

**QUESTIONS & ANSWERS
ANNUAL LEAVE RESTORATION
AT
BASE REALIGNMENT AND CLOSURE (BRAC) CLOSING OR
REALIGNMENT INSTALLATIONS OR ACTIVITIES**

The Department of Defense (DoD) announced that the recommendations of the BRAC Commission went into effect on November 9, 2005. Employees assigned to DoD activities designated by the BRAC Commission for closure are entitled to have forfeited annual leave restored under section 6304(d)(3) of title 5, United States Code (U.S.C.). Employees assigned to DoD activities designated by the BRAC Commission for realignment are also entitled to have forfeited annual leave restored under 5 U.S.C. 6304(d)(3), provided that the realignment meets the definition of realignment in 10 U.S.C. 2687(e)(3) and meets the requirements of 10 U.S.C. 2687(a)(2).

Legislation

Q1. What are the pertinent parts of 5 U.S.C. 6304(d)?

A1. “5 U.S.C. 6304(d)(1) Annual leave which is lost by operation of this section because of ... (B) exigencies of the public business when the annual leave was scheduled in advance ... shall be restored to the employee.

(2) Annual leave restored under paragraph (1) of this subsection ... which is in excess of the maximum leave accumulation permitted by law shall be credited to a separate leave account for the employee and shall be available for use by the employee within the time limits prescribed by regulations of the Office of Personnel Management.

(3) (A) For the purpose of this subsection, the closure of, and any realignment with respect to, an installation of the Department of Defense pursuant to the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101-510; 10 U.S.C. 2687 note) during any period, and the closure of any other installation during the period beginning on October 1, 1992, and ending on December 31, 1997, shall be deemed to create an exigency of the public business and any leave that is lost by an employee of such installation by operation of this section (regardless of whether such leave was scheduled) shall be restored to the employee and shall be credited and available in accordance with paragraph (2).

(B) For the purpose of subparagraph (a), the term realignment means a base realignment (as defined in subsection (e)(3) of section 2687 of title 10) that meets the requirements of subsection (a)(2) of such section.”

Q2. Can you provide information on the references used in 5 U.S.C. 6304(d)(3)?

A2. The pertinent parts of 10 U.S.C. 2687 covering base closures and realignments are:

“(a) Notwithstanding any provision of law, no action may be taken to effect or implement—

(1) the closure of any military installation at which at least 300 civilian personnel are authorized to be employed;

(2) any realignment with respect to any military installation referred to in paragraph (1) involving a reduction by more than 1,000, or by more than 50 percent, in the number of civilian personnel authorized to be employed at such military installation at the time the Secretary of Defense or the Secretary of the military department concerned notifies the Congress under subsection (b) of the Secretary's plan to close or realign such installation...

(e) In this section...

(3) The term "realignment" includes any action which both reduces and relocates functions and civilian personnel positions, but does not include a reduction in force resulting from workload adjustments, reduced personnel or funding levels, skill imbalances, or other similar causes."

Q3. What is the definition of "military installation" that should be used in applying these regulations?

A3. The definition used should be in accordance with 10 U.S.C. 2687(e)(1), which states "The term "military installation" means a base, camp, post, station, yard, center, homeport facility for any ship, or other activity under the jurisdiction of the Department of Defense, including any leased facility, which is located within any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, or Guam. Such term does not include any facility used primarily for civil works, rivers and harbors projects, or flood control projects."

Q4. Does the closure and realignment action have to be under BRAC before 5 U.S.C. 6304(d)(3) can be applied?

A4. Yes, with the exception of closure actions that occurred between October 1, 1992, and December 31, 1997.

Intent

Q5. What does 5 U.S.C. 6304(d)(3) actually do?

A5. Section 6304(d)(3) allows automatic restoration of annual leave earned by employees assigned to installations or activities subject to BRAC. Under the normal procedures, in order to have forfeited leave restored, there must be written documentation that shows the employee scheduled use of the leave before the start of the third biweekly pay period prior to the end of the leave year. There must also be a determination by a management official that an exigency of the public business prevented the employee from using the scheduled leave. The provisions of 5 U.S.C. 6304(d)(3) allow forfeited leave to be restored without having to consider whether it was scheduled in advance, and they stipulate that a closure or realignment under BRAC shall be deemed to create an exigency of the public business.

Coverage

Q6. Are all employees who work for an installation or activity scheduled for BRAC closure covered under 5 U.S.C. 6304(d)(3)?

A6. Yes, with the possible exception of those locations listed in the BRAC recommendations that are subject to a contingency that must be met before closure can be accomplished. In those cases, the issue of coverage under 5 U.S.C. 6304(d)(3) should be addressed to the Civilian Personnel Management Service.

Q7. Are all employees who work for an installation or activity scheduled for BRAC realignment covered under 5 U.S.C. 6304(d)(3)?

A7. No. The fact that an employee works on an installation or activity scheduled for BRAC realignment does not itself mean that the employee is covered under 5 U.S.C. 6304(d)(3). For an employee to be covered, the realignment must meet the definition of realignment in 10 U.S.C. 2687(e)(3) and meet the requirements of 10 U.S.C. 2687(a)(2).

Q8. We have employees working in an activity scheduled for BRAC closure but the installation where their activity is located is not scheduled for BRAC closure or realignment. Are employees in this activity covered?

A8. Yes. Employees working in the activity scheduled for BRAC closure are covered under 5 U.S.C. 6304(d)(3).

Q9. We have employees working in an activity that is not identified in the BRAC report for closure or realignment but their activity must relocate because the installation their activity is on is scheduled to close. Are the employees in this activity eligible for BRAC restored leave?

A9. It is not necessary that an activity be specifically named in the BRAC report in order for its employees to be entitled to BRAC restored leave. If an activity must be realigned due to a BRAC closure (i.e., its functions and employees must be relocated because the host installation is closing), then the employees are entitled to BRAC restored leave (provided that the numerical criteria in 10 U.S.C. 2687(a)(2) are met, as with any realignment).

Q10. A tenant activity on an installation that is not closing is identified for realignment in the BRAC report and the activity and its positions will relocate to another installation. Are the employees of the tenant activity eligible for BRAC leave, even though the losing installation will ultimately gain a significant number of employees as a result of various BRAC realignments?

A10. In applying the numerical criteria for realignments in 10 U.S.C. 2687(a)(2) (i.e., that a realignment must reduce the civilian personnel strength by more than 1,000, or by more than 50 percent), tenant activities on host installations should be looked at

discretely. If the tenant activity is being realigned and meets the numerical criteria, the employees of that tenant are entitled to BRAC restored leave. This is based on the definition of “military installation” in 10 U.S.C. 2687(e)(1), which includes “...other activity under the jurisdiction of the Department of Defense;” the term “other activity” would include tenant activities.

Q11. What about employees from a closing or realigning activity that is not relocating outside the commuting area. Are these employees covered under 5 U.S.C. 6304(d)(3)?

A11. Yes. The fact that the relocation may occur in the commuting area does not affect the determination of entitlement under 5 U.S.C. 6304(d)(3).

Q12. Does a commander have to decide, based on workload, which employees in the activity scheduled for BRAC closure or realignment are covered under 5 U.S.C. 6304(d)(3)?

A12. No.

Q13. We have SES members working in an activity scheduled for closure or realignment. Now that they are subject to forfeiture rules, would the provisions of 5 U.S.C. 6304(d)(3) apply to them?

A13. Yes.

Q14. Can non-U.S. citizen employees be covered under 5 U.S.C. 6304(d)(3)?

A14. Yes, as long as the non-U.S. citizen is covered under Subchapter I, Chapter 63 of title 5, U.S.C.

Q15. Are Government contractors, military members, and non-employee reservists covered under 5 U.S.C. 6304(d)(3)?

A15. No. Federal civil service employees covered by the annual and sick leave system established under 5 U.S.C. Chapter 63 are eligible for coverage under 5 U.S.C. 6304(d)(3). See 5 U.S.C. 6301(2) (A) for the applicable definition of employee.

Q16. When an employee is in a non-BRAC position and is temporarily promoted or reassigned to a position in an activity that is eligible for BRAC restored leave, does that employee become eligible for BRAC restored leave?

A16. No, the permanent position of an employee gives the entitlement to BRAC restored leave, so an employee temporarily promoted or reassigned to a BRAC activity would not be eligible for BRAC restored leave.

Leave Restoration and Payment

Q17. Is BRAC restored leave placed in a special leave account?

A17. Yes. Leave in excess of the statutory maximum (normally 240 hours) is restored and is placed in a separate leave account.

Q18. What happens to active restored accounts (accounts on which the time limit for use is running) when employees become subject to 5 U.S.C. 6304(d)(3)? Is there any way to stop the clock from running on the active restored accounts?

A18. Yes. The time limits established under 5 CFR 630.306(a) and (b) are canceled for the period during which an employee is subject to 5 U.S.C. 6304(d)(3). Once the employee's coverage under 5 U.S.C. 6304(d)(3) ends, a new time limit is established for all the leave that had been restored to the employee prior to coverage under 5 U.S.C. 6304(d)(3).

Q19. What happens to leave restored under 5 U.S.C. 6304(d)(3) when an employee transfers from an installation or activity closed or realigned under BRAC to a non-BRAC installation?

A19. 5 U.S.C. 5551(c) requires the Department of Defense to pay a lump-sum payment to an employee for any unused annual leave that was restored under 5 U.S.C. 6304(d)(3) when the employee (1) transfers to a position in any other department or agency of the Federal Government or (2) moves to a position within DOD not located at an installation undergoing closure or realignment.

Q20. What happens to leave restored under 5 U.S.C. 6304(d)(3) when an employee is no longer eligible for restoration of leave under this provision, but has not separated nor moved to a position in a Federal agency or department outside of DoD or to a position within DoD not located at an installation being closed or realigned (for example, this might occur if an activity scheduled for realignment to another location ultimately does not move)?

A20. Because the employee has not separated or moved from a BRAC installation to a non-BRAC installation, the employee's restored leave account may not be liquidated by the payment of a lump-sum as required by 5 U.S.C. 5551(c). Instead, the special time limits established under 5 CFR 630.306(b) for using the restored leave will be applied. For example, a full-time employee with 416 hours or less is required to use the leave by the end of the leave year in progress 2 years after the date the employee is no longer subject to 5 U.S.C. 6304(d)(3). That period is extended by 1 leave year for each additional 208 hours of excess annual leave or any portion thereof.

Q21. Is an employee covered under 5 U.S.C. 6304(d)(3) eligible for a lump-sum payment if he moves to another BRAC activity?

A21. No, because he is moving to another BRAC activity (and as long as the new activity meets the criteria in 10 U.S.C. 2687), the employee continues to be covered by the unlimited annual leave carryover provision.

Q22. When an employee in a position eligible for BRAC restored leave is temporarily promoted or reassigned to a non-BRAC position, what should happen to his/her BRAC restored leave?

A22. The permanent position of an employee gives the entitlement to BRAC restored leave, so until an employee is permanently moved to a non-BRAC position, the BRAC restored leave would stay in the employee's leave account (i.e., not be paid out).

Q23. If an employee covered by 5 U.S.C. 6304(d)(3) receives an offer from a non-BRAC activity prior to the end of the leave year, is that leave (current year) included in the lump-sum payment for annual leave restored under 5 U.S.C. 6304(d)(3)?

A23. No. Leave earned during the current leave year cannot be included in the lump-sum payment because it has not been restored under 5 U.S.C. 6304(d)(3).