

SUBCHAPTER VI—GRADE AND PAY
RETENTION

PRIOR PROVISIONS

A prior subchapter VI was renumbered VII by Pub. L. 95-454, title VIII, §801(a)(3)(A)(i), Oct. 13, 1978, 92 Stat. 1221.

§ 5361. Definitions

For the purpose of this subchapter—

(1) “employee” means an employee to whom chapter 51 of this title applies, and a prevailing rate employee, as defined by section 5342(a)(2) of this title, whose employment is other than on a temporary or term basis;

(2) “agency” has the meaning given it by section 5102 of this title;

(3) “retained grade” means the grade used for determining benefits to which an employee to whom section 5362 of this title applies is entitled;

(4) “rate of basic pay” means—

(A) the rate of basic pay payable to an employee under law or regulations before any deductions or additions of any kind, but including—

(i) any applicable locality-based comparability payment under section 5304 or similar provision of law;

(ii) any applicable special pay under section 5305 or similar provision of law; and

(iii) subject to such regulations as the Office of Personnel Management may prescribe, any applicable existing retained rate of pay established under section 5363 or similar provision of law; and

(B) in the case of a prevailing rate employee, the scheduled rate of pay determined under section 5343;

(5) “covered pay schedule” means the General Schedule, any prevailing rate schedule established under subchapter IV of this chapter, or a special occupational pay system under subchapter IX;

(6) “position subject to this subchapter” means any position under a covered pay schedule;

(7) “reduction-in-force procedures” means procedures applied in carrying out any reduction in force due to a reorganization, due to lack of funds or curtailment of work, or due to any other factor; and

(8) “retained rate” means the rate of basic pay to which an employee is entitled under section 5363(b)(2).

(Added Pub. L. 95-454, title VIII, §801(a)(1), Oct. 13, 1978, 92 Stat. 1218; amended Pub. L. 98-615, title II, §204(a)(2), Nov. 8, 1984, 98 Stat. 3216; Pub. L. 101-509, title V, §529 [title I, §105(b)(1)], Nov. 5, 1990, 104 Stat. 1427, 1448; Pub. L. 103-89, §3(b)(1)(J), Sept. 30, 1993, 107 Stat. 982; Pub. L. 108-411, title III, §301(a)(4), Oct. 30, 2004, 118 Stat. 2315.)

REFERENCES IN TEXT

The General Schedule, referred to in par. (5), is set out under section 5332 of this title.

PRIOR PROVISIONS

A prior section 5361, Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 473, which related to scientific and professional

positions, was renumbered section 5371 of this title by Pub. L. 95-454, title VIII, §801(a)(3)(A)(ii), Oct. 13, 1978, 92 Stat. 1221.

AMENDMENTS

2004—Par. (4). Pub. L. 108-411, §301(a)(4)(A), amended par. (4) generally. Prior to amendment, par. (4) read as follows: “‘rate of basic pay’ means, in the case of a prevailing rate employee, the scheduled rate of pay determined under section 5343 of this title;”

Par. (8). Pub. L. 108-411, §301(a)(4)(B)–(D), added par. (8).

1993—Par. (5). Pub. L. 103-89 substituted “or a special occupational pay system under subchapter IX” for “a special occupational pay system under subchapter IX, or the performance management and recognition system under chapter 54 of this title”.

1990—Par. (5). Pub. L. 101-509 inserted “a special occupational pay system under subchapter IX,” before “or the performance”.

1984—Par. (5). Pub. L. 98-615 substituted “performance management and recognition system” for “merit pay system”.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108-411 effective on the first day of the first applicable pay period beginning on or after the 180th day after Oct. 30, 2004, with provisions relating to conversion rules, see section 301(d) of Pub. L. 108-411, set out as a note under section 5363 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103-89 effective Nov. 1, 1993, see section 3(c) of Pub. L. 103-89, set out as a note under section 3372 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101-509 effective on such date as the President shall determine, but not earlier than 90 days, and not later than 180 days, after Nov. 5, 1990, see section 529 [title III, §305] of Pub. L. 101-509, set out as a note under section 5301 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98-615, title II, §205, Nov. 8, 1984, 98 Stat. 3217, provided that amendment by Pub. L. 98-615 was effective Oct. 1, 1984, and applicable with respect to pay periods commencing on or after that date, with certain exceptions and qualifications.

EFFECTIVE DATE

Pub. L. 95-454, title VIII, §801(a)(4), Oct. 13, 1978, 92 Stat. 1222, provided that:

“(A) The amendments made by this subsection [enacting sections 5361 to 5366 of this title and redesignating former sections 5361 to 5366 as sections 5371 to 5375 of this title, amending sections 559, 1305, 3104, 5102, 5107, 5334, 5349, and 8704 of this title, sections 4540, 7212, and 9540 of Title 10, Armed Forces, section 1715 of Title 15, Commerce and Trade, and section 3608 of Title 42, The Public Health and Welfare, and repealing sections 5337 and 5345 of this title] shall take effect on the first day of the first applicable pay period beginning on or after the 90th day after the date of the enactment of this Act [Oct. 13, 1978].

“(B) An employee who was receiving pay under the provisions of section 5334(d), 5337, or 5345 of title 5, United States Code, on the day before the effective date prescribed in subparagraph (A) of this paragraph shall not have such pay reduced or terminated by reason of the amendments made by this subsection and, unless section 5362 of such title 5 (as amended by subsection (a)(1) of this section) applies, such an employee is entitled to continue to receive pay as authorized by those provisions (as in effect on such date).”

§ 5362. Grade retention following a change of positions or reclassification

(a) Any employee—

(1) who is placed as a result of reduction-in-force procedures from a position subject to this subchapter to another position which is subject to this subchapter and which is in a lower grade than the previous position, and

(2) who has served for 52 consecutive weeks or more in one or more positions subject to this subchapter at a grade or grades higher than that of the new position,

is entitled, to the extent provided in subsection (c) of this section, to have the grade of the position held immediately before such placement be considered to be the retained grade of the employee in any position he holds for the 2-year period beginning on the date of such placement.

(b)(1) Any employee who is in a position subject to this subchapter and whose position has been reduced in grade is entitled, to the extent provided in subsection (c) of this section, to have the grade of such position before reduction be treated as the retained grade of such employee for the 2-year period beginning on the date of the reduction in grade.

(2) The provisions of paragraph (1) of this subsection shall not apply with respect to any reduction in the grade of a position which had not been classified at the higher grade for a continuous period of at least one year immediately before such reduction.

(c) For the 2-year period referred to in subsections (a) and (b) of this section, the retained grade of an employee under such subsection (a) or (b) shall be treated as the grade of the employee's position for all purposes (including pay and pay administration under this chapter and chapter 55 of this title, retirement and life insurance under chapters 83, 84, and 87 of this title, and eligibility for training and promotion under this title) except—

(1) for purposes of subsection (a) of this section,

(2) for purposes of applying any reduction-in-force procedures, or

(3) for such other purposes as the Office of Personnel Management may provide by regulation.

(d) The foregoing provisions of this section shall cease to apply to an employee who—

(1) has a break in service of one workday or more;

(2) is demoted (determined without regard to this section) for personal cause or at the employee's request;

(3) is placed in, or declines a reasonable offer of, a position the grade of which is equal to or higher than the retained grade; or

(4) elects in writing to have the benefits of this section terminate.

(Added Pub. L. 95-454, title VIII, §801(a)(1), Oct. 13, 1978, 92 Stat. 1219; amended Pub. L. 98-615, title II, §204(a)(1), Nov. 8, 1984, 98 Stat. 3216; Pub. L. 103-89, §3(b)(1)(K), Sept. 30, 1993, 107 Stat. 982.)

PRIOR PROVISIONS

A prior section 5362, Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 473, Pub. L. 95-251, §2(a)(1), (b)(1), Mar. 27, 1978, 92 Stat. 183, which related to hearing examiners, was renumbered section 5372 of this title by Pub. L. 95-454, title VIII, §801(a)(3)(A)(ii), Oct. 13, 1978, 92 Stat. 1221.

AMENDMENTS

1993—Subsec. (c). Pub. L. 103-89 substituted “chapter 55 of this title, retirement and life insurance under chapters 83, 84, and 87” for “chapters 54 and 55 of this title, retirement and life insurance under chapters 83 and 87” in introductory provisions, redesignated par. (4) as (3), and struck out former par. (3) which read as follows: “for purposes of determining whether the employee is covered by the performance management and recognition system established under chapter 54 of this title, or”.

1984—Subsec. (c)(3). Pub. L. 98-615 substituted “performance management and recognition system established under chapter 54” for “merit pay system established under section 5402”.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103-89 effective Nov. 1, 1993, see section 3(c) of Pub. L. 103-89, set out as a note under section 3372 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Section 205 of Pub. L. 98-615 provided that amendment by Pub. L. 98-615 was effective Oct. 1, 1984, and applicable with respect to pay periods commencing on or after that date, with certain exceptions and qualifications.

ADDITIONAL PAY AND BENEFITS FOR EMPLOYEES REDUCED IN GRADE ON OR AFTER JANUARY 1, 1977, ETC.

Pub. L. 95-454, title VIII, §801(b), Oct. 13, 1978, 92 Stat. 1222, provided that:

“(1) Under regulations prescribed by the Office of Personnel Management, any employee—

“(A) whose grade was reduced on or after January 1, 1977, and before the effective date of the amendments made by subsection (a) of this section [see Effective Date note set out under section 5361 of this title] under circumstances which would have entitled the employee to coverage under the provisions of section 5362 of title 5, United States Code (as amended by subsection (a) of this section) if such amendments had been in effect at the time of the reduction; and

“(B) who has remained employed by the Federal Government from the date of the reduction in grade to the effective date of the amendments made by subsection (a) of this section without a break in service of one workday or more;

shall be entitled—

“(i) to receive the additional pay and benefits which such employee would have been entitled to receive if the amendments made by subsection (a) of this section had been in effect during the period beginning on the effective date of such reduction in grade and ending on the day before the effective date of such amendments, and

“(ii) to have the amendments made by subsection (a), of this section apply to such employee as if the reduction in grade had occurred on the effective date of such amendments.

“(2) No employee covered by this subsection whose reduction in grade resulted in an increase in pay shall have such pay reduced by reason of the amendments made by subsection (a) of this section.

“(3)(A) For purposes of this subsection, the requirements under paragraph (1)(B) of this subsection, relating to continuous employment following reduction in grade, shall be considered to be met in the case of any employee—

“(i) who separated from service with a right to an immediate annuity under chapter 83 of title 5, United States Code, or under another retirement system for Federal employees; or

“(ii) who died.

“(B) Amounts payable by reason of subparagraph (A) of this paragraph in the case of the death of an employee shall be paid in accordance with the provisions of subchapter VIII of chapter 55 of title 5, United States Code, relating to settlement of accounts in the case of deceased employees.

“(4) The Office of Personnel Management shall have the same authority to prescribe regulations under this subsection as it has under section 5365 of title 5, United States Code, with respect to subchapter VI of chapter 53 of such title, as added by subsection (a) of this section.”

§ 5363. Pay retention

(a) Any employee—

(1) who ceases to be entitled to the benefits of section 5362 of this title by reason of the expiration of the 2-year period of coverage provided under such section;

(2) who is in a position subject to this subchapter and who is subject to a reduction or termination of a special rate of pay established under section 5305 of this title (or corresponding prior provision of this title);

(3) who is in a position subject to this subchapter and who (but for this section) would be subject to a reduction in pay under circumstances prescribed by the Office of Personnel Management by regulation to warrant the application of this section; or

(4) who is in a position subject to this subchapter and who is subject to a reduction or termination of a rate of pay established under subchapter IX of chapter 53;

is entitled to a rate of basic pay in accordance with regulations prescribed by the Office of Personnel Management in conformity with the provisions of this section.

(b)(1)(A) If, as a result of any event described in subsection (a), the employee's former rate of basic pay is less than or equal to the maximum rate of basic pay payable for the grade of the employee's position immediately after the occurrence of the event involved, the employee is entitled to basic pay at the lowest rate of basic pay payable for such grade that equals or exceeds such former rate of basic pay.

(B) This section shall cease to apply to an employee to whom subparagraph (A) applies once the appropriate rate of basic pay has been determined for such employee under this paragraph.

(2)(A) If, as a result of any event described in subsection (a), the employee's former rate of basic pay is greater than the maximum rate of basic pay payable for the grade of the employee's position immediately after the occurrence of the event involved, the employee is entitled to basic pay at a rate equal to the lesser of—

(i) the employee's former rate of basic pay; or

(ii) 150 percent of the maximum rate of basic pay payable for the grade of the employee's position immediately after the occurrence of the event involved,

as adjusted by subparagraph (B).

(B) A rate to which an employee is entitled under this paragraph shall be increased at the time of any increase in the maximum rate of basic pay payable for the grade of the employee's position by 50 percent of the dollar amount of each such increase.

(3) For purposes of this subsection, the term “former rate of basic pay”, as used with respect to an employee in connection with an event described in subsection (a), means the rate of basic pay last received by such employee before the occurrence of such event.

(c)(1) Notwithstanding any other provision of this section, in the case of an employee who—

(A) moves to a new official duty station, and

(B) in conjunction with such move, becomes subject to both a different pay schedule and (disregarding this subsection) the preceding provisions of this section,

this section shall be applied—

(i) first, by determining the rate of pay to which such employee would be entitled at the new official duty station based on such employee's position, grade, and step (or relative position in the pay range) before the move, and

(ii) then, by applying the provisions of this section that would apply (if any), treating the rate determined under clause (i) as if it were the rate last received by the employee before the application of this section.

(2) A reduction in an employee's rate of basic pay resulting from a determination under paragraph (1)(ii) is not a basis for an entitlement under this section.

(3) The rate of basic pay for an employee who is receiving a retained rate at the time of moving to a new official duty station at which different pay schedules apply shall be subject to regulations prescribed by the Office of Personnel Management consistent with the purposes of this section.

(d) A retained rate shall be considered part of basic pay for purposes of this subchapter and for purposes of subchapter III of chapter 83, chapters 84 and 87, subchapter V of chapter 55, section 5941, and for such other purposes as may be expressly provided for by law or as the Office of Personnel Management may by regulation prescribe. The Office shall, for any purpose other than any of the purposes referred to in the preceding sentence, prescribe by regulation what constitutes basic pay for employees receiving a retained rate.

(e) This section shall not apply, or shall cease to apply, to an employee who—

(1) has a break in service of 1 workday or more;

(2) is entitled, by operation of this subchapter, chapter 51 or 53, or any other provision of law, to a rate of basic pay which is equal to or higher than, or declines a reasonable offer of a position the rate of basic pay for which is equal to or higher than, the retained rate to which the employee would otherwise be entitled; or

(3) is demoted for personal cause or at the employee's request.

(Added Pub. L. 95-454, title VIII, §801(a)(1), Oct. 13, 1978, 92 Stat. 1219; amended Pub. L. 101-509, title V, §529 [title I, §§101(b)(3)(B), 105(b)(2)], Nov. 5, 1990, 104 Stat. 1427, 1439, 1448; Pub. L. 103-89, §3(b)(1)(L), Sept. 30, 1993, 107 Stat. 982; Pub. L. 108-411, title III, §301(a)(5), Oct. 30, 2004, 118 Stat. 2316.)

PRIOR PROVISIONS

A prior section 5363, Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 473, which related to limitation on pay fixed by administrative action, was renumbered section 5373 of this title by Pub. L. 95-454, title VIII, §801(a)(3)(A)(ii), Oct. 13, 1978, 92 Stat. 1221.