



Benefits Administration Letter

Number 11 - 102

Date: February 22, 2011

Subject: Guidance on National Defense Authorization Act for Fiscal Year 2010 Provisions on Sick Leave for FERS Retirees

Purpose: The purpose of this Benefits Administration Letter (BAL) is to provide guidance concerning the benefits under the Federal Employees Retirement System (FERS) that have been affected by section 1901 of the "National Defense Authorization Act for Fiscal Year 2010", Public Law 111-84, signed on October 28, 2009.

Background: Section 1901 of Public Law 111-84, added paragraph 5 U.S.C. § 8415(l)(2). That paragraph provides that any individual who separates for retirement, or dies while in active employment between the date of enactment (October 28, 2009) and December 31, 2013, will have added to his or her total creditable service for annuity computation purposes, "the applicable percentage of the days of unused sick leave to his credit under a formal leave system." The provisions of 5 U.S.C. § 8415(l)(2)(B)(i)-(ii) state that the "applicable percentage" of unused days of sick leave is 50% with respect to persons who separate or die in service between October 28, 2009, and December 31, 2013, and, 100% with respect to those persons who separate or die in service on or after January 1, 2014.

The question has arisen as to whether 50% of accumulated sick leave of an employee retiring under the Federal Employees Retirement System (FERS), between October 28, 2009, and December 31, 2013, remains available for recredit to the retiring employee in case of reemployment, pursuant to 5 C.F.R. § 630.502.

Decision: It is our conclusion that the 50% of unused sick leave of a FERS employee that is not part of the "applicable percentage" of sick leave that can be used for computation of a FERS annuity for an individual separating between October 28, 2009, and December 31, 2013, remains to that individual's credit under 5 C.F.R. § 630.502 for recredit in the instance of reemployment.

Guidance:

For separations for retirement under FERS prior to October 28, 2009

Only the amount of unused sick leave not used in the computation of a CSRS component will be available for recredit. If the separation occurred:

- Before the amendment of the regulations repealing the three-year restriction, then the unused sick leave would be deemed to have expired as of the lapse of the three-year period; or,
- On or after December 2, 1994, (the amendment of 5 C.F.R. § 630.502 repealing the three-year restriction), then the unused sick leave would remain available for recredit upon reemployment indefinitely.

For separations for retirement under FERS occurring between October 28, 2009, and December 31, 2013

50% of the total unused sick leave not used in the computation of a CSRS component of an individual retiring under FERS shall be creditable for purposes of annuity computation. The remaining 50% of the total unused sick leave shall be treated as sick leave which can be recredited upon reemployment, and shall remain available for purposes of recredit on reemployment indefinitely.

For separations for retirement under FERS occurring on and after January 1, 2014

100% of the hours of unused sick leave not used in the computation of a CSRS component shall be used for purposes of computation of the FERS annuity. None of the hours of unused sick leave at the time of separation shall be available for recredit, pursuant to 5 C.F.R. §§ 630.502 and 630.405, in the event of reemployment.

For all periods of time

The amount of sick leave that is available for credit in the computation of a FERS annuity is considered used in the annuity computation, (even if the credit does not result in an additional month of service in the annuity computation), and may not be recredited upon reemployment under 5 C.F.R. § 630.502.

Agencies should identify any FERS employees who were initially retired on or after October 28, 2009, reemployed, and have subsequently retired again before the issuance of this BAL. This information should be provided to Michael Evans, Michael.Evans@opm.gov, or Phil Gardner, Philip.Gardner@opm.gov.

William Zielinski
Associate Director
Retirement Services

Retirement Services
Quality Benefits for the Federal Family