

SUBCHAPTER S9

GRADE AND PAY RETENTION UNDER THE FEDERAL WAGE SYSTEM

S9-1 General

This subchapter contains specific instructions concerning grade and pay retention benefits for prevailing rate employees who are placed in a lower grade as a result of reduction-in-force procedures or whose positions are reduced in pay and otherwise meet the criteria outlined below. The grade and pay retention provisions apply to certain employees who are reduced in grade and pay on or after January 1, 1979. Employees who were reduced in grade on or after January 1, 1977, but before January 11, 1979, are entitled to retroactive pay and benefits in accordance with appendix B of Book 536, FPM Supplement 990-2. These instructions are in addition to the basic material found in subchapter VI of chapter 53 of title 5, United States Code; part 536 of title 5, Code of Federal Regulations; and guidance found in Book 536 of FPM Supplement 990-2.

S9-2 Definitions

- a. *Employee* means an employee as defined in 5 U.S.C. 5361 and also an individual who is moved from a position which is not under a covered pay schedule to a position which is under a covered pay schedule, provided that the individual's employment immediately prior to the move was on other than a temporary or term basis.
- b. *Covered pay schedule* means any prevailing rate schedule established under subchapter IV of chapter 53 of title 5, United States Code, and special schedules as listed in subchapter S11 and appendix V. All appropriated and nonappropriated fund regular schedules are covered pay schedules.
- c. *Employment on a temporary or term basis* means employment under an appointment having a definite time limitation or designation as temporary or term.
- d. *Demotion at an employee's request* means a reduction in grade:
 - (1) Which is initiated by the employee for his or her benefit, convenience or personal advantage, including consent to a demotion in lieu of one for personal cause, and
 - (2) Which is not caused or influenced by management action.
- e. *Demotion for personal cause* means a reduction in grade based on the conduct, character, or unacceptable performance of an employee.
- f. *Rate of basic pay* means the rate of pay fixed by law or administrative action for the position held by an employee before any deductions and exclusive of additional pay of any kind, such as night or environmental differentials.
- g. *Representative rate* means:
 - (1) The fourth rate of the grade for a position under the General Schedule.
 - (2) The second rate of the grade for a position under a regular prevailing rate schedule established under subchapter IV of chapter 53 of title 5, United States Code, or in the case of a position with a single rate, the single rate of that position.

- (3) The rate designated as representative of the position by the agency responsible for establishing and adjusting the schedule in cases where the schedule is other than those covered in subparagraphs 1 or 2 above.
- h. *Temporary promotion* means a promotion with a definite time limitation, and one which the employee is informed in advance is temporary and would normally require the individual's return to the permanent position at the expiration of the promotion.
- i. *Temporary reassignment* means a reassignment with a definite time limitation, and one which the individual is informed in advance is temporary and would normally require the individual's return to the permanent position at the expiration of the reassignment.
- j. *Reorganization* means the planned elimination, addition, or redistribution of functions or duties either wholly within an agency or between agencies.

S9-3 Grade Retention Provisions

a. **Eligibility requirements.**

- (1) An employee must have been placed in a lower graded position as a result of a reduction-in-force and must have served for 52 consecutive weeks at a grade or grades higher than that of the position in which placed;
- (2) An employee's position must have been reduced in grade as a result of reclassification, and the downgraded position must have been classified at a higher grade for 1 year immediately before the action. The head of an agency may also offer grade retention to eligible employees who are reduced in grade as a result of a reorganization or reclassification decision announced by management in writing, provided the employee has served in a position in any pay schedule for 52 consecutive weeks at a grade or grades higher than the position in which the employee is placed and provided the service was in agency as defined in 5 U.S.C. 5102.

b. **Grade retention period.** An employee entitled to grade retention is entitled to retain that grade for 2 years beginning on the date the employee is placed in the lower graded position. If, during the 2-year period of grade retention, an employee is further reduced in grade under circumstances also entitling the employee to grade retention, the employee continues to retain the previous retained grade for the remainder of the original 2-year grade retention period. At the end of that period, the employee is entitled to retain the grade of the position from which the further reduction in grade was made until 2 years have passed from the date of the further reduction in grade.

c. **Determining retained grade.**

- (1) *Move from a position under a covered pay schedule.* An employee entitled to grade retention retains the grade which he or she held immediately prior to the reduction in grade even if the employee has moved to a different pay system.
- (2) *Move from a position not under a covered pay schedule.* An employee who is reduced in grade from a position not under a covered pay schedule retains the lowest grade of the covered pay schedule in which he or she is placed which has a representative rate equal to or higher than the representative rate of the grade held immediately before the reduction. If there is no grade in the covered pay schedule with a representative rate of the grade held immediately before the reduction, the employee retains the highest grade in the new pay schedule.

d. **Determining rate of basic pay.**

(1) An employee entitled to grade retention is entitled to the greatest of:

- (a) His or her rate of basic pay before the movement;
- (b) The rate of basic pay from the applicable rate schedule for the grade and step held by the employee before the movement; or
- (c) The lowest rate of basic pay from the applicable rate schedule for the retained grade which equals or exceeds the employee's rate of basic pay before the movement.

(2) Under grade retention, the employee is entitled to have the retained grade treated as his or her grade for most pay administration purposes, including entitlement to all wage adjustments, step increases, and premium pay.

e. Once the employee's initial rate of pay is determined, subsequent pay actions are based entirely on the wage schedule in the "new" area.

f. **Annual adjustment computation.**

(1) An employee who, at the time of an annual wage adjustment, is receiving a rate of pay within the rate range of the retained grade, is entitled to receive the full wage adjustment of the appropriate retained grade and step.

(2) An employee who, at the time of an annual wage adjustment, is receiving a rate of pay outside the rate range of the retained grade, is entitled to his or her retained rate increased by the amount of the increase in the maximum rate of the employee's retained grade. If an employee's entitlement is greater under an authority other than the grade retention provisions, the employee is entitled to the greater increase as provided by the authority. (See Example 38, FPM Supplement 990-2, Book 536).

(3) An employee who is placed in a position in a different geographical area is entitled to receive the full wage adjustment at the appropriate retained grade and step on the rate schedule in the new geographical area; the rate is added as above.

g. **Loss of eligibility.**

(1) Eligibility for grade retention ceases when an employee:

- (a) Has a break in service of one workday or more;
- (b) Is demoted for personal cause or at the employee's request;
- (c) Is placed in a position where the grade is equal to or higher than the retained grade;
- (d) Declines a reasonable offer of a position, the grade of which is equal to or higher than the retained grade; or
- (e) Elects in writing to have the benefits of grade retention terminated.

(2) Eligibility for grade retention that is provided at the option of an agency ceases under any of the above conditions and also if the employee fails to enroll in, or to comply with, reasonable written requirements established to assure full consideration under a program providing priority consideration for placement. Eligibility for grade retention does not cease when an employee moves to another position or to an intervening grade. This is because such a change in position is not considered a demotion under section 5362(d)(2) of title 5, United States Code.

h. **Termination of grade retention.** Grade retention terminates if any of the conditions listed in S9-3g(1) occurs after the commencement of the 2-year grade retention period. Grade retention that is provided at the option of an agency terminates if any of the conditions listed in S9-3f(1) occurs after the commencement of the 2-year grade retention period and also if the employee fails to enroll in, or to comply with, reasonable written requirements

established to assure full consideration under a program providing priority consideration for placement. The effective date of termination of benefits is:

- (1) The day before placement if the termination is the result of the employee's placement in another position; or
- (2) At the end of the last day of the pay period during which the employee declines a reasonable offer, elects to waive grade retention benefits, or who fails to enroll in, or to comply with, reasonable requirements established to assure full consideration under a program providing priority consideration for placement.

S9-4 Pay Retention Provisions

a. **Eligibility requirements.** Pay retention shall apply to any employee whose rate of basic pay would otherwise be reduced as a result of:

- (1) The expiration of the 2-year grade retention period;
- (2) Reduction in force or reclassification when the employee does not meet eligibility requirements for grade retention;
- (3) The reduction or elimination of scheduled rates, including those reflecting a decrease in the level of prevailing rates as determined by a wage survey, or as a result of the reduction or elimination of special schedules or special rates;
- (4) Placement in a non-special rate position or into a lower special rate position from a special rate position;
- (5) Placement in a position in a lower wage area or in a position in a different pay schedule;
- (6) Placement in a formal employee development program utilized Governmentwide, such as an apprenticeship program.
- (7) An agency may grant pay retention at its option to any employee who meets the eligibility requirements and whose rate of basic pay would otherwise be reduced as the result of a management action. Generally, an employee who moves to a different pay schedule or wage area (in other than a promotion action) or to a lower grade as a result of the merit promotion program (unless movement is to a Governmentwide employee development program), is not entitled to pay retention because such a move is considered to be at the employee's own request.

(a) Examples of reduction in pay initiated by management action:

- An employee applies for selection under a formal employee development or recruitment program, generally utilized Governmentwide and established by the agency in writing (e.g., the FWS apprentice program). Pay retention is appropriate only if all potential applicants are informed in writing that pay retention will be offered to successful applicants whose pay would otherwise be reduced if selected for the program.
- An agency announces a reorganization or reclassification decision in writing. An employee who is or might be affected by this decision requests or is made a voluntary offer of a lower graded position or a position in a lower paying wage area. Because the employee's action is caused or influenced by a management action and the employee's pay would or might otherwise be reduced, pay retention is appropriate.

(b) Examples of reductions in pay initiated by the employee:

- An employee requests or applies under the merit promotion program for a lower

graded position or a position in a lower paying wage area for his or her own benefit, convenience, or personal advantage. The position is not part of a formal employee development or recruitment program established by the agency in writing. Because the employee's action is not caused or influenced by a management action, pay retention is inappropriate.

- An agency offers an employee a lower graded position or a position in a lower paying wage area because of a need to fill the position with an individual having the employee's qualifications, but makes the offer voluntary. (No action will be taken if the employee declines the offer.) While the employee's action may be caused or influenced by a management action, the employee's pay would not be reduced if the employee declines the offer. Therefore, pay retention is inappropriate.

b. Determining rate of basic pay.

- (1) An employee entitled to pay retention is entitled to the lowest rate of basic pay in the employee's grade after the action is taken which equals or exceeds his or her current rate of basic pay. If there is no such rate, then the employee retains either his or her current rate of basic pay or 150 percent of the maximum rate of basic pay for the employee's grade after the action is taken, whichever is less.
- (2) An employee is entitled to receive 50 percent of any increase in the maximum rate of basic pay for the grade of the employee's new position.
- (3) When, as a result of an increase in the scheduled rates of the grade of the employee's new position, an employee's retained rate becomes equal to or lower than the maximum rate of the grade, the employee is entitled to the maximum rate, and pay retention ceases.
- (4) An employee serving under a temporary promotion at the time he or she becomes eligible for pay retention is entitled to retain the rate of basic pay which he or she would have been receiving at that time had the temporary promotion not occurred.
- (5) When an employee who is receiving a retained rate or saved rate under some other authority is affected by an action covered by pay retention, the employee's rate of basic pay will be determined in accordance with the above. Whether the employee is entitled at the same time to continue the retained or saved rate under the other authority will be determined under those statutory and regulatory provisions providing for the retained or saved rates.

c. Loss of eligibility. Pay retention ceases to apply to any employee who:

- (1) Has a break in service of 1 workday or more;
- (2) Is demoted for personal cause or at the employee's request;
- (3) Is entitled to a rate of basic pay which is equal to, or higher than, the employee's retained rate;
- (4) Declines a reasonable offer of a position the rate of which is equal to, or higher than, the employee's retained rate.

d. Termination of pay retention. Pay retention terminates if any of the conditions listed in S9-4(c) occur. The effective date of termination of pay retention benefits is:

- (1) The day before placement if the termination is a result of the employee's placement in another position; or
- (2) The end of the last day of the pay period in which the employee declines a reasonable offer.

S9-5 Exclusions

- a. Grade and pay retention shall not apply to an employee who:
 - (1) Moves from a position which is not in an agency as defined in 5 U.S.C. 5102;
 - (2) Is identified under 5 U.S.C. 2105(c), except prevailing rate employees included under 5 U.S.C. 5361;
 - (3) Is reduced in grade or pay for personal cause or at the employee's request; or
 - (4) Does not satisfactorily complete the probationary period prescribed by 5 U.S.C. 3321(a)(2) and, as a result, is removed from a supervisory or managerial position.
- b. An employee's entitlement to grade or pay retention is not affected by a temporary promotion or temporary reassignment. However, an employee serving under a temporary promotion or reassignment may not retain a grade or rate of basic pay held during the temporary promotion or temporary reassignment

S9-6 Criteria for Reasonable Offer

In order for an offer of a position to be considered reasonable, it must fulfill the following conditions:

- a. The offer must be in writing and must include an official position description of the offered position;
- b. The offer must inform the employee that entitlement to grade or pay retention will be terminated if the offer is declined and that the employee may appeal the reasonableness of the offer as provided in S9-7;
- c. The offered position must be of tenure equal to or greater than that of the position creating the grade or pay retention entitlement;
- d. The offered position must be in an agency, although not necessarily in the same agency in which the employee is serving at the time of the offer.
- e. The offered position must be full-time, unless the employee's position immediately before the change creating entitlement to grade or pay retention is less than full-time, in which case the offered position must have a work schedule of no less than that of the position held before the change; and
- f. The offered position must be in the same commuting area as the employee's position immediately before the offer unless the employee is subject to a mobility agreement or a published agency policy which requires employee mobility.

S9-7 Appeal of Termination of Benefits Because of Reasonable Offer

- a. Except as provided in subparagraph S9-5, an employee whose grade or pay retention benefits are terminated on the grounds the employee declined a reasonable offer of a position, the grade or pay of which is equal to or greater than his or her retained grade or pay, may appeal the termination to the Office of Personnel Management.

- b. An employee who appeals under this section shall file the appeal in writing to OPM not later than 20 calendar days after being notified that his or her grade or pay retention benefits have been terminated, and shall state in the appeal the reasons why the employee believes the offer of a position was not a reasonable offer.
- c. OPM may conduct any investigation or hearing it determines necessary to ascertain the facts in the case.
- d. If an OPM decision on an appeal under this section requires corrective action by an agency, including retroactive or prospective restoration of grade or pay retention benefits, the agency shall take that corrective action.
- e. Termination of benefits based on a declination of a reasonable offer by an employee in an exclusively recognized bargaining unit may be reviewed under negotiated grievance and arbitration procedures in accordance with chapter 71 of title 5, United States Code, and the terms of any applicable collective bargaining agreement. An employee in an exclusively recognized bargaining unit may not appeal a termination of benefits to OPM if the grievance procedure of the agreement by which he or she is covered provides for this review.
- f. Decisions issued by OPM shall be considered final decisions. OPM may, at its discretion, reconsider an original appellate decision when new and material information is presented, in writing, by the employee or the agency, which establishes a reasonable doubt as to the appropriateness of the original decision. The request must be submitted to OPM within 30 calendar days of the date of the original decision.

S9-8 Issuance of Employee Letters

When an employee is entitled to grade and/or pay retention, the employing agency shall give the employee a copy of the Notification of Personnel Action (SF50), documenting entitlement to grade and/or pay retention, and a letter describing the circumstances warranting grade and/or pay retention and the nature of that entitlement.

S9-9 Retroactive Entitlement

Employees who are eligible for grade retention as provided by S9-3(a), except that the reduction in grade took place on or after January 1, 1977, and before the first day of the first pay period beginning on or after January 11, 1979, shall be entitled to pay and benefits as provided in appendix B of Book 536, FPM Supplement 990-2.