

Publication Date _____

6325-39

OFFICE OF PERSONNEL MANAGEMENT

5 CFR PART 630

RIN: 3206-AK80

Absence and Leave; Creditable Service

AGENCY: Office of Personnel Management.

ACTION: Interim rule with request for comments.

SUMMARY: The Office of Personnel Management is issuing interim regulations to implement a provision of the Federal Workforce Flexibility Act of 2004 which provides an agency with the authority to grant a newly appointed or reappointed employee credit for prior work experience that otherwise would not be creditable for the purpose of determining the employee's annual leave accrual rate.

DATES: Effective Date: The interim regulations will become effective on April 28, 2005.

Comment Date: Comments must be received on or before June 28, 2005.

ADDRESSES: Send or deliver written comments to Donald J. Winstead, Deputy Associate Director for Pay and Performance Policy, Rm. 7H31, 1900 E Street, NW., Washington, DC 20415, by fax at (202) 606-0824, or by email to pay-performance-policy@opm.gov.

FOR FURTHER INFORMATION CONTACT: Sharon Dobson by telephone at (202) 606-2858, by fax at (202) 606-0824, or by email at pay-performance-policy@opm.gov.

SUPPLEMENTARY INFORMATION: The Office of Personnel Management (OPM) is issuing interim regulations to implement Section 202(a) of the Federal Workforce Flexibility Act of 2004 (Public Law 108-411, October 30, 2004). Section 202(a) amends 5 U.S.C. 6303

to provide OPM with the authority to prescribe regulations under which a newly appointed or reappointed employee who is covered by the Federal annual and sick leave program established under chapter 63 of title 5, United States Code, may be given service credit for prior experience that otherwise would not be creditable for the purpose of determining the employee's annual leave accrual rate. An employee may receive credit if the experience was obtained in a position having duties that directly relate to the duties of the position to which he or she is being appointed and if it is determined by the head of the agency that the use of this authority is necessary in order to achieve an important agency mission or performance goal.

Section 202(a) provides that not later than 180 days after enactment of the Act (April 28, 2005), OPM must prescribe regulations to allow the credit of non-Federal service for the purpose of determining an employee's annual leave accrual rate. OPM has added regulations at 5 CFR 630.205 to provide agencies with the authority to grant a newly appointed or reappointed employee with service credit for annual leave accrual rate purposes based on prior non-Federal work experience or a period of active duty in a uniformed service.

The interim regulations at 5 CFR 630.205(a) allow the head of an agency or designee to provide service credit for work experience that otherwise would not be creditable for the purpose of determining the annual leave accrual rate of a newly appointed employee or an employee who is reappointed following a break in service of at least 90 calendar days after his or her last period of civilian Federal employment. Prior to granting such credit, the agency head or his or her designee must determine that the employee meets both of the following conditions:

(1) The skills and experience the employee possesses are essential to the new position and were acquired through performance in a non-Federal position having duties that directly relate to the position to which he or she is being appointed; and

(2) The use of this authority is necessary to achieve an important agency mission or performance goal.

Previously, an employee who is a retired member of a uniformed service under 5 U.S.C. 3501 could be granted credit only for periods of active duty served during a campaign or expedition for which a campaign badge was issued. The new regulations at 5 CFR 630.205(b) provide that an employee who is a retired member of a uniformed service may be granted credit for any period of active military service during which he or she performed duties directly related to the position to which he or she is being appointed. As in the case of granting credit for non-Federal service, when hiring a retired member of the uniformed service, the head of the agency must determine that the use of this authority is necessary to achieve an important agency mission or performance goal.

When an agency head or designee makes a determination to provide service credit for experience that otherwise would not be creditable, the agency must provide credit only for non-Federal work experience or experience in a uniformed service during which the employee performed duties that directly relate to the duties of the position to which he or she is appointed. An employee must provide written documentation, acceptable to the agency, of his or her qualifying service. The interim regulations at 5 CFR 630.205(e) require an agency to establish guidelines for documenting the use of this authority, as well as recordkeeping procedures to allow for the reconstruction of each action.

Credit for non-Federal work experience or experience in a uniformed service is granted to an employee on the date of his or her initial appointment or reappointment following a break in service of 90 calendar days from the date of his or her last period of civilian Federal employment. Service credit granted to an employee will remain creditable for annual leave accrual purposes unless the employee fails to complete 1 full year of continuous service with the appointing agency.

If an employee separates from Federal service or transfers to another agency prior to completing 1 full year of continuous service with the appointing agency, he or she is not entitled to retain service credit for non-Federal or active duty work experience. Prior to the transfer or separation of the employee, the agency must establish a new service computation date for leave under 5 U.S.C. 6303(a), subtracting the credit that was provided for non-Federal or military work experience. However, all unused annual leave accrued and accumulated by an employee as a result of receiving credit for non-Federal or uniformed service remains to the credit of the employee and must be transferred to the new agency under 5 CFR 630.501 or liquidated by a lump-sum payment under 5 CFR 550.1205, as appropriate.

E.O. 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with E.O. 12866.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they will apply only to Federal agencies and employees.

List of Subjects in 5 CFR 630

Government employees

Office of Personnel Management

Dan G. Blair
Acting Director

Accordingly, OPM is amending 5 CFR part 630 to read as follows:

PART 630--ABSENCE AND LEAVE

1. The authority citation for part 630 is revised to read as follows:

AUTHORITY: 5 U.S.C. 6311; 630.205 also issued under Pub. L. 108-411, 118 Stat 2312; 630.301 also issued under Pub. L. 103-356, 108 Stat. 3410 and Pub. L. 108-411, 118 Stat 2312; 630.303 also issued under 5 U.S.C. 6133(a); 630.306 and 630.308 also issued under 5 U.S.C. 6304(d)(3), Pub. L. 102-484, 106 Stat. 2722, and Pub. L. 103-337, 108 Stat. 2663; subpart D also issued under Pub. L. 103-329, 108 Stat. 2423; 630.501 and subpart F also issued under E.O. 11228, 30 FR 7739, 3 CFR, 1974 Comp., p. 163; subpart G also issued under 5 U.S.C. 6305; subpart H also issued under 5 U.S.C. 6326; subpart I also issued under 5 U.S.C. 6332, Pub. L. 100-566, 102 Stat. 2834, and Pub. L. 103-103, 107 Stat. 1022; subpart J also issued under 5 U.S.C. 6362, Pub. L 100-566, and Pub. L. 103-103; subpart K also issued under Pub. L. 105-18, 111 Stat. 158; subpart L also issued under

5 U.S.C. 6387 and Pub. L. 103-3, 107 Stat. 23; and subpart M also issued under 5 U.S.C. 6391 and Pub. L. 102-25, 105 Stat. 92.

Subpart B – Definitions and General Provisions for Annual and Sick Leave

2. Section 630.205 is added to read as follows:

§ 630.205 Credit for Non-Federal and Uniformed Service for Determining Annual Leave Accrual Rate.

(a) The head of an agency or his or her designee may, at his or her sole discretion, provide credit for service that otherwise would not be creditable under 5 U.S.C. 6303(a) for the purpose of determining the annual leave accrual rate of a newly appointed employee or an employee who is reappointed following a break in service of at least 90 calendar days after his or her last period of civilian Federal employment. The head of the agency or his or her designee must determine that the skills and experience the employee possesses are—

(1) Essential to the new position and were acquired through performance in a non-Federal position having duties that directly relate to the duties of the position to which he or she is being appointed; and

(2) Necessary to achieve an important agency mission or performance goal.

(b) Notwithstanding 5 U.S.C. 6303(a), the head of an agency or his or her designee may, at his or her sole discretion, provide credit for active duty uniformed service that otherwise would not be creditable under 5 U.S.C. 6303(a) for the purpose of determining the annual leave accrual rate of an employee who is a retired member of a uniformed service as defined by 38 U.S.C. 4303. The head of the agency or his or her designee must determine that the skills and experience the employee possesses are—

(1) Essential to the new position and were acquired through performance in a position in the uniformed services having duties that directly relate to the duties of the position to which he or she is being appointed; and

(2) Necessary to achieve an important agency mission or performance goal.

(c) When the head of an agency or his or her designee makes a determination to provide credit for non-Federal service or active duty in the uniform services under paragraph (a) or (b) of this section, he or she must determine the amount of service that will be credited. The amount of service credited may not exceed the actual amount of service during which the employee performed duties directly related to the position to which the employee is being appointed.

(d) An employee must provide written documentation, acceptable to the agency, of his or her non-Federal or uniformed service.

(e) The agency must establish documentation and recordkeeping procedures sufficient to allow reconstruction of each action.

(f) Credit for prior non-Federal or uniformed service work experience under paragraph (a) or (b) of this section is granted to the employee upon the effective date of his or her initial appointment to the agency or reappointment after a 90-day break in service and remains creditable for annual leave accrual purposes thereafter unless the employee fails to complete 1 full year of continuous service with the appointing agency.

(g) If an employee separates from Federal service or transfers to another agency before completing 1 full year of continuous service with the appointing agency—

(1) Any credit under paragraph (a) or (b) of this section must be subtracted from the employee's total creditable service before the employee transfers or separates, and the

agency must establish a new service computation date for leave accrual purposes under 5 U.S.C. 6303(a);

(2) Any annual leave accrued or accumulated by an employee as a result of receiving credit for service under paragraph (a) or (b) of this section remains to the credit of the employee; and

(3) The agency must—

(i) Transfer the annual leave balance to the new employing agency under 5 CFR 630.501 if the employee is transferring to a position to which annual leave may be transferred; or

(ii) Make a lump-sum payment under 5 CFR 550.1205 for any unused annual leave if the employee is separating from Federal service or moving to a position to which annual leave cannot be transferred.

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