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Reservist Differential Guidance

A Mandatory Reference for ADS Chapter 477

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This mandatory reference provides guidance from the U.S. Office of Personnel Management (OPM) regarding a law requiring Federal agencies to make "reservist differential" payments to eligible Federal civilian direct-hire employees. This provision applies to direct-hire employee-reservists called or ordered to active duty under certain specific provisions of law. The law is codified in 5 U.S.C. 5538, which was added by section 751 of the Omnibus Appropriations Act, 2009 (Public Law 111-8 March 11, 2009) and was amended by section 745 of the Consolidated Appropriations Act, 2010 (Public Law 111-117, December 16, 2009). Section 5338 became effective on March 15, 2009.

Under 5 U.S.C. 5538, employing agencies must provide a payment--a "reservist differential"-- equal to the amount by which an employee's projected civilian basic pay for a covered pay period exceeds the employee's actual military pay and allowances for that pay period.

OPM will be issuing regulations in consultation with the Department of Defense in the near future. Pending issuance of regulations implementing section 5538, the Agency will rely upon guidance OPM has provided at <http://www.opm.gov/reservist/guidance/>. This guidance is summarized below.

1. Qualifying Period

Eligible employee-reservists qualify for a reservist differential under section 5538 for a covered period when they are:

- a. Absent from a Federal civilian position in order to perform active duty in the uniformed services pursuant to a call or order to active duty under Section 331, 332, 333, 688, 12301(a), 12302, 12304, 12305, or 12406 of Title 10, United States Code, and are serving on such qualifying active duty; and
- b. Entitled to reemployment rights under the Uniformed Services Employment and Reemployment Rights Act (USERRA - 38 U.S.C. Chapter 43) for such active duty.

Employee-reservists must provide their employing agency with a copy of their military orders. The employing agency will determine whether the employee-reservist meets the conditions described above.

Effective March 28, 2010, OPM provided agencies with new instructions related to the reservist differential. Update 52 to the Guide to Processing Personnel Actions makes the term "LWOP-US" obsolete and provides that a new term "Absent-Uniformed Service" (NOAC 473) be used to describe employees who are performing service in a uniformed service and who have USERRA reemployment rights. If such an employee is performing service that is qualifying for the reservist differential, a new legal authority "QRD/5 U.S.C. 5538" is used in combination with legal authority Q3k to document that qualifying service.

2. Computation of Differential

For each biweekly pay period, the projected civilian basic pay will be compared to the allocated military pay and allowances. If the allocated military pay and allowances are greater than or equal to the projected civilian basic pay, no reservist differential will be paid for that pay period. If the projected civilian basic pay is greater than the allocated military pay and allowances, then the difference represents the unadjusted reservist differential.

The receipt of a reservist differential does not affect an employee's civilian pay and leave status. While absent from the civilian position, the employee is considered to be on leave without pay-unless the employee takes civilian paid leave or other paid time off. The employee may use paid time off (e.g., military leave, annual leave, or compensatory time off) as available to the employee, subject to the normal conditions governing use of the particular paid time off.

The reservist differential is not paid for periods which the employee is:

- a. Receiving civilian basic pay for performing work,
- b. Using civilian paid leave, or
- c. Using other paid time off.

The unadjusted reservist differential must be adjusted, or reduced, to take into account any hours during the applicable pay period where the employee-reservist receives some form of civilian pay or paid leave. The Agency will follow the adjustment methodology prescribed by OPM in its guidance.

Effective on the first pay period beginning on or after December 16, 2009, section 745 of Public Law 111-117 amended 5 U.S.C. 5538 to clarify that the reservist differential is not paid for periods following completion of active duty. OPM and DOD will offer further guidance in a subsequent issuance regarding agencies' obligation, if any, to pay the reservist differential after the date on which active duty is completed.

3. Claims Submission

Employee-reservists should notify the Payroll Division (M/CFO/P), Attn: Angela Burkard, Chief, 7.07-132, at (202) 712-0225, prior to any deployment and to provide an email address where he or she can be reached while on active duty. To secure the payment differential, the employee-reservist must fax a copy of his or her military orders and military leave and earnings statement for each month within the qualifying period to M/CFO/P.

This reservist differential entitlement went into effect on March 11, 2009. Accordingly, USAID will process reservist-differential applications for any pay period beginning on or after March 11, 2009. For each biweekly pay period, after comparing the

projected civilian basic pay to the allocated military pay and allowances, M/CFO/P will inform the employee-reservist whether his or her claim is eligible for the reservist differential.

4. Payment

The reservist differential must be paid from the same appropriation or fund that would have been used to pay the employee's civilian salary but for the interruption to perform military active duty. Reservist differentials should be paid at the same frequency as regular civilian salary payments with appropriate documentation.

Given the need to obtain information about an individual's military pay and allowances and other matters to accurately compute the reservist differential, a reservist differential is considered due and payable on a scheduled date that is no later than 8 weeks (4 biweekly pay periods) after the normal civilian salary payment date for a given pay period, except that this scheduled date may be pushed back beyond 8 weeks if the employee does not provide USAID with a copy of any documentation - such as military orders and military leave and earnings statement - that USAID needs to compute the differential.

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 the active duty.

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