



PERSONNEL AND
READINESS

UNDER SECRETARY OF DEFENSE

4000 DEFENSE PENTAGON
WASHINGTON, D.C. 20301-4000

JUN 23 2023

MEMORANDUM FOR SENIOR PENTAGON LEADERSHIP
COMMANDERS OF THE COMBATANT COMMANDS
DEFENSE AGENCY AND DOD FIELD ACTIVITY DIRECTORS

SUBJECT: Calendar Year 2023 Waiver of Annual Pay Limitations for Certain Employees

The premium pay limitation in 5 U.S.C. § 5547 is waived for Calendar Year (CY) 2023 for eligible DoD employees who perform work in direct support of, or directly related to, a military operation, including a contingency operation or an operation in response to a national emergency declared by the President of the United States, for a period of 42 consecutive days. Eligible employees are those who perform qualifying work in any overseas location. By agreement with the Under Secretary of Defense for Intelligence and Security, this waiver extends to employees covered by the Defense Civilian Intelligence Personnel System who meet the criteria above. In addition, this waiver extends to employees in the Cyber Excepted Service who meet this criteria. This waiver of premium pay limitations is authorized pursuant to Section 1101 of the National Defense Authorization Act for Fiscal Year 2009 (Public Law 110-417), "Authority to Waive Annual Limitation on Premium Pay and Aggregate Limitation on Pay for Federal Civilian Employees Working Overseas," as amended, and 10 U.S.C. §§ 1599f and 1601-1603.

Covered DoD employees are entitled to premium payments only to the extent the employee's combined payable amount of basic pay and premium pay for CY 2023 does not exceed the annual rate of salary payable to the Vice President of the United States under 3 U.S.C. § 104, which is \$272,100. Moreover, the aggregate pay limitation in 5 U.S.C. § 5307 continues to apply, although any pay in addition to basic pay during the waiver period is exempted when applying this limitation. Additional premium pay resulting from this waiver will not be considered basic pay for any purpose (e.g., retirement). Further, such additional premium pay may not be used in computing lump-sum payments for accumulated and accrued annual leave.

The attached implementing guidance provides specific criteria for determining whether an employee is covered by this waiver of annual pay limitations for CY 2023.

Please direct questions to my point of contact, Ms. Rosemary Meriwether, Associate Director, Employment and Compensation, Defense Civilian Personnel Advisory Service, at (571) 372-2191 or rosemary.m.meriwether.civ@mail.mil.

A handwritten signature in black ink, appearing to read "Gilbert R. Cisneros, Jr.", is located below the text.

Gilbert R. Cisneros, Jr.

Attachment:
As stated

CALENDAR YEAR 2023 WAIVER OF ANNUAL PREMIUM PAY AND AGGREGATE PAY LIMITATIONS FOR THE DEPARTMENT OF DEFENSE PERSONNEL SUPPORTING MILITARY OPERATIONS IN OVERSEAS LOCATIONS

Premium Pay Waiver

The authority in section 1101(a) of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2009 (Public Law 110–417), as amended, was extended through Calendar Year (CY) 2023 by section 1102 of the NDAA for FY 2023 (Public Law 117–263). It authorizes the Secretary of Defense to waive the annual premium pay limitation in 5 U.S.C. § 5547 and other similar limitations, up to the annual rate of the salary payable to the Vice President pursuant to 3 U.S.C. § 104 (\$272,100 for CY 2023).

Covered Employees

The Under Secretary of Defense for Personnel and Readiness has waived these annual pay limitations for CY 2023 for Department of Defense employees who meet all of the following criteria:

- (1) Perform qualifying work while in any overseas location;
- (2) Perform work in direct support of, or directly related to, the response to a national emergency declared by the President or a military operation, including a contingency operation as defined in 10 U.S.C. § 101(a)(13);
- (3) Are subject to 5 U.S.C. § 5547 or a similar limitation applicable to Defense Civilian Intelligence Personnel System or Cyber Excepted Service employees; and
- (4) Remain at the qualifying location for at least 42 consecutive calendar days.

As of the date of this memorandum, the President has continued a declaration of national emergency related to Iraq. Employees assigned to Iraq are deemed to meet the criteria in paragraph (2) above. For other employees, a determination must be made by the employee's appointing authority. Appointing authorities may grant an exception to the criteria in paragraph (4) above in extraordinary and unanticipated circumstances. No exceptions may be granted to the remaining criteria.

The 42-day period may overlap a CY. For employees who were serving in a covered area on January 1, 2023, the 42 consecutive days may include days served in 2022. The 42 consecutive days also may include days served in a covered area in 2024, but the waiver only applies to premium pay payable in 2023. The change in coverage resulting from the removal of the geographic restrictions will apply prospectively starting on the date of enactment (i.e., December 23, 2022).

Aggregate Pay Limitation

For employees covered by the premium pay waiver, the aggregate limitation on pay in 5 U.S.C. § 5307 still applies during CY 2023, but any pay in addition to basic pay received during the waiver period is not counted as compensation in applying the aggregate pay limitation. Payments, other than basic pay, in excess of the aggregate limitation must be deferred and generally will be paid as a lump-sum payment at the beginning of the following CY.

End of the Waiver Period

When a covered employee no longer performs work in support of a declared emergency or a covered military operation or when the employee is reassigned to a position that is not in an overseas location, the employee will be subject to the biweekly limitation for that position and location as established by 5 U.S.C. § 5547 or under 10 U.S.C. §§ 1599f and 1601-1603, as applicable. The higher annual limitation on premium pay continues for the remainder of the CY. Employees may receive premium payments up to the biweekly premium pay limitation each pay period, until the \$272,100 annual premium pay limitation is reached.

(1) If an employee's aggregate projected basic pay plus premium pay payable for CY 2023 is less than the annual limit established under 5 U.S.C. § 5547 (or similar limitation), an appointing authority may invoke that annual limit, if appropriate, and pay premium pay in excess of the biweekly limit. (See 5 U.S.C. § 5547(b) and 5 CFR §§ 550.106-550.107). Once the annual limit is reached, the employee would be again subject to the biweekly limit and the annual limit described above.

(2) If the employee's projected basic pay plus premium pay payable for CY 2023 is more than the annual limit established under 5 U.S.C. § 5547 (or similar limitation), the biweekly limit continues to apply to any premium pay earned for each successive pay period, until the \$272,100 annual premium pay limitation is reached. Once this limit is reached, the employee may not earn any additional premium pay during CY 2023.

(3) If an employee's premium pay limitation is increased but the employee did not meet the eligibility criteria, the employee must reimburse the Department for premium payments made in excess of the applicable limitation. The debt collection process for current and former employees is outlined in DoD 7000.14-R, "Department of Defense Financial Management Regulation," Volume 8.

Pay and Leave Administration

To the extent that a waiver results in payment of additional premium pay of a type that is normally credited as basic pay for retirement or any other purpose, such additional pay shall not be considered basic pay for any purpose, nor shall it be used in computing a lump-sum payment for accumulated and accrued annual leave.

Time and attendance, and electronic personnel and payroll procedures established in 2009 remain essentially the same. Timekeepers should continue to provide the Defense Finance and

Accounting Service (DFAS) with the necessary data on employees who are projected to work in an overseas location for a period of at least 42 consecutive days.

Authorized management officials should ensure personnel records are established in the Defense Civilian Personnel Data System (or equivalent) and DFAS is provided the required data even if the employee has departed the overseas location prior to the issuance date of this policy. Authorized management officials also must update personnel records when an employee departs the area prior to meeting the 42-day eligibility criterion.

DEFINITION OF TERMS

Aggregate Pay Limitation. The maximum amount of an employee's total CY payable income as specified in 5 U.S.C. § 5307, or similar limitation pursuant to 10 U.S.C. §§ 1599f and 1601-1603, as applicable.

Annual Premium Pay Limitation. The maximum amount of basic pay and premium pay payable in a CY to an employee as specified in 5 U.S.C. § 5547(a), or similar limitation pursuant to 10 U.S.C. §§ 1599f and 1601-1603, as applicable.

Contingency Operation. As defined in 10 U.S.C. § 101(a)(13), a military operation that is designated by the Secretary of Defense as an operation in which members of the Armed Forces are or may become involved in military actions, operations, or hostilities against an enemy of the United States or against an opposing force; or results in the call or order to, or retention on, active duty of members of the uniformed services under 10 U.S.C. §§ 688, 12301(a), 12302, 12304, 12304a, 12305, 12406; chapter 15 of title 10, U.S.C.; 14 U.S.C. § 712; or any other provision of law during a war or during a national emergency declared by the President or Congress.

Military Operations. Operations that encompass the use of military capabilities across the range of military operations. These military actions can be applied to complement any combination of the other instruments of national power and occur before, during, and after war.

National Emergency. A condition declared by the President or the Congress by virtue of powers previously vested in them that authorize certain emergency actions to be undertaken in the national interest. Action to be taken may include partial, full, or total mobilization of national resources.

Premium Pay. Premium pay subject to the annual premium pay limitation is the dollar value of earned hours of compensatory time off and additional pay authorized for overtime, night, Sunday, or holiday work; or for standby duty, administratively uncontrollable overtime work, or availability duty. It excludes overtime pay paid to employees under the Fair Labor Standards Act and compensatory time off earned in lieu of such overtime pay.