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Reservist Differential Briefing
U.S. Office of Personnel Management
December 11, 2009

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Agenda

- Introduction of Speakers
- Background
- References/Tools
- Overview of Reservist Differential Authority
- Qualifying Active Duty Service and Military Orders
- Understanding Military Leave and Earnings Statements

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Background

5 U.S.C. 5538 (Section 751 of the Omnibus Appropriations Act, 2009, March 11, 2009)
(Public Law 111-8)

Law requires OPM to consult with DOD

Law effective first day of first pay period on or after March 11, 2009 (March 15 for
most executive branch employees)

Number of affected employees unclear

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Next Steps

OPM

Develop additional guidance

Issue proposed regulations

Agencies

Begin implementing

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References/Tools

Law—5 U.S.C. 5538

OPM policy guidance—*(see web page below)*

Cover memo—asks for comments on guidance

Main body

Appendices

Summary description

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New webpage: <http://www.opm.gov/reservist/>

Contains policy guidance and summary description

Links to other OPM reservist guidance (e.g., military leave)

New email address: reservist-differential@opm.gov for Agency HQ human resources
staff questions

Agency field human resources staff should contact agency HQ

Employees/reservists should contact employing agency

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Legislation

New section 5538 in title 5, U.S. Code, as added by section 751 of Public Law 111-8
Enacted on March 11, 2009
Effective on first day of first pay period beginning after enactment (March 15, 2009, for most)

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Who is Covered?

Federal civilian employees in executive, legislative, and judicial branches – unless employee is excluded from coverage by other provision of law
Must be member of Reserve or National Guard who is ordered to perform active duty in a uniformed service under qualifying law
Must be entitled to reemployment rights under the Uniformed Services Employment and Reemployment Act (USERRA – 38 U.S.C. chapter 43)
Note: Coverage does not necessarily mean entitlement to a payment

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Key Definitions

Reservist-a member of a reserve component of the uniformed services, including the Army National Guard of the United States and the Air National Guard of the United States
Uniformed services-Army, Navy, Air Force, Marine Corps, and Coast Guard; the Army National Guard and Air National Guard when engaged in active duty; and the commissioned corps of the Public Health Service
Qualifying active duty-Active duty ordered under the following provisions of title 10, U.S. Code: section 331, 332, 333, 688, 12301(a), 12302, 12304, 12305, 12406
Qualifying period-Period of qualifying active duty during which employee is entitled to USERRA reemployment rights – i.e., period of coverage under the reservist differential law
USERRA = Uniformed Services Employment and Reemployment Rights Act of 1994 (38 U.S.C. chapter 43)

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OPM Role

Prescribe Governmentwide regulations in consultation with DOD
Consult with certain intelligence agencies (CIA, DIA, NSA, NGIA, FBI) and FAA in development of agency procedures
Provide guidance (policy, procedures, fact sheets, Qs and As)
Agencies must follow OPM guidance pending development of regulations
OPM will issue proposed regulations for comment
OPM will consider comments on guidance in developing proposed regulations

Allocation of Military pay and Allowances

Must allocate military pay and allowances to civilian biweekly pay period
Convert monthly military pay and allowances to a daily rate
Sum military pay and allowances for a month
Divide by 30 days if full month
Divide by actual days if partial month (beginning or end of qualifying period)
If a month includes military nonpay status days for conduct-related reasons, subtract those days from 30 days or actual days, as applicable, before computing daily rate
Apply applicable daily rate to qualifying days within civilian biweekly pay period
Sum up daily amounts for the pay period

Computation of Differential

For each affected pay period, subtract allocated military pay and allowances from projected civilian basic pay (if higher) to derive the unadjusted reservist differential
Law bars payment of differential for civilian paid hours
 Paid leave such as annual leave or military leave
 Other paid time off such as holiday time off, compensatory time off, or credit hours
Make adjustment for any paid hours in the pay period
Identify paid hours
Express paid hours as percentage of civilian tour of duty within qualifying period
Compute percentage of LWOP hours
Multiply LWOP percentage by unadjusted differential
Result is the adjusted (payable) reservist differential

Payment of Differential

Paid from same appropriation or fund from which employee's civilian salary would have been paid
Paid on biweekly pay period basis
Scheduled payment date may be delayed as much as 8 weeks after the normal salary payment date for the given pay period
Delay on employee's part in providing information may delay agency payment obligation
 (Employee must provide military leave and earnings statement)
Differential is not "basic pay"
Differential treated as "pay" under most title 5 provisions (e.g., salary offset, garnishment, waiver, back pay)
Differential not included in applying aggregate pay limit in 5 U.S.C. 5307

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Reservist Differential

Reservist differential-amount by which an employee's projected civilian "basic pay" for a covered pay period exceeds the employee's actual military "pay and allowances" allocable to that pay period

Paid on a civilian pay period basis

Paid by civilian employing agency

Does not affect employee's civilian pay and leave status – on LWOP unless using paid leave or other paid time off

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Military Pay and Allowances

Military basic pay

Basic allowance for housing (BAH)

Basic allowance for subsistence (BAS)

Various other allowances

Various other special payments/incentives (e.g., hazardous duty incentive pay)

Does not include travel, transportation, and per diem allowances; clothing allowances, reenlistment bonuses

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Civilian Basic Pay

Based on current law and regulations, basic pay includes

Base pay

Locality pay

Special rate supplement

Market pay for VA doctors and dentists

All other payments are excluded (e.g., premium pay, allowances, differentials, 3R incentive payments)

Note: For title 5 retained rate employees, must use maximum rate of range as rate of basic pay

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Projection of Civilian Basic Pay

Civilian basic pay the employee would have received but for active duty

Based on employee's established biweekly tour of duty

Must adjust rate of basic pay as it would have been adjusted with reasonable certainty

General increases

Within-grade increases

Career-ladder promotions

Performance-based adjustments (last rating or modal rating?)

Exclude pay for nonqualifying days—

Days outside the qualifying period (in first and last pay periods); or

Days of military nonpay status for conduct-related reasons

Tax Treatment

IRS gave OPM the following guidance regarding the tax treatment of reservist differentials:

- Reservist differentials are taxable income for Federal income tax purposes
- Reservist differentials are treated as wages for Federal income tax withholding purposes, regardless of the length of active duty; thus, reported as wages in box 1 of Form W-2 and in line 7 of Form 1040
- Reservist differentials are not subject to FICA (Social Security and Medicare) taxes if those differential payments are paid for periods of active duty of more than 30 days
- Reservist differentials are subject to FICA taxes if those differential payments are paid for periods of active duty of 30 days or less

Employee-Reservist Responsibilities

- Must provide employing civilian agency with a copy of military orders
- Must provide employing civilian agency with a copy of military leave and earning statements
- Must provide information as necessary to verify entitlement to USERRA reemployment rights
- Must decide whether to take civilian paid time off during active duty
- Generally, leave and paid time off allows employees to receive full civilian pay and full military pay
- Exception: Additional (22 days) of military leave under 5 U.S.C. 6323(b) – employee civilian leave payment is offset by amount of military pay for the leave days in the pay period
- Holiday time off allowed only if in pay status immediately before or after the holiday

Choosing Between Section 6323(b) Military Leave and Reservist Differential

- Under 5 U.S.C. 6323(b), a reservist may take up to 22 days of military leave each calendar year for contingency operations or law enforcement purposes
- The leave payment is offset by the amount of military pay allocated to those leave days, as required by 5 U.S.C. 5519
- Factors to consider:
 - Military pay offset does not include military pay for civilian nonworkdays (e.g., weekend days)
 - Employees may not use regular military leave under section 6323(a) until they exhaust any section 6323(b) military leave
 - Amount of reservist differential depends solely on amount of civilian basic pay, while the payment for military leave may reflect additional types of civilian pay

More Information

Webpage: <http://www.opm.gov/reservist>

Email address: reservist-differential@opm.gov