

The following provides valuable information clarifying the treatment of BRAC leave after September 15, 2011.

Even though the eligibility to accrue additional annual leave for restoration purposes under 5 U.S.C. 6304(d)(3) ceases upon the BRAC deadline of September 15, 2011, the requirement under 5 U.S.C. 5551(c) to liquidate the unused portion of the BRAC restored leave account does not cease. Once a restored leave account is established pursuant to 5 U.S.C. 6304(d)(3), any balance in that account must be treated in accordance with the Code of Federal Regulations and 5 U.S.C. 5551(c) regarding proper disposition of that account.

5 U.S.C. section 5551(c)(1) provides that "[BRAC restored leave that]...remains unused upon the transfer of the employee to a position described in paragraph (2) shall be liquidated by payment of a lump-sum for such leave to the employee upon transfer." "(2) a position referred to in paragraph (1) is a position in a department or agency of the Federal Government outside the Department of Defense or a Department of Defense position that is not located at a Department of Defense installation being closed or realigned as described in section 6304(d)(3) of this title."

5 C.F.R. 550.1203(b) states: "The Department of Defense (DoD) must make a lump-sum payment to an employee who has unused annual leave that was restored under 5 U.S.C. 6304(d)(3) [BRAC] when he or she transfers from a DoD installation undergoing closure or realignment to a position in any other department or agency of the Federal Government or moves to a position within DoD not located at an installation undergoing closure or realignment."

DODI 1400.25 V 1705, DoD Civilian Personnel Management System: Operational Continuity During Closure, dated January 24, 2007 (administratively reissued April 6, 2009), paragraph 4.d. provides: "Lump-sum payment of annual leave in the restored leave account for employees affected by closure or realignment actions is required by section 6304(d)(3) of Reference (b) in certain situations. Pursuant to section 5551(c) of Reference (b), lump-sum payment shall be made to eligible DoD employees upon their being assigned to a position in any other Federal agency or department outside of the Department of Defense, or to any DoD position at an installation that is not being closed or realigned.

Thus, if an employee has an established BRAC restored leave account, the provisions of 5 U.S.C. 5551(c) apply regardless of whether the employee remains eligible to continue accruing BRAC restored leave under 5 U.S.C. 6304(d)(3). That is, the BRAC restored leave account is simply the "nature" of the annual leave that has been restored to the employee. That account (or entitlement to the leave already restored) does not expire upon termination of BRAC. If the employee fails to meet the criteria described in 5 U.S.C. 5551(c), 5 C.F.R. 550.1203(b) or the paragraph 4.d. of the DoDI that mandate DoD liquidate the unused balance of the account, the accumulated leave that has been restored must be used in accordance with 5 C.F.R. 630.306, Time limit for use of restored annual leave. However, once the requirements of 5 U.S.C. 5551(c) are triggered [being assigned to a position in any other Federal agency or department outside of the Department of Defense, or to any DoD position at an installation that is not being closed or realigned] a liquidation of any remaining balance in that restored leave account is required.