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Approved for Release

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Date

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**DEPARTMENT OF COMMERCE  
OFFICE OF HUMAN RESOURCES MANAGEMENT**

**HUMAN RESOURCES (HR) BULLETIN #250, FY20**

**SUBJECT:** Streamlined Restoration of Annual Leave for Employees Performing Services Determined to be Essential for the Response to Certain National Emergencies

**EFFECTIVE DATE:** Upon release of this HR Bulletin

**EXPIRATION DATE:** Effective until canceled or superseded

**PURPOSE:** To provide guidance to Department of Commerce (Department) employees on the policy and procedures for restoring annual leave to employees **performing services determined to be essential for the response to certain national emergencies**, as authorized by the Office of Personnel Management's (OPM) Interim Regulations, "Scheduling of Annual Leave by Employees Determined Necessary To Respond to Certain National Emergencies," 85 *Federal Register* 15337, document number 2020-168235, posted August 10, 2020.

**BACKGROUND:** On March 13, 2020, President Trump declared a "National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak." Many Federal agencies and employees have been, and for the foreseeable future will continue to be, involved in activities vital to the Nation and to the pandemic response. OPM's interim regulations provide certain employees – those who would forfeit annual leave in excess of their maximum annual leave carryover amount because of their work to support the nation during a national emergency – a streamlined process to have their excess annual leave restored.

The procedures established under OPM's interim regulations are similar to those established in previously rescinded Title 5, Code of Federal Regulations (CFR) § 630.310, for employees who were deemed essential to the Year 2000 (Y2K) computer conversion, and in current Title 5, CFR § 630.311, for employees whose services were deemed essential to the emergency response in the aftermath of the September 11, 2001, terrorist attacks, which has also been rescinded by the interim rule.

These interim regulations differ from the previous regulations: they allow this authority to be used for any national emergency, not just the current COVID-19 emergency, upon OPM's notification to agencies that they may use the authority to restore annual leave to employees based on a particular national emergency.

**COVERAGE AND EXCLUSIONS:** The bulletin applies to any individual to whom subchapter I of chapter 63 of Title 5, United States Code (U.S.C.) applies.

**ELIGIBILITY:** An employee who would forfeit annual leave in excess of their maximum annual leave allowable carryover because their services are required to carry out their operating unit's mission-related response to the designated national emergency. <sup>1</sup>

**DEFINITIONS:**

Active Restored Leave Account – An account of restored annual leave that was established under other conditions permitting restoration of annual leave under Title 5, U.S.C. § 6304(d).

Exigency of the Public Business – For the purpose of Federal leave administration, an exigency of the public business occurs when there is a pressing need for an employee's services and their other pre-approved annual leave must be canceled because there are no other practical alternatives available to accomplish the work by a given deadline.

Heads of Operating Unit – Officials who are assigned by the President or the Secretary to manage the primary or constituent operating units of the Department (as defined in Department Organization Order 1-1, "Mission and Organization of the Department of Commerce," and in the Orders establishing the respective operating units). For policies and decisions involving the Office of the Secretary, the Chief Financial Officer and Assistant Secretary for Administration (CFO/ASA) will fulfill the responsibilities of the head of an operating unit except where it would be more appropriate for the Secretary or Deputy Secretary to do so.

**DELEGATION OF AUTHORITY:** Heads of Operating Units are delegated the authority to perform all actions required of the agency head under OPM's Interim Regulations, "Scheduling of Annual Leave by Employees Determined Necessary To Respond to Certain National Emergencies," 85 *Federal Register* 15337, document number 2020-168235, posted August 10, 2020.

The Head of an Operating Unit may further re-delegate the authority within their operating unit as they deem appropriate, in its entirety, or for only specific actions.

**POLICY:** Annual leave may only be restored under this authority after OPM has notified agencies it has deemed a specific national emergency, as declared by the President under the National Emergencies Act, to be an exigency of the public business for the purpose of restoring annual leave forfeited under Title 5, U.S.C. § 6304(d)(1)(B).

The Office of Human Resources Management (OHRM) will notify the Servicing Human Resources Offices (SHROs) when OPM has notified agencies this authority may be used, and the SHROs will in turn notify each Head of an Operating Unit (or designee) within their serviced area of this authority.

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<sup>1</sup> Employees who do not meet the criteria for the streamlined restoration of annual leave restoration process, are still eligible for restoration of annual leave under 5 U.S.C. 6304 and 5 CFR 630.305 using the normal process and procedures.

In accordance with Title 5, CFR § 630.310(b)(1)(i), an employee or group of employees **must be providing essential services that support the operating unit's mission-related response to the designated national emergency.**

Other situations, such as work requirements not related to the operating unit's mission-related response to the national emergency, or low staffing levels, periods of administrative leave, periods of leave without pay, periods of excused absence under an evacuation order, etc., do not meet the exigency of public business requirement for any designated emergency. However, the situation can be reviewed and approved as an exigency of public business outside of the designated emergency through the normal process and procedures.

Once the Director, OPM, informs agencies of its exigency of public business declaration, and the SHRO has notified the Head of an Operating Unit (or designee), that individual, in their sole and exclusive discretion, **must perform the following actions:**

- Identify employees covered under this streamlined annual leave restoration authority because they are affected by the exigency of the public business described in the OPM notification, **due to their services being deemed essential to the response to the national emergency; therefore, they cannot use their annual leave.**

This determination can be made for groups of employees or for specific individual employees.

Note: A determination may NOT be made by any official whose leave would be affected by the decision. The approving official must also be one management level higher than the leave approving official. If an approving official has a personal interest in the leave restoration decision or might benefit from the decision, the decision must be made by a higher-level authority.

- Inform the designated employees or group of employees in writing of this determination and its application to them. This can be accomplished through an email, or another written document, whichever the Head of the Operating Unit deems appropriate.
- Continually monitor their operating unit's response to the national emergency and determine whether the services of individual employees or groups of employees continue to be required in response to the emergency such that annual leave may not be scheduled according to the normal procedures. (See Termination of the Exigency of Public Business.)
- Fix a date as the termination date of the exigency of the public business for each employee or group of employees. (See Termination of the Exigency of Public Business.)
- Notify the affected employee(s) in writing of the exigency of public business termination date, and work with their SHRO to notify the Department's payroll provider, the National Finance Center (NFC), of the exigency of public business termination date. (See Termination of the Exigency of Public Business.)

**Restored Annual Leave:** Annual leave restored under this authority will be placed in a separate restored leave account, upon the NFC establishing such an account. Until such time, the SHROs will be responsible for manually tracking annual leave restored under the authority versus annual leave restored under Title 5, CFR § 630.305.

**Time Period to Use Restored Leave:**

- Full-time Employee. Is required to schedule and use excess annual leave of 416 hours or less by the end of the leave year in progress 2 years after the date fixed by the Head of the Operating Unit (or designee), as the termination date of the exigency of the public business. The time period will be extended by 1 leave year for each additional 208 hours of excess annual leave or any portion thereof.
- Part-time Employee. Is required to schedule and use excess annual leave in an amount equal to or less than 20 percent of the number of hours in the employee's scheduled annual tour of duty by the end of the leave year in progress 2 years after the date the employee is no longer subject to the exigency. The time period will be extended by 1 leave year for each additional number of hours of excess annual leave, or any portion thereof, equal to 10 percent of the number of hours in the employee's scheduled annual tour of duty.
- Uncommon Tour of Duty. The referenced number of hours for full-time employees (416 hours and 208 hours) shall be proportionally adjusted based on the percentage amount by which the number of hours in the uncommon tour of duty exceeds the number of hours in a regular full-time tour of duty.

**Treatment of Current Restored Annual Leave:** The time limit for using active restored annual leave is canceled for the entire period during which an employee's services are determined to be essential for activities associated with the national emergency.<sup>2</sup>

When coverage under the national emergency ends due to the termination date of the exigency of public business, a new time limit will be established under Title 5, CFR § 630.310(d) for using all restored leave, including leave restored under the authority of this HR Bulletin.

**Termination of the Exigency of Public Business:** All exigencies established under this process must include an initial termination date, which cannot extend beyond the date that is 12 months after the date the national emergency was declared. However, this date may change in accordance with the guidance outlined in the section below.

The Head of the Operating Unit (or designee) is responsible for continually monitoring the conditions under which the provisions of Title 5, CFR, § 630.310 will no longer be applicable to specific employees or groups of employees, and the normal annual leave forfeiture rules will apply to them. Employees whose services are required in response to the national emergency, will all at some point be able to schedule and take annual leave following normal procedures.

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<sup>2</sup> There is no authority to restore previously restored annual leave.

The Head of the Operating Unit (or designee) must fix a specific date as the termination date of the exigency of the public business; notify the affected employee(s) in writing of the exigency of public business termination date; and work with their SHRO to notify the Department's payroll provider, the NFC, of the exigency of public business termination date, in order for the NFC to establish the expiration date of restored annual leave in the payroll system.

**The exigency of public business must be terminated at the earliest occurrence of one of a series of possible events:**

1. When the President declares an end to the national emergency;
2. When the Director of OPM deems the national emergency to no longer be an exigency of the public business for the purpose of this authority;
3. When the Head of the Operating Unit (or designee), in their sole and exclusive discretion, determines that the employees' or group of employees' services are no longer essential to the response to the national emergency or that such employees are able to follow the normal leave requesting procedures in Title 5, CFR § 630.308(a);
4. When an employee whose services were determined essential to responding to the national emergency moves to a position not considered essential to responding to the national emergency; or
5. On the day that is 12 months after the national emergency has been declared, unless the Head of the Operating Unit (or designee) has extended this period.

Note: The Head of the Operating unit (or designee) may extend the 12-month period after the national emergency has been declared annually by an additional 12 months.

However, **under no circumstance** may the Head of Operating Unit (or designee) grant more than two 12-month extensions in connection to the same national emergency. Therefore, the authority may not be applied for more than a total of 3 years from the initial date of the declared emergency.<sup>3</sup> In the unlikely event that a national emergency requires an extended response in excess of 3 years, Title 5, CFR § 630.309 can be implemented by the SHRO **after** receiving approval from OHRM.

**When Exigency Terminates in the Later Part of the Leave Year:** When the national emergency to which an employee was responding terminates during the later portion of a leave year, it is possible that some employees will have annual leave in excess of the maximum limitation and will still be unable to schedule the leave in time for it to be restored under normal procedures.<sup>4</sup>

In accordance with Title 5, CFR § 630.310(g), employees are expected to make a reasonable effort to comply with the advance scheduling requirements of Title 5, CFR § 630.308(a). However, the Head of the Operating Unit (or designee) may except an employee from the advance scheduling requirement if the employee can show that they were previously involved in

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<sup>3</sup> Title 5, CFR § 630.309 provides for an extended public exigency for more than 3 calendar years and meets other requirements.

<sup>4</sup> In accordance with 5 CFR 630.308(a), before annual leave forfeited may be considered for restoration, it must have been scheduled in writing before the start of the third biweekly pay period prior to the end of the leave year.

activities necessary to respond to the national emergency during the leave year, and was unable to comply with the scheduling requirements due to circumstances beyond their control.

An employee is not entitled to the leave being restored once the national emergency exigency of public business has been terminated.

**PROCESSING:** At this time, the NFC has not made the system changes needed to automate this process; therefore, manual tracking will be required. Enterprise Services (ES) shall perform the tracking activities for its serviced clients, and for those not serviced by ES, the SHRO shall perform the tracking activities.

As appropriate, ES/SHROs are responsible for manually tracking the number of annual leave hours restored under this authority and the time period of expiration. In addition, ES/SHROs are responsible for tracking the number of “active restored leave” hours and canceling the time limit to use this leave in accordance with the regulations. (See Treatment of Current Restored Annual Leave.)

ES/SHROs have authority to develop their own standard operating procedures to manually track the restored annual leave hours and the time period in which the hours must be used.

#### **REFERENCES:**

- 85 *Federal Register* 15337, document number 2020-168235, posted August 10, 2020, “Scheduling of Annual Leave by Employees Determined Necessary To Respond to Certain National Emergencies”
- Title 5, CFR § 630.310, Scheduling of annual leave by employees determined necessary to respond to certain national emergencies.
- 5 U.S.C. Part 63 – Leave

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