

§ 5538. Nonreduction in pay while serving in the uniformed services or National Guard

(a) An employee who is absent from a position of employment with the Federal Government in order to perform active duty in the uniformed services pursuant to a call or order to active duty under section 12304b of title 10 or a provision of law referred to in section 101(a)(13)(B) of title 10 shall be entitled, while serving on active duty, to receive, for each pay period described in subsection (b), an amount equal to the amount by which—

(1) the amount of basic pay which would otherwise have been payable to such employee for such pay period if such employee's civilian employment with the Government had not been interrupted by that service, exceeds (if at all)

(2) the amount of pay and allowances which (as determined under subsection (d))—

(A) is payable to such employee for that service; and

(B) is allocable to such pay period.

(b) Amounts under this section shall be payable with respect to each pay period (which would otherwise apply if the employee's civilian employment had not been interrupted)—

(1) during which such employee is entitled to re-employment rights under chapter 43 of title 38 with respect to the position from which such employee is absent (as referred to in subsection (a)); and

(2) for which such employee does not otherwise receive basic pay (including by taking any annual, military, or other paid leave) to which such employee is entitled by virtue of such employee's civilian employment with the Government.

(c) Any amount payable under this section to an employee shall be paid—

(1) by such employee's employing agency;

(2) from the appropriation or fund which would be used to pay the employee if such employee were in a pay status; and

(3) to the extent practicable, at the same time and in the same manner as would basic pay if such employee's civilian employment had not been interrupted.

(d) The Office of Personnel Management shall, in consultation with Secretary of Defense, prescribe any regulations necessary to carry out the preceding provisions of this section.

(e)(1) The head of each agency referred to in section 2302(a)(2)(C)(ii) shall, in consultation with the Office, prescribe procedures to ensure that the rights under this section apply to the employees of such agency.

(2) The Administrator of the Federal Aviation Administration shall, in consultation with the Office, prescribe procedures to ensure that the rights under this section apply to the employees of that agency.

(f) For purposes of this section—

(1) the terms "employee", "Federal Government", and "uniformed services" have the same respective meanings as given those terms in section 4303 of title 38;

(2) the term "employing agency", as used with respect to an employee entitled to any

payments under this section, means the agency or other entity of the Government (including an agency referred to in section 2302(a)(2)(C)(ii)) with respect to which such employee has reemployment rights under chapter 43 of title 38; and

(3) the term "basic pay" includes any amount payable under section 5304.

(Added Pub. L. 111-8, div. D, title VII, §751(a), Mar. 11, 2009, 123 Stat. 693; amended Pub. L. 111-117, div. C, title VII, §745(a), Dec. 16, 2009, 123 Stat. 3219; Pub. L. 115-232, div. A, title VI, §605, Aug. 13, 2018, 132 Stat. 1795.)

AMENDMENTS

2018—Subsec. (a). Pub. L. 115-232 inserted "section 12304b of title 10 or" after "under" in introductory provisions.

2009—Subsec. (b). Pub. L. 111-117 added subsec. (b) and struck out former subsec. (b), which read as follows:

"(b)(1) Amounts under this section shall be payable with respect to each pay period (which would otherwise apply if the employee's civilian employment had not been interrupted)—

"(A) during which such employee is entitled to re-employment rights under chapter 43 of title 38 with respect to the position from which such employee is absent (as referred to in subsection (a)); and

"(B) for which such employee does not otherwise receive basic pay (including by taking any annual, military, or other paid leave) to which such employee is entitled by virtue of such employee's civilian employment with the Government.

"(2) For purposes of this section, the period during which an employee is entitled to reemployment rights under chapter 43 of title 38—

"(A) shall be determined disregarding the provisions of section 4312(d) of title 38; and

"(B) shall include any period of time specified in section 4312(e) of title 38 within which an employee may report or apply for employment or reemployment following completion of service on active duty to which called or ordered as described in subsection (a)."

EFFECTIVE DATE OF 2009 AMENDMENT

Pub. L. 111-117, div. C, title VII, §745(b), Dec. 16, 2009, 123 Stat. 3219, provided that: "The amendments made by this section [amending this section] shall take effect on the first day of the first applicable pay period beginning on or after the date of the enactment of this Act [Dec. 16, 2009]."

EFFECTIVE DATE

Pub. L. 111-8, div. D, title VII, §751(c), Mar. 11, 2009, 123 Stat. 695, provided that: "The amendments made by this section [enacting this section] shall apply with respect to pay periods (as described in section 5538(b) of title 5, United States Code, as amended by this section) beginning on or after the date of enactment of this Act [Mar. 11, 2009]."

SUBCHAPTER V—PREMIUM PAY

§ 5541. Definitions

For the purpose of this subchapter—

(1) "agency" means—

(A) an Executive agency;

(B) a military department;

(C) an agency in the judicial branch;

(D) the Library of Congress;

(E) the Botanic Garden;

(F) the Office of the Architect of the Capitol; and

(G) the government of the District of Columbia;

(2) “employee” means—

(A) an employee in or under an Executive agency;

(B) an individual employed by the government of the District of Columbia; and

(C) an employee in or under the judicial branch, the Library of Congress, the Botanic Garden, and the Office of the Architect of the Capitol, who occupies a position subject to chapter 51 and subchapter III of chapter 53 of this title;

but does not include—

(i) a justice or judge of the United States; (ii) the head of an agency other than the government of the District of Columbia;

(iii) a teacher, school official, or employee of the Board of Education of the District of Columbia, whose pay is fixed under chapter 15 of title 31, District of Columbia Code;

(iv) a member of—
(I) the Metropolitan Police or the Fire Department of the District of Columbia; or
(II) a member of the United States Park Police, other than for purposes of section¹ 5545(a) and 5546;

(v) a student-employee as defined by section 5351 of this title;

[(vi) Repealed. Pub. L. 91-375, §6(c)(16), Aug. 12, 1970, 84 Stat. 776;]

(vii) an employee outside the continental United States or in Alaska who is paid in accordance with local native prevailing wage rates for the area in which employed;

(viii) an employee of the Tennessee Valley Authority;

(ix) an individual to whom section 1291(a)² of title 50, appendix, applies;

(x) an employee of a Federal land bank, a Federal intermediate credit bank, or a bank for cooperatives;

(xi) an employee whose pay is fixed and adjusted from time to time in accordance with prevailing rates under subchapter IV of chapter 53 of this title, or by a wage board or similar administrative authority serving the same purpose, except as provided by section 5544 or 5550b of this title;

(xii) an employee of the Transportation Corps of the Army on a vessel operated by the United States, a vessel employee of the Environmental Science Services Administration, or a vessel employee of the Department of the Interior;

(xiii) a “teacher” or an individual holding a “teaching position” as defined by section 901 of title 20;

(xiv) a Foreign Service officer;

(xv) a member of the Senior Foreign Service;

(xvi) member of the Senior Executive Service; or

(xvii) a member of the Federal Bureau of Investigation and Drug Enforcement Administration Senior Executive Service; and

(3) “law enforcement officer” means an employee who—

(A) is a law enforcement officer within the meaning of section 8331(20) or 8401(17);

(B) in the case of an employee who holds a supervisory or administrative position and is subject to subchapter III of chapter 83, but who does not qualify to be considered a law enforcement officer within the meaning of section 8331(20), would so qualify if such employee had transferred directly to such position after serving as a law enforcement officer within the meaning of such section;

(C) in the case of an employee who holds a supervisory or administrative position and is subject to chapter 84, but who does not qualify to be considered a law enforcement officer within the meaning of section 8401(17), would so qualify if such employee had transferred directly to such position after performing duties described in section 8401(17)(A) and (B) for at least 3 years; and

(D) in the case of an employee who is not subject to subchapter III of chapter 83 or chapter 84—

(i) holds a position that the Office of Personnel Management determines would satisfy subparagraph (A), (B), or (C) if the employee were subject to subchapter III of chapter 83 or chapter 84; or

(ii) is a special agent in the Diplomatic Security Service.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 485; Pub. L. 90-83, §1(4), Sept. 11, 1967, 81 Stat. 196; Pub. L. 91-375, §6(c)(16), Aug. 12, 1970, 84 Stat. 776; Pub. L. 92-392, §4, Aug. 14, 1972, 86 Stat. 573; Pub. L. 94-183, §2(22), Dec. 31, 1975, 89 Stat. 1058; Pub. L. 95-105, title IV, §412(a)(1), Aug. 17, 1977, 91 Stat. 855; Pub. L. 95-426, title II, §204(b)(5)(B), Oct. 7, 1978, 92 Stat. 974; Pub. L. 95-454, title IV, §408(a)(2), Oct. 13, 1978, 92 Stat. 1173; Pub. L. 96-70, title III, §3302(e)(1), Sept. 27, 1979, 93 Stat. 498; Pub. L. 96-465, title II, §2304, Oct. 17, 1980, 94 Stat. 2165; Pub. L. 100-325, §2(i)(1), May 30, 1988, 102 Stat. 582; Pub. L. 101-509, title V, §529 [title IV, §411(a)], Nov. 5, 1990, 104 Stat. 1427, 1469; Pub. L. 102-378, §2(40)(A)-(C), Oct. 2, 1992, 106 Stat. 1351; Pub. L. 104-201, div. C, title XXXV, §3548(a)(6), Sept. 23, 1996, 110 Stat. 2869; Pub. L. 110-181, div. A, title XI, §1111(b), Jan. 28, 2008, 122 Stat. 360; Pub. L. 111-282, §4(c)(2), Oct. 15, 2010, 124 Stat. 3043.)

HISTORICAL AND REVISION NOTES

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
.....	5 U.S.C. 901(a), (d), (e).	June 30, 1945, ch. 212 §101(a), (d), (e), 59 Stat. 295, 296. Sept. 1, 1954, ch. 1208, §202(a), 68 Stat. 1109.
.....	5 U.S.C. 902 (less clause (1) and last sentence of (a)).	June 30, 1945, ch. 212, §102 (less clause (1) and last sentence of (a)), 59 Stat. 296. May 24, 1946, ch. 270, §8(a), 60 Stat. 213. Aug. 4, 1947, ch. 452, §1, 61 Stat. 727. Aug. 18, 1959, Pub. L. 86-168, §202(c) 73 Stat. 389.
.....	5 U.S.C. 2358(a) (as applicable to the Federal Employees Pay Act of 1945, as amended).	July 17, 1959, Pub. L. 86-91, §10(a) (as applicable to the Federal Employees Pay Act of 1945, as amended), 73 Stat. 217.

The section is revised as a definition section. The provisions of former section 901(d) are omitted as unnecessary because the sections referred to state their

¹ So in original. Probably should be “sections”.

² See References in Text note below.

application and there is no need to restate the application here.

In paragraph (1), the terms “Executive agency” and “military department” are substituted for the references in former section 901(a) and (e) to the executive branch, including Government-owned or controlled corporations, and the General Accounting Office in view of the definitions in sections 105 and 102.

In paragraph (2)(iii), the words “chapter 15 of title 31, District of Columbia Code” are substituted for the reference in former section 902(a)(4) to “the Teachers Salary Act of June 4, 1924, as amended” on authority of the provisions contained therein. Enumeration of the individuals to which the provisions apply are added.

In paragraph (2)(iv), the provisions of former section 902(a)(5) and (b)(6) are combined.

In paragraph (2)(v), the words “student-employee as defined by section 5351 of this title” are coextensive with and substituted for the enumeration of the employees in former section 902(a)(6).

In paragraph (2)(iv), (vi), (vii), (viii), (ix), (xi), and (xii), the reference to former section 947 is omitted as that section was repealed by the Act of Sept. 12, 1950, ch. 946, §301(85), 64 Stat. 843.

In paragraph (2)(xii), the reference to former section 946 is omitted as unnecessary since that section is not carried into this subchapter. The words “Panama Canal Company” are substituted for “Panama Railroad Company” on authority of the Act of Sept. 2, 1950, ch. 1049, §2(a)(2), 64 Stat. 1038.

In paragraph (2)(xiii), the words “as defined by section 901 of title 20” are added on authority of former section 2351, which section is scheduled for transfer to section 901 of title 20.

The exception for officers and employees of the Inland Waterways Corporation in former section 902(b)(3) is omitted on authority of the Act of July 19, 1963, Pub. L. 88-67, 77 Stat. 81.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

REFERENCES IN TEXT

Section 1291(a) of title 50, appendix, referred to in par. (2)(C)(ix), is section 1(a) of act Mar. 24, 1943, ch. 26, 57 Stat. 45, which was classified to section 1291(a) of the former Appendix to Title 50, War and National Defense, prior to editorial reclassification as section 4701(a) of Title 50.

AMENDMENTS

2010—Par. (2)(iv)(II). Pub. L. 111-282 struck out “a member of the United States Secret Service Uniformed Division,” before “a member of the United States Park Police”.

2008—Par. (2)(xi). Pub. L. 110-181 substituted “section 5544 or 5550b” for “section 5544”.

1996—Par. (2)(xii). Pub. L. 104-201 inserted “or” after “Services Administration,” and struck out “, or a vessel employee of the Panama Canal Commission” after “Interior”.

1992—Par. (3). Pub. L. 102-378 added par. (3).

1990—Par. (2)(iv). Pub. L. 101-509 amended cl. (iv) generally. Prior to amendment, cl. (iv) read as follows: “a member of the Metropolitan Police, the Fire Department of the District of Columbia, the United States Park Police, or the Executive Protective Service;”.

1988—Par. (2)(xvii). Pub. L. 100-325 added cl. (xvii).

1980—Par. (2)(xiv). Pub. L. 96-465 struck out “within the meaning of section 401 of the Foreign Service Act of 1946” after “officer”.

Par. (2)(xv). Pub. L. 96-465 substituted “a member of the Senior Foreign Service” for “a ‘Foreign Service information officer’ as provided for by the first section of the Act entitled ‘An Act to promote the foreign policy of the United States by strengthening and improving the Foreign Service personnel system of the International Communication Agency through establishment of a Foreign Service Information Officer Corps’, approved August 20, 1968”.

1979—Par. (2)(xii). Pub. L. 96-70 substituted “Commission” for “Company”.

1978—Par. (2)(xvi). Pub. L. 95-454 added cl. (xvi).

Par. (2)(xv). Pub. L. 95-426 substituted “International Communication Agency” for “United States Information Agency”.

1977—Par. (2)(xiv), (xv). Pub. L. 95-105 added cls. (xiv) and (xv).

1975—Par. (2)(iv). Pub. L. 94-183 substituted “Executive Protective Service” for “White House Police”.

1972—Par. (2)(xi). Pub. L. 92-392 substituted “pay” for “basic pay” and provided for determination of pay under subchapter IV of chapter 53 of this title.

1970—Par. (2)(vi). Pub. L. 91-375 repealed cl. (vi) which excluded an employee in the postal field service from definition of “employee”.

1967—Par. (2)(xii). Pub. L. 90-83 substituted “Environmental Science Services Administration” for “Coast and Geodetic Survey”. See Historical and Revision Notes under section 2101 of this title.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111-282 effective on first day of first pay period which begins after Oct. 15, 2010, see section 5 of Pub. L. 111-282, set out as a note under section 5102 of this title.

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110-181, div. A, title XI, §1111(c), Jan. 28, 2008, 122 Stat. 360, provided that: “The amendments made by this section [amending this section and section 5550b of this title] shall take effect on the earlier of—

“(1) the effective date of any regulations prescribed to carry out such amendments; or

“(2) the 90th day after the date of the enactment of this Act [Jan. 28, 2008].”

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102-378 effective as of first day of first applicable pay period beginning on or after Oct. 2, 1992, see section 9(b)(9) of Pub. L. 102-378, set out as a note under section 6303 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Pub. L. 101-509, title V, §529 [title IV, §411(b)], Nov. 5, 1990, 104 Stat. 1427, 1469, provided that: “The amendment made by this section [amending this section] shall be effective on January 1, 1992.”

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-465 effective Feb. 15, 1981, except as otherwise provided, see section 2403 of Pub. L. 96-465, set out as an Effective Date note under section 3901 of Title 22, Foreign Relations and Intercourse.

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96-70 effective Oct. 1, 1979, see section 3304 of Pub. L. 96-70, set out as an Effective Date note under section 3601 of Title 22, Foreign Relations and Intercourse.

EFFECTIVE DATE OF 1978 AMENDMENTS

Amendment by Pub. L. 95-454 effective 9 months after Oct. 13, 1978, and congressional review of provisions of sections 401 through 412 of Pub. L. 95-454, see section 415 of Pub. L. 95-454, set out as an Effective Date note under section 3131 of this title.

Pub. L. 95-426, title II, §204(b)(5)(B), Oct. 7, 1978, 92 Stat. 974, provided that the amendment made by such section 204(b)(5)(B) is effective Oct. 1, 1978.

EFFECTIVE DATE OF 1977 AMENDMENT

Section 412(a)(2) of Pub. L. 95-105 provided that: “The amendments made by paragraph (1) [amending this section] shall take effect on October 1, 1978.”

EFFECTIVE DATE OF 1972 AMENDMENT

Amendment by Pub. L. 92-392 effective on first day of first applicable pay period beginning on or after 90th

day after Aug. 19, 1972, see section 15(a) of Pub. L. 92-392, set out as an Effective Date note under section 5341 of this title.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91-375 effective within 1 year after Aug. 12, 1970, on date established therefor by Board of Governors of United States Postal Service and published by it in Federal Register, see section 15(a) of Pub. L. 91-375, set out as an Effective Date note preceding section 101 of Title 39, Postal Service.

SHORT TITLE OF 1994 AMENDMENT

Pub. L. 103-329, title VI, §633(a), Sept. 30, 1994, 108 Stat. 2425, provided that: "This section [enacting section 5545a of this title, amending sections 5542 and 5547 of this title and section 213 of Title 29, Labor, and enacting provisions set out as notes under section 5545a of this title] may be cited as the 'Law Enforcement Availability Pay Act of 1994'."

TRANSFER OF FUNCTIONS

Environmental Science Services Administration in Department of Commerce, including offices of Administrator and Deputy Administrator thereof, abolished by Reorg. Plan No. 4 of 1970, eff. Oct. 3, 1970, 35 F.R. 15627, 84 Stat. 2090, set out in the Appendix to this title, which created National Oceanic and Atmospheric Administration in Department of Commerce and transferred personnel, property, records, and unexpended balances of funds of Environmental Science Services Administration to such newly created National Oceanic and Atmospheric Administration. Components of Environmental Science Services Administration thus transferred included Weather Bureau [now National Weather Service], Coast and Geodetic Survey [now National Ocean Survey], Environmental Data Service, National Environmental Satellite Center, and ESSA Research Laboratories.

AVAILABILITY OF PREMIUM PAY FOR ATTORNEYS EMPLOYED IN DEPARTMENT OF JUSTICE

Pub. L. 106-113, div. B, §1000(a)(1) [title I, §115], Nov. 29, 1999, 113 Stat. 1535, 1501A-21, provided that:

"(a) None of the funds made available by this or any other Act may be used to pay premium pay under title 5, United States Code, sections 5542-5549, to any individual employed as an attorney, including an Assistant United States Attorney, in the Department of Justice for any work performed on or after the date of the enactment of this Act [Nov. 29, 1999].

"(b) Notwithstanding any other provision of law, neither the United States nor any individual or entity acting on its behalf shall be liable for premium pay under title 5, United States Code, sections 5542-5549, for any work performed on or after the date of the enactment of this Act [Nov. 29, 1999] by any individual employed as an attorney in the Department of Justice, including an Assistant United States Attorney."

[Pub. L. 106-553, §1(a)(2) [title I, §111], Dec. 21, 2000, 114 Stat. 2762, 2762A-68, provided that: "Section 115 of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 2000 (as enacted into law by section 1000(a)(1) of Public Law 106-113) [set out above] shall apply hereafter."]

SENSE OF CONGRESS RELATING TO LAW ENFORCEMENT OFFICER PROVISIONS

Pub. L. 102-378, §2(40)(D), Oct. 2, 1992, 106 Stat. 1351, provided that: "It is the sense of the Congress that—

"(i) the provisions of section 5541(3) of title 5, United States Code (as added by section 2(40)(C) of this Act)—

"(I) are enacted only for the purposes of pay and not for the purposes of retirement;

"(II) do not reflect any intent of the Congress to change retirement eligibility standards for law enforcement officers; and

"(ii) law enforcement officers in primary positions have different retirement eligibility standards than

employees in supervisory or administrative positions because of the different requirements in their responsibilities."

PAYMENT OF BONUSES FOR FOREIGN LANGUAGE CAPABILITIES

Pub. L. 100-690, title VI, §6401, Nov. 18, 1988, 102 Stat. 4370, as amended by Pub. L. 101-509, title V, §529 [title IV, §408(c)], Nov. 5, 1990, 104 Stat. 1427, 1468, provided that:

"(a) IN GENERAL.—Notwithstanding any other provision of law, the Drug Enforcement Administration and the Federal Bureau of Investigation are authorized on and after October 1, 1988, to pay bonuses up to 25 percent of base pay to employees of the Drug Enforcement Administration and the Federal Bureau of Investigation who possess and make substantial use of one or more languages, other than English, in the performance of their official duties. The Administrator of the Drug Enforcement Administration and the Director of the Federal Bureau of Investigation shall develop such policies as necessary to implement the payment of these bonuses.

"(b) LIMITATION.—The provisions of this section shall apply only to an employee who has received a bonus under this section before January 1, 1992. The provisions of subchapter III of chapter 45 of title 5, United States Code, shall apply to any employee who would otherwise be eligible to receive a bonus under this section, on and after such date."

§ 5542. Overtime rates; computation

(a) For full-time, part-time and intermittent tours of duty, hours of work officially ordered or approved in excess of 40 hours in an administrative workweek, or (with the exception of an employee engaged in professional or technical engineering or scientific activities for whom the first 40 hours of duty in an administrative workweek is the basic workweek and an employee whose basic pay exceeds the minimum rate for GS-10 (including any applicable locality-based comparability payment under section 5304 or similar provision of law and any applicable special rate of pay under section 5305 or similar provision of law) for whom the first 40 hours of duty in an administrative workweek is the basic workweek) in excess of 8 hours in a day, performed by an employee are overtime work and shall be paid for, except as otherwise provided by this subchapter, at the following rates:

(1) For an employee whose basic pay is at a rate which does not exceed the minimum rate of basic pay for GS-10 (including any applicable locality-based comparability payment under section 5304 or similar provision of law and any applicable special rate of pay under section 5305 or similar provision of law), the overtime hourly rate of pay is an amount equal to one and one-half times the hourly rate of basic pay of the employee, and all that amount is premium pay.

(2) For an employee whose basic pay is at a rate which exceeds the minimum rate of basic pay for GS-10 (including any applicable locality-based comparability payment under section 5304 or similar provision of law and any applicable special rate of pay under section 5305 or similar provision of law), the overtime hourly rate of pay is an amount equal to the greater of one and one-half times the hourly rate of the minimum rate of basic pay for GS-10 (including any applicable locality-based comparability payment under section 5304 or