1427, 1469; Pub. L. 102–378, §2(40)(A)–(C), Oct. 2, 1992, 106 Stat. 1351; Pub. L. 104–201, div. C, title XXXV,

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

² See References in Text note below.