

is participating in a program under subsection (a) is being substantially disrupted in carrying out its functions or is incurring additional costs because of such participation, such agency head may—

- (1) restrict the employees' choice of arrival and departure time,
- (2) restrict the use of credit hours, or
- (3) exclude from such program any employee or group of employees.

(Added Pub. L. 97-221, §2(a)(2), July 23, 1982, 96 Stat. 228.)

**§ 6123. Flexible schedules; computation of premium pay**

(a) For purposes of determining compensation for overtime hours in the case of an employee participating in a program under section 6122 of this title—

(1) the head of an agency may, on request of the employee, grant the employee compensatory time off in lieu of payment for such overtime hours, whether or not irregular or occasional in nature and notwithstanding the provisions of sections 5542(a), 5543(a)(1) and section<sup>1</sup> 5544(a) of this title, section 7453(e) of title 38, section 7 of the Fair Labor Standards Act (29 U.S.C. 207), or any other provision of law; or

(2) the employee shall be compensated for such overtime hours in accordance with such provisions, as applicable.

(b) Notwithstanding the provisions of law referred to in subsection (a)(1) of this section, an employee shall not be entitled to be compensated for credit hours worked except to the extent authorized under section 6126 of this title or to the extent such employee is allowed to have such hours taken into account with respect to the employee's basic work requirement.

(c)(1) Notwithstanding section 5545(a) of this title, premium pay for nightwork will not be paid to an employee otherwise subject to such section solely because the employee elects to work credit hours, or elects a time of arrival or departure, at a time of day for which such premium pay is otherwise authorized, except that—

(A) if an employee is on a flexible schedule under which—

- (i) the number of hours during which such employee must be present for work, plus
- (ii) the number of hours during which such employee may elect to work credit hours or elect the time of arrival at and departure from work,

which occur outside of the nightwork hours designated in or under such section 5545(a) total less than 8 hours, such premium pay shall be paid for those hours which, when combined with such total, do not exceed 8 hours, and

(B) if an employee is on a flexible schedule under which the hours that such employee must be present for work include any hours designated in or under such section 5545(a), such premium pay shall be paid for such hours so designated.

<sup>1</sup> So in original. The word "section" probably should not appear.

(2) Notwithstanding section 5343(f) of this title, and section 7453(b) of title 38, night differential will not be paid to any employee otherwise subject to either of such sections solely because such employee elects to work credit hours, or elects a time of arrival or departure, at a time of day for which night differential is otherwise authorized, except that such differential shall be paid to an employee on a flexible schedule under this subchapter—

(A) in the case of an employee subject to subsection (f) of such section 5343, for which all or a majority of the hours of such schedule for any day fall between the hours specified in such subsection, or

(B) in the case of an employee subject to subsection (b) of such section 7453, for which 4 hours of such schedule fall between the hours specified in such subsection.

(Added Pub. L. 97-221, §2(a)(2), July 23, 1982, 96 Stat. 228; amended Pub. L. 102-40, title IV, §403(c)(2), May 7, 1991, 105 Stat. 240; Pub. L. 102-378, §2(44)(D), Oct. 2, 1992, 106 Stat. 1352.)

**Editorial Notes**

AMENDMENTS

1992—Subsec. (a)(1). Pub. L. 102-378 substituted "5543(a)(1) and section 5544(a)" for "5543(a)(1), 5544(a), and 5550".

1991—Subsec. (a)(1). Pub. L. 102-40, §403(c)(2)(A), substituted "section 7453(e)" for "section 4107(e)(5)".

Subsec. (c)(2). Pub. L. 102-40, §403(c)(2)(B), in introductory provisions substituted "section 7453(b)" for "section 4107(e)(2)" and in subpar. (B) substituted "subsection (b) of such section 7453" for "subsection (e)(2) of such section 4107".

**§ 6124. Flexible schedules; holidays**

Notwithstanding sections 6103 and 6104 of this title, if any employee on a flexible schedule under section 6122 of this title is relieved or prevented from working on a day designated as a holiday by Federal statute or Executive order, such employee is entitled to pay with respect to that day for 8 hours (or, in the case of a part-time employee, an appropriate portion of the employee's biweekly basic work requirement as determined under regulations prescribed by the Office of Personnel Management).

(Added Pub. L. 97-221, §2(a)(2), July 23, 1982, 96 Stat. 229.)

**§ 6125. Flexible schedules; time-recording devices**

Notwithstanding section 6106 of this title, the Office of Personnel Management or any agency may use recording clocks as part of programs under section 6122 of this title.

(Added Pub. L. 97-221, §2(a)(2), July 23, 1982, 96 Stat. 229.)

**§ 6126. Flexible schedules; credit hours; accumulation and compensation**

(a) Subject to any limitation prescribed by the Office of Personnel Management or the agency, a full-time employee on a flexible schedule can accumulate not more than 24 credit hours, and a part-time employee can accumulate not more than one-fourth of the hours in such employee's biweekly basic work requirement, for carryover

from a biweekly pay period to a succeeding biweekly pay period for credit to the basic work requirement for such period.

(b) Any employee who is on a flexible schedule program under section 6122 of this title and who is no longer subject to such a program shall be paid at such employee's then current rate of basic pay for—

(1) in the case of a full-time employee, not more than 24 credit hours accumulated by such employee, or

(2) in the case of a part-time employee, the number of credit hours (not in excess of one-fourth of the hours in such employee's biweekly basic work requirement) accumulated by such employee.

(Added Pub. L. 97-221, §2(a)(2), July 23, 1982, 96 Stat. 230.)

**§ 6127. Compressed schedules; agencies authorized to use**

(a) Notwithstanding section 6101 of this title, each agency may establish programs which use a 4-day workweek or other compressed schedule.

(b)(1) An employee in a unit with respect to which an organization of Government employees has not been accorded exclusive recognition shall not be required to participate in any program under subsection (a) unless a majority of the employees in such unit who, but for this paragraph, would be included in such program have voted to be so included.

(2) Upon written request to any agency by an employee, the agency, if it determines that participation in a program under subsection (a) would impose a personal hardship on such employee, shall—

(A) except such employee from such program; or

(B) reassign such employee to the first position within the agency—

(i) which becomes vacant after such determination,

(ii) which is not included within such program,

(iii) for which such employee is qualified, and

(iv) which is acceptable to the employee.

A determination by an agency under this paragraph shall be made not later than 10 days after the day on which a written request for such determination is received by the agency.

(Added Pub. L. 97-221, §2(a)(2), July 23, 1982, 96 Stat. 230.)

**§ 6128. Compressed schedules; computation of premium pay**

(a) The provisions of sections 5542(a) and 5544(a) of this title, section 7453(e) of title 38, section 7 of the Fair Labor Standards Act (29 U.S.C. 207), or any other law, which relate to premium pay for overtime work, shall not apply to the hours which constitute a compressed schedule.

(b) In the case of any full-time employee, hours worked in excess of the compressed schedule shall be overtime hours and shall be paid for as provided by the applicable provisions referred to in subsection (a) of this section. In the case

of any part-time employee on a compressed schedule, overtime pay shall begin to be paid after the same number of hours of work after which a full-time employee on a similar schedule would begin to receive overtime pay.

(c) Notwithstanding section 5544(a) or 5546(a) of this title, or any other applicable provision of law, in the case of any full-time employee on a compressed schedule who performs work (other than overtime work) on a tour of duty for any workday a part of which is performed on a Sunday, such employee is entitled to pay for work performed during the entire tour of duty at the rate of such employee's basic pay, plus premium pay at a rate equal to 25 percent of such basic pay rate.

(d) Notwithstanding section 5546(b) of this title, an employee on a compressed schedule who performs work on a holiday designated by Federal statute or Executive order is entitled to pay at the rate of such employee's basic pay, plus premium pay at a rate equal to such basic pay rate, for such work which is not in excess of the basic work requirement of such employee for such day. For hours worked on such a holiday in excess of the basic work requirement for such day, the employee is entitled to premium pay in accordance with the provisions of section 5542(a) or 5544(a) of this title, as applicable, or the provisions of section 7 of the Fair Labor Standards Act (29 U.S.C. 207) whichever provisions are more beneficial to the employee.

(Added Pub. L. 97-221, §2(a)(2), July 23, 1982, 96 Stat. 230; amended Pub. L. 102-40, title IV, §403(c)(3), May 7, 1991, 105 Stat. 240; Pub. L. 102-378, §2(44)(E), Oct. 2, 1992, 106 Stat. 1352.)

**Editorial Notes**

AMENDMENTS

1992—Subsec. (a). Pub. L. 102-378, §2(44)(E)(i), substituted “5542(a) and 5544(a)” for “5542(a), 5544(a), and 5550(2)”.

Subsec. (c). Pub. L. 102-378, §2(44)(E)(ii), substituted “5544(a) or 5546(a)” for “5544(a), 5546(a), or 5550(1)”.

1991—Subsec. (a). Pub. L. 102-40 substituted “section 7453(e)” for “section 4107(e)(5)”.

**§ 6129. Administration of leave and retirement provisions**

For purposes of administering sections 6303(a), 6304, 6307(a) and (d), 6323, 6326, 6327, and 8339(m) of this title, in the case of an employee who is in any program under this subchapter, references to a day or workday (or to multiples or parts thereof) contained in such sections shall be considered to be references to 8 hours (or to the respective multiples or parts thereof).

(Added Pub. L. 97-221, §2(a)(2), July 23, 1982, 96 Stat. 231; amended Pub. L. 103-329, title VI, §629(a)(2)(A), (b)(2), Sept. 30, 1994, 108 Stat. 2423.)

**Editorial Notes**

AMENDMENTS

1994—Pub. L. 103-329 substituted “6307(a) and (d)” for “6307(a) and (c)” and inserted “6327,” after “6326.”

**§ 6130. Application of programs in the case of collective bargaining agreements**

(a)(1) In the case of employees in a unit represented by an exclusive representative, any