

from an injury (excluding a disease proximately caused by the employment) sustained in the performance of duty, without regard to whether such survivor elects to waive compensation under such section 8133.

(c) Order of payment

A death gratuity payment under this section shall be made as follows:

- (1) First, to the widow or widower.
- (2) Second, to the child, or children in equal shares, if there is no widow or widower.
- (3) Third, to the dependent parent, or dependent parents in equal shares, if there is no widow, widower, or child.

If there is no survivor entitled to payment under this subsection, no payment shall be made.

(d) Definitions

As used in this section—

- (1) the term “Foreign Service employee” means any member of the Service or United States representative to an international organization or commission; and
- (2) each of the terms “widow”, “widower”, “child”, and “parent” shall have the same meaning given each such term by section 8101 of title 5.

(Pub. L. 96-465, title I, § 413, Oct. 17, 1980, 94 Stat. 2092.)

§ 3974. Border equalization pay adjustment

(a) In general

An employee who regularly commutes from the employee’s place of residence in the continental United States to an official duty station in Canada or Mexico shall receive a border equalization pay adjustment equal to the amount of comparability payments under section 5304 of title 5 that the employee would receive if the employee were assigned to an official duty station within the United States locality pay area closest to the employee’s official duty station.

(b) Employee defined

For purposes of this section, the term “employee” means a person who—

- (1) is an “employee” as defined under section 2105 of title 5; and
- (2) is employed by the Department of State, the United States Agency for International Development, or the International Joint Commission of the United States and Canada (established under Article VII of the treaty signed January 11, 1909) (36 Stat. 2448), except that the term shall not include members of the Service (as specified in section 3903 of this title).

(c) Treatment as basic pay

An equalization pay adjustment paid under this section shall be considered to be part of basic pay for the same purposes for which comparability payments are considered to be part of basic pay under section 5304 of title 5.

(d) Regulations

The heads of the agencies referred to in subsection (b)(2) of this section may prescribe regulations to carry out this section.

(Pub. L. 96-465, title I, § 414, as added Pub. L. 106-113, div. B, § 1000(a)(7) [div. A, title III, § 333(a)], Nov. 29, 1999, 113 Stat. 1536, 1501A-439.)

SUBCHAPTER V—CLASSIFICATION OF POSITIONS AND ASSIGNMENTS

§ 3981. Authority of Secretary

The Secretary shall designate and classify positions in the Department and at Foreign Service posts which are to be occupied by members of the Service (other than by chiefs of mission and ambassadors at large). Positions designated under this section are excepted from the competitive service. Position classifications under this section shall be established, without regard to chapter 51 of title 5, in relation to the salaries established under subchapter IV of this chapter. In classifying positions at Foreign Service posts abroad, the Secretary shall give appropriate weight to job factors relating to service abroad and to the compensation practices applicable to United States citizens employed abroad by United States corporations.

(Pub. L. 96-465, title I, § 501, Oct. 17, 1980, 94 Stat. 2092.)

§ 3982. Assignments to Foreign Service positions

(a) Positions assignable; basis for assignment

(1) The Secretary (with the concurrence of the agency concerned) may assign a member of the Service to any position classified under section 3981 of this title in which that member is eligible to serve (other than as chief of mission or ambassador at large), and may assign a member from one such position to another such position as the needs of the Service may require.

(2) In making assignments under paragraph (1), the Secretary shall assure that a member of the Service is not assigned to a position at a post in a particular geographic area exclusively on the basis of the race, ethnicity, or religion of that member.

(b) Filling of positions by members of Service; employment of members of State Department and other agencies

Positions designated as Foreign Service positions normally shall be filled by the assignment of members of the Service to those positions. Subject to that limitation—

- (1) Foreign Service positions may be filled by the assignment for specified tours of duty of employees of the Department and, under interagency agreements, employees of other agencies; and
- (2) Senior Foreign Service positions may also be filled by other members of the Service.

(c) Charge d'affaires

The President may assign a career member of the Service to serve as charge d'affaires or otherwise as the head of a mission (or as the head of a United States office abroad which is designated under section 3902(a)(3)¹ of this title by the Secretary of State as diplomatic in na-

¹ See References in Text note below.