



UNITED STATES OFFICE OF PERSONNEL MANAGEMENT
Washington, DC 20415

The Director

Tuesday, March 18, 2003

MEMORANDUM FOR: Heads Of Executive Departments And Agencies

FROM: Kay Coles James, Director

Subject: Level Orange Emergency Human Resources Management (HRM) Authorities

As you know, the threat condition under the Homeland Security Advisory System was raised to Level Orange, and all of us are asked to increase our level of preparedness in response to potential threats at home and abroad. The American people expect us to continue essential government services without undue interruption, no matter the contingency, and Federal agencies must have the human resources to accomplish their missions, even under the most extreme of circumstances. In order to facilitate your planning efforts in this regard, I am reminding you of those currently existing HRM flexibilities that you may employ in emergency situations, as well as those that may be employed in emergency situations with OPM approval. These authorities are summarized in Attachment 1 and are described in more detail in Attachment 2.

Should your staff have questions in this regard, they may contact Doris Hausser, my Senior Policy Advisor, on 202-606-1000; email: dlhausse@opm.gov.

cc: Human Resources Management Council

*Attachment 1***Summary of Emergency HRM Authorities****Agency May Act Without OPM Approval: Existing Authorities**

- Make excepted service appointment NTE 30 days (may be extended 30 days)
- Make SES limited emergency appointment, so long as appointee is a current career status employee
- Reemploy annuitants
- Make competitive service appointment NTE 120 days without regard to CTAP, ICTAP, or RPL requirements

Premium Pay

- Apply annual premium pay cap rather than biweekly cap

Excused Absence

- Grant excused absence to employees who are prevented from reporting to work or who are needed for emergency law enforcement, relief, or recovery efforts

Telework

- Approve telecommuting arrangements

Furlough

- Furlough employees without advanced notice or an opportunity to respond

Death Gratuity

- Pay up to \$10,000 to the personal representative of an employee who dies in the line of duty

OPM Approval or Action Is Required: Authorities Granted by OPM**Staffing**

- Make excepted service temporary appointment when examination is impractical
- Waive dual compensation restriction for reemployed annuitant
- Waive buyout repayment requirement, if specific agency authority permits such waiver

Leave Transfer

- OPM may establish an emergency leave transfer program to assist employees affected by an emergency or major disaster

Expedited

- OPM may establish expedited arrangements for processing disability retirement

Processing Benefits

- applications, survivor benefits, and other insurance payments

*Attachment 2***Emergency Human Resources Management (HRM) Authorities**

This Attachment outlines authorities that heads of executive departments and agencies may use to respond to an emergency. The authorities described in this Attachment involve hiring; pay, leave, and hours/location of work; and other emergency-related benefits not otherwise available for use in normal, day-to-day operations.

Hiring Flexibilities*Excepted Appointments*

Under 5 CFR § 213.3102(i)(2), agencies have the discretion, without OPM approval, to fill positions for which an emergency or critical hiring need exists; however, initial excepted appointments under this authority may not exceed 30 days, and may be extended only for an additional 30 days. Such an extension may be made only if the appointees continued employment would be essential to the agency's operations.

Under 5 CFR § 213.3102(i)(3), OPM may also grant agencies the authority to temporarily appoint individuals to the excepted service in positions for which OPM has determined that examination is impracticable (because of the time involved, etc.). For example, in the aftermath of the September 11, 2001, attacks, OPM granted agencies authority to fill positions affected by or needed to deal with the attacks for up to one year, and later extended that authority.

When OPM grants an agency the authority to appoint individuals under § 213.3102, the agency, not OPM, is responsible for establishing the qualifications that an individual must have to fill the position. In addition, in accordance with 5 CFR part 330, agencies are not required to comply with the regulations regarding Career Transition Assistance Plan (CTAP), Reemployment Priority List (RPL) and Interagency CTAP (ICTAP) because these regulations do not apply to excepted appointments.

Agencies may use the authority granted by OPM under section 213.3102 to fill Senior Level positions, as well as positions at lower levels. Under appropriate circumstances, OPM may also authorize agencies to use a Senior Level position allocation to appoint an individual under this section (5 CFR 319.104).

SES Limited Emergency Appointments

To meet a bona fide, unanticipated, urgent need, agencies have the authority under 5 CFR 317.601 to make SES limited emergency appointments of career employees without OPM approval. OPM approval is required to appoint individuals who are not current career employees and cannot delegate this authority; however, we will process such requests on a priority basis and will also consider temporary position allocations for agencies who identify the need as essential to deal with the emergency.

Reemploying Retirees.

Agencies have the discretion, without OPM approval, to employ retirees to deal with an emergency and/or to replace employees called to active duty military service. Agencies may immediately offer reemployment to retirees under any applicable appointing authority. However, as a general matter, dual compensation restrictions (e.g., 5 U.S.C. 8344 and 8468) require agencies to reduce the pay of a Federal civil service retiree by the amount of their annuity. For details see the *CSRS and FERS Handbook for Personnel and Payroll Offices, Chapter 100 - Reemployed Annuitants*.

OPM may waive these dual compensation restrictions and upon request, may also delegate such authority to an agency head or designee to deal with emergency staffing requirements. See 5 CFR 553 for details. Dual compensation waivers cannot be approved retroactively. However, annuitants who agree to work under salary offset pending a dual compensation waiver may be recognized for their special service by the agency through an individual cash award.

Reemploying Voluntary Separation Incentive Payment (VSIP) Recipients

Ordinarily, employees who resign or retire upon acceptance of a Voluntary Separation Incentive Payment (or buyout) can be re-employed only if they agree to repay the amount of that payment. However, upon agency request, OPM may waive the repayment requirement if the individual's re-employment is necessary to deal with the emergency situation. See 5 CFR 576.203(a)(1), dated February 4, 2003. Persons being considered for VSIP repayment waivers must be the only qualified applicants available for the positions and possess expertise and special qualifications to replace persons lost or otherwise unavailable. Note that waivers may be limited by the agency's specific statutory VSIP authority.

Other Staffing Authorities and Resources

Agencies have the discretion, without OPM approval, to make competitive service appointments of 120 days or less without regard to Career Transition Assistance Program (CTAP), Interagency Career Transition Assistance Program (ICTAP), or Reemployment Priority List (RPL) eligibles. The programs do not apply to such appointments. See 5 CFR 330 Subparts F and G for CTAP/ICTAP and 5 CFR 330.207(d) for RPL conditions. Note that agencies also have the discretion, without OPM approval, to appoint current and former employees from the agency's Reemployment Priority List (RPL) to temporary, term or permanent competitive service appointments. Under 5 CFR part 300, subpart E, agencies have the discretion, without OPM approval, to contract with private sector temporary employment firms for services to meet your emergency needs.

Authorities Dealing with Pay, Leave, Hours/Location of Work

Premium Pay for Employees Performing Emergency Work

In certain emergency or mission-critical situations, an agency has the discretion, without OPM approval, to apply an annual premium pay cap instead of a biweekly premium pay cap, subject to the conditions set forth in 5 U.S.C. 5547(b) and 5 CFR 550.106. In this regard, the agency head, his or her designee, or OPM may determine that an emergency exists. Agencies may apply an

annual cap to certain types of premium pay for any pay period for (1) employees performing work in connection with an emergency, including work performed in the aftermath of such an emergency, or (2) employees performing work critical to the mission of the agency. Such employees may receive premium pay under these conditions only to the extent that the aggregate of basic pay and premium pay for the calendar year does not exceed the **greater** of the **annual** rate for (1) GS-15, step 10 (including any applicable special salary rate or locality rate of pay); or (2) level V of the Executive Schedule.

Furloughs Without Adverse Action Procedures in Unforeseeable Circumstances.

In some emergency situations, an agency has the discretion, without OPM approval to furlough employees; that is, to place them in a temporary status without duties and pay for non-disciplinary reasons. Under 5 CFR 752.404(d)(2), an agency is relieved of the requirement to provide employees advanced notice and an opportunity to respond when the furlough is based on "unforeseeable circumstances," such as a sudden breakdown in equipment; acts of God; or sudden emergencies requiring the agency to immediately curtail activities.

Excused Absence

Agencies may, without OPM approval, grant excused absence to employees who are prevented from reporting to work because of an emergency. The authority to grant excused absence also applies to employees who are needed for emergency law enforcement, relief, or recovery efforts authorized by Federal, State, or local officials having appropriate jurisdiction and whose participation in such activities has been approved by the employing agency. Military leave under 5 U.S.C. 6323(b) is appropriate for Federal employee members of the National Guard or Reserves who are called up to assist in an emergency.

Alternative Work Sites

Agencies may, without OPM approval, approve telecommuting arrangements and alternative work sites to accommodate emergency situations.

Emergency-Related Benefits

Emergency Leave Transfer Program

Subject to approval by the President, OPM may establish an emergency leave transfer program to assist employees affected by an emergency or major disaster. Under such a program, employees in executive agencies are permitted to donate unused annual leave for transfer to employees of the same or other agencies who have been adversely affected by an emergency or major disaster and who need additional time off from work without having to use their own paid leave.

The emergency leave transfer program is authorized under 5 U.S.C. 6391 and is separate from the Federal leave sharing program established under 5 U.S.C. 6332 and 6362. Under the emergency leave transfer program, the use of donated leave is not restricted to medical emergencies, and approved leave recipients are not required to exhaust their own accrued and accumulated annual and sick leave before using donated annual leave. Employees may use leave

donated under the emergency leave transfer program for personal needs or to care for a family member (as that term is defined in 5 CFR 630.902) who was affected by an emergency. In addition, donated leave may be substituted retroactively (beginning no earlier than the date of the emergency) for any period of leave without pay used as a result of the emergency or to liquidate an indebtedness incurred by an employee for advanced annual or sick leave used as a result of the emergency.

Workers' Compensation Benefits

Workers' compensation benefits are available in the case of Federal employees who are injured or killed while on duty. The Department of Labor may establish special procedures to provide direct assistance to affected employees and their families.

Retirement and Life Insurance Benefits

To assist agencies in responding to employee needs during and after an emergency situation, OPM may establish special expedited arrangements for processing disability retirement applications, survivor benefits, and payments under the Federal Employees Group Life Insurance Program, administered by the Metropolitan Life Insurance Company.

Death Gratuity Benefit

Under Section 651 of Public Law 104-208 (Omnibus Consolidated Appropriations Act of 1996), the head of a department or agency has authority, without OPM approval, to pay up to \$10,000 as a death gratuity to the personal representative of a civilian employee who dies in the line of duty.