



UNITED STATES OFFICE OF PERSONNEL MANAGEMENT
Washington, DC 20415

The Director

Thursday, August 27, 2020
CPM 2020-11

MEMORANDUM FOR: HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

FROM: MICHAEL J. RIGAS, ACTING DIRECTOR

Subject: Interim Regulations on Scheduling of Annual Leave by Employees Performing Services Determined to be Essential for the Response to Certain National Emergencies, and Notice of the Determination that the National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak Constitutes an Exigency of the Public Business for the Purpose of Restoring Forfeited Annual Leave.

On March 13, 2020, President Trump declared a “National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak” (85 FR 15337 at <https://www.federalregister.gov/documents/2020/03/18/2020-05794/declaring-a-national-emergency-concerning-the-novel-coronavirus-disease-covid-19-outbreak>). Since this time, the Office of Personnel Management (OPM) has been working with agencies to provide guidance on the various workplace flexibilities available and provide creative ways to help agencies and their employees during this unprecedented time. See <https://www.opm.gov/policy-data-oversight/covid-19>.

In working with agencies, OPM has received multiple requests to streamline the restoration of annual leave for employees performing mission-critical work in response to the Novel Coronavirus Disease (COVID-19) who have been prevented from using their annual leave in excess of the maximum carryover. (See 5 U.S.C. 6304(d).) Under normal procedures, agencies may restore annual leave that is forfeited because it is in excess of the maximum leave ceilings (i.e., 30, 45, or 90 days) if the leave is forfeited because of an administrative error, exigency of the public business, or sickness of the employee. To restore annual leave due to an exigency of the public business, an employee must pre-schedule annual leave before the third pay period prior to the end of the leave year, and the agency must cancel the employee’s pre-approved annual leave because there are no other practical alternatives available to accomplish the work by a given deadline.

To avoid the cumbersome process for a large number of employees who have been required to work during this national emergency, I am pleased to announce that OPM has taken steps to issue interim regulations that will allow agencies to continue to meet their vital missions while streamlining the process for restoration of annual leave for employees whose services are essential to respond to the COVID-19 national emergency. These regulations can be found at https://www.regulations.gov/document?D=OPM_FRDOC_0001-1650.

These regulations will not only help agencies during the current national emergency but will also permit the Director of OPM to deem a specific future 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 under the new streamlined authority.

OPM Director Authorization

As part of the process described in the interim regulation, by issuing this memorandum, I am notifying agencies of my determination that the COVID-19 national emergency constitutes an exigency of the public business for the purpose of restoring forfeited annual leave. Agencies may utilize the streamlined authority outlined in the interim regulation to restore annual leave to employees whose work the agency determines to be essential for the response to the COVID-19 national emergency. Agencies are now authorized under these interim regulations to determine that employees who would forfeit annual leave in excess of their maximum allowable carryover rate due to their services being considered essential for the response to the COVID-19 national emergency are deemed to have scheduled the annual leave in advance, and such leave is subject to restoration.

Actions Required by Agencies to Use Authority for COVID-19 National Emergency

The regulations require all agencies to establish procedures and policies to administer and implement this authority for their employees whether or not an agency needs to use this authority for the COVID-19 national emergency. Agency procedures and policies will prepare each agency to immediately use this authority for this and any future national emergencies for which it may be necessary.

In order to utilize this authority for the COVID-19 national emergency, agencies must establish specific procedures and policies to administer and implement this authority for their employees. Agency heads or designees are further required to perform the following actions:

- determine the specific employees or groups of employees whose services are essential in response to the national emergency and who are qualified for coverage under the regulations;
- inform designated employees in writing of such a determination;
- continually monitor its response to the national emergency and determine whether the services of the designated employees to respond to the national emergency are still required, preventing the employees from scheduling and using their annual leave; and
- fix a termination date of the exigency of the public business for each employee or group of employees per the regulatory criteria, and inform both the affected employees and the agency payroll provider in writing of the termination date.

As a reminder, OPM issued CPM 2020-09 on June 18, 2020, regarding the normally applicable rules for annual leave and various paid time off categories. Agencies should continue to work with their employees to ensure that they take any annual leave or other paid time off before it expires, since an employee's decision to cancel annual leave he or she had previously scheduled or to not schedule annual leave due to the cancellation of vacation or travel plans because of COVID-19 restrictions (rather than because of the need to perform essential services) does not constitute an exigency of the public business for the purpose of restoration of annual leave. For further information on the normal applicable rules, agencies and employees may review this guidance at <https://www.chcoc.gov/content/annual-leave-and-other-paid-time-guidance>.

Additional Information

Agency headquarters-level human resources offices may contact OPM at pay-leave-policy@opm.gov with their questions. Agency field offices should contact their appropriate headquarters-level agency human resources office. Employees should contact their agency human resources office for further information on this memorandum.

cc: Chief Human Capital Officers (CHCOs), Deputy CHCOs, Human Resources Directors, and Work-Life Coordinators.