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APPROVED
DEC 23 1975

THE WHITE HOUSE

ACTION

WASHINGTON

Last Day: December 27

December 22, 1975

*Printed in
Colorado 12/23
To Archie.
12/24*

MEMORANDUM FOR

THE PRESIDENT

FROM:

JIM CANNON

SUBJECT:

Enrolled Bill H.R. 7976 - Restoration
of Certain Annual Leave to
Federal Employees

Attached for your consideration is H.R. 7976, sponsored by Representative Ketchum and nine others, which would permit a Federal employee who has been restored to duty following an unjustified or unwarranted personnel action to receive credit for all annual leave he would have earned during the period of separation notwithstanding the current statutory limitation of 30 days accumulated leave.

Additional information is provided in OMB's enrolled bill report at Tab A.

OMB, Max Friedersdorf, Counsel's Office (Lazarus) and I recommend approval of the enrolled bill.

RECOMMENDATION

That you sign H.R. 7976 at Tab B.



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

DEC 19 1975

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill H.R. 7976 - Restoration of certain
annual leave to Federal employees
Sponsor - Rep. Ketchum (R) California and 9 others

Last Day for Action

December 27, 1975 - Saturday

Purpose

Provides for restoration of all annual leave lost by Federal employees as a result of an unjustified or unwarranted personnel action.

Agency Recommendations

Office of Management and Budget	Approval
Civil Service Commission	Approval
U.S. Postal Service	No objection

Discussion

Under present law, Federal employees generally cannot accumulate more than 30 days of annual leave. P.L. 93-181, approved December 14, 1973, provided for restoration of annual leave in excess of the 30-day maximum if such excess leave was lost because of administrative error or because the employee could not use the leave due to illness or exigencies of the public business. Such additional leave is maintained in a separate leave account and may be used in accordance with regulations prescribed by the Civil Service Commission.

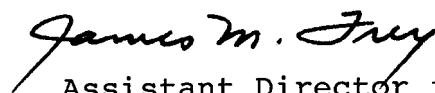
H.R. 7976 would extend the same provisions to employees who are restored to duty following a period of separation resulting from an unjustified or unwarranted personnel action. Under the

"Back Pay Act of 1966," such employees are deemed for all purposes to have performed service during the period of separation, except that they may not be credited with annual leave in excess of 30 days. The enrolled bill would rectify this inequity, effective as of March 30, 1966, when the Back Pay Act took effect.

As in P.L. 93-181, former employees eligible for leave restoration under H.R. 7976 would be permitted to file claims within three years for a lump-sum payment for annual leave which could not be credited under the current provisions of the Back Pay Act. Similar benefits would also be extended to present and former employees of the U.S. Postal Service, and to former employees of the former Post Office Department, for leave accrued but not credited before July 1, 1971, when the U.S. Postal Service was established.

The report of the House Post Office and Civil Service Committee as well as the Postal Service views letter on the enrolled bill indicate that costs under the bill would be minimal.

During consideration of H.R. 7976, the Civil Service Commission supported the bill's enactment on the basis that "it is only fair to restore annual leave to an employee...when that employee was unjustifiably or unwarrantedly separated and then restored with back pay. If the employee had remained on the rolls, he would have been entitled to earn and use the amount of leave appropriate for his leave category." The Commission's views letter on the enrolled bill reiterates this position.


Assistant Director for
Legislative Reference

Enclosures



LAW DEPARTMENT
Washington, DC 20260

December 18, 1975

Mr. James M. Frey
Office of Management and Budget
Assistant Director for Legislative Reference
Washington, D. C. 20503

Dear Mr. Frey:

This responds to your request for the views of the Postal Service with respect to the enrolled bill:

H. R. 7976, "To amend title 5, United States Code, to provide that annual leave lost by a Federal employee because of an unjustified or unwarranted personnel action shall be restored to the employee, and for other purposes."

1. Purpose of Legislation as it
Pertains to the Postal Service.

Section 3 of the bill provides, among other things, that a former employee of the Post Office Department, or a present or former employee of the Postal Service who was an employee of the Post Office Department or other federal agency, would be entitled to a lump sum payment by the Postal Service, for annual leave accrued before July 1, 1971, but not credited under 5 U. S. C. 5596, because it was in an amount that would have caused the amount of leave to such person's credit to exceed the maximum authorized by law. Claims for lump sum payment would have to be filed with the Postal Service within three years immediately following the date of enactment of this bill.

2. Position of the Postal Service.

The Postal Service has no objection to enactment of section 3 of the bill, since it deals only with annual leave accrued prior to July 1, 1971. The bill has no effect whatever on annual leave accrued by Postal Service employees subsequent to that date. This is consistent with the Postal Reorganization Act, the clear intention of which is that general amendments to the annual and sick leave provisions in chapter 63 of title 5 would not apply to the Postal Service. See 39 U.S.C. 1005(f).

We note that the bill fails to specify the source of funds for any lump-sum payments to claimants. However, the Postal Service would expect to request appropriated funds pursuant to 39 U.S.C. 2004 to cover any payments under section 3 of the bill. This would be consistent with the procedure followed by the Postal Service under P. L. 93-181, a law similar to this bill, in which the House of Representatives indicated it would be proper to request an additional appropriation to cover the new obligations created by the legislation. H. R. Rep. No. 93-456, 93d Cong., 1st Sess. 7-8 (1973).

3. Timing.

We have no recommendation to make as to when the measure should be signed.

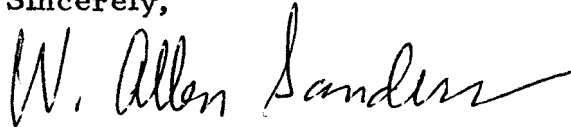
4. Cost or Savings.

We have no estimate of the cost of section 3 of this legislation but believe it would be minimal; probably no more than a couple thousand dollars.

5. Recommendation of
Presidential Action.

The Postal Service has no objection
to approval of section 3 of this
measure.

Sincerely,

A handwritten signature in cursive script that reads "W. Allen Sanders". The signature is written in black ink and is positioned to the right of the word "Sincerely,".

W. Allen Sanders
Assistant General Counsel
Legislative Division



UNITED STATES CIVIL SERVICE COMMISSION

WASHINGTON, D.C. 20415

CHAIRMAN

December 18, 1975

Honorable James T. Lynn
Director
Office of Management and Budget
Washington, D.C. 20503

Dear Mr. Lynn:

This is in response to your request for the Commission's views and recommendations on enrolled bill H.R. 7976 "To amend title 5, United States Code, to provide that annual leave lost by a Federal employee because of an unjustified or unwarranted personnel action shall be restored to the employee, and for other purposes."

The Civil Service Commission previously reported favorably on this bill to the Congress. We believe that it is only fair to restore annual leave to an employee, above the maximum leave accumulation amounts presently prescribed in section 6304 of title 5, United States Code, when that employee was unjustifiably or unwarrantedly separated, and then restored with back pay.

Accordingly, from the standpoint of equity to Federal employees, the Civil Service Commission urges that the President sign enrolled bill H.R. 7976.

By direction of the Commission:

Sincerely yours,

A handwritten signature in cursive script that reads "Robert Hampton".

Chairman

To-
J. Cannon
12-19-75
5:30 p.m.



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

DEC 19 1975

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill H.R. 7976 - Restoration of certain
annual leave to Federal employees
Sponsor - Rep. Ketchum (R) California and 9 others

Last Day for Action

December 27, 1975 - Saturday

Purpose

Provides for restoration of all annual leave lost by Federal employees as a result of an unjustified or unwarranted personnel action.

Agency Recommendations

Office of Management and Budget	Approval
Civil Service Commission	Approval
U.S. Postal Service	No objection

Discussion

Under present law, Federal employees generally cannot accumulate more than 30 days of annual leave. P.L. 93-181, approved December 14, 1973, provided for restoration of annual leave in excess of the 30-day maximum if such excess leave was lost because of administrative error or because the employee could not use the leave due to illness or exigencies of the public business. Such additional leave is maintained in a separate leave account and may be used in accordance with regulations prescribed by the Civil Service Commission.

H.R. 7976 would extend the same provisions to employees who are restored to duty following a period of separation resulting from an unjustified or unwarranted personnel action. Under the

"Back Pay Act of 1966," such employees are deemed for all purposes to have performed service during the period of separation, except that they may not be credited with annual leave in excess of 30 days. The enrolled bill would rectify this inequity, effective as of March 30, 1966, when the Back Pay Act took effect.

As in P.L. 93-181, former employees eligible for leave restoration under H.R. 7976 would be permitted to file claims within three years for a lump-sum payment for annual leave which could not be credited under the current provisions of the Back Pay Act. Similar benefits would also be extended to present and former employees of the U.S. Postal Service, and to former employees of the former Post Office Department, for leave accrued but not credited before July 1, 1971, when the U.S. Postal Service was established.

The report of the House Post Office and Civil Service Committee as well as the Postal Service views letter on the enrolled bill indicate that costs under the bill would be minimal.

During consideration of H.R. 7976, the Civil Service Commission supported the bill's enactment on the basis that "it is only fair to restore annual leave to an employee...when that employee was unjustifiably or unwarrantedly separated and then restored with back pay. If the employee had remained on the rolls, he would have been entitled to earn and use the amount of leave appropriate for his leave category." The Commission's views letter on the enrolled bill reiterates this position.

(Signed) James M. Frey

Assistant Director for
Legislative Reference

Enclosures

THE WHITE HOUSE

ACTION MEMORANDUM

WASHINGTON

LOG NO.: 1420

Date: December 20

Time: 1130am

FOR ACTION: Dick Parsons
 Max Friedersdorf *MF* cc (for information): Jack Marsh
 Ken Lazarus *KL* Jim Cavanaugh
 Warren Hendriks

FROM THE STAFF SECRETARY

DUE: Date: December 22

Time: 200pm

SUBJECT:

H.R. 7976 - Restoration of certain annual leave to
Federal employees

ACTION REQUESTED:

For Necessary Action

For Your Recommendations

Prepare Agenda and Brief

Draft Reply

For Your Comments

Draft Remarks

REMARKS:

Please return to Judy Johnston, Ground Floor West Wing

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

K. R. COLE, JR.
For the President

THE WHITE HOUSE

ACTION MEMORANDUM

WASHINGTON

LOG NO.: 1420

Date: December 20

Time: 1130am

FOR ACTION: Dick Parsons
Max Friedersdorf
Ken Lazarus

cc (for information): Jack Marsh
Jim Cavanaugh
Warren Hendriks

FROM THE STAFF SECRETARY

DUE: Date: December 22

Time: 200pm

SUBJECT:

H.R. 7976 - Restoration of certain annual leave to
Federal employees

ACTION REQUESTED:

For Necessary Action

For Your Recommendations

Prepare Agenda and Brief

Draft Reply

x

For Your Comments

Draft Remarks

REMARKS:

Please return to Judy Johnston, Ground Floor West Wing

No objection.

Ken Lazarus

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

7-10-60
100-100000-100000

THE WHITE HOUSE

WASHINGTON

December 22, 1975

MEMORANDUM FOR: JIM CAVANAUGH
FROM: MAX L. FRIEDERSDORF *MLF*
SUBJECT: H.R. 7976 - Restoration of certain annual leave to
federal employees

The Office of Legislative Affairs concurs with the agencies
that the subject bill be signed.

Attachments

RESTORATION OF EXCESS ANNUAL LEAVE LOST DUE TO CERTAIN PERSONNEL ACTIONS

SEPTEMBER 3, 1975.—Committed to the Committee of the Whole House, on the State of the Union and ordered to be printed.

Mr. WHITE, from the Committee on Post Office and Civil Service, submitted the following

REPORT

[To accompany H.R. 7976]

The Committee on Post Office and Civil Service, to whom was referred the bill (H.R. 7976) to amend title 5, United States Code, to provide that annual leave lost by a Federal employee because of an unjustified or unwarranted personnel action shall be restored to the employee, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE

H.R. 7976 will permit a Federal employee who has been restored to duty following an unjustified or unwarranted personnel action to receive credit for all annual leave he would have earned during the period of separation notwithstanding the current statutory limitation of 30 days' accumulated leave.

COMMITTEE ACTION

H.R. 7976 was ordered reported by the Committee on Post Office and Civil Service by a unanimous voice vote on July 17, 1975. Public hearings on H.R. 3251, a similar bill, were held on June 3 and 5, 1975, by the Subcommittee on Retirement and Employee Benefits (Serial No. 94-26). The subcommittee unanimously recommended H.R. 7976 to the full committee on June 16, 1975.

BACKGROUND

Federal employees, with certain exceptions, are authorized to earn and accumulate annual leave under the provisions of chapter 63 of title 5, United States Code. Generally speaking, an employee, during

his first 3 years of service, earns annual leave at the rate of 13 days a year; after 3 years of service until completion of 15 years of service, the employee earns 20 days a year; and thereafter, the employee earns 26 days leave a year. Generally, an employee cannot accumulate more than 30 days of annual leave (see 5 U.S.C. 6304(a)).

Public Law 93-181, approved December 14, 1973, amended the annual leave provisions of title 5 to permit restoration of annual leave in excess of 30-day maximum if such excess leave was lost because of administrative error or because the employee could not use the leave due to the exigencies of the public business or the employee's illness. Such additional leave is maintained in a separate leave account and may be used in accordance with regulations prescribed by the Civil Service Commission.

Public Law 93-181 did not include a corresponding amendment to the back pay provisions contained in section 5596 of title 5, United States Code. Under these provisions, an employee who is restored to duty following a period of separation resulting from an unjustified or unwarranted personnel action is deemed for all purposes to have performed service for the agency during such period except that he may not be credited with annual leave in excess of 240 hours. Any annual leave which would cause his leave balance to exceed 240 hours (30 days) is forfeited.

During the preparation of regulations to implement Public Law 93-181, the Civil Service Commission considered the question of what whether that law would permit the restoration of leave lost as a result of unjustified or unwarranted personnel actions. The General Counsel of the Commission determined, however, that there was no legal basis to cover unjustified or warranted personnel actions under the administrative error concept of Public Law 93-181, particularly since that law did not amend the back pay provisions (5 U.S.C. 5596) which expressly limit restoration of annual leave to the 240-hour ceiling. Accordingly, under existing law, an employee may not receive credit for annual leave in excess of 240 hours when he is restored to duty following an unjustified or unwarranted personnel action.

STATEMENT

The reported bill is supported by the administration and the committee knows of no opposition to favorable consideration of the bill.

The committee believes that when a Federal employee is restored to duty following an unjustified or unwarranted personnel action such employee should be entitled to a complete restoration of all the benefits which would have accrued to him had such an action never taken place. The "Back Pay Act of 1966" (now codified in 5 U.S.C. 5596) is the authority for making such administrative adjustments in pay, leave, insurance, and other benefits of employment. However, as discussed above, that law now limits the amount of annual leave that may be restored to an employee following an unjustified or unwarranted personnel action.

H.R. 7976 would accomplish the committee's objective by amending the back pay provisions (5 U.S.C. 5596) to permit restoration to an employee of all of the annual leave he would have earned during the period he was in a nonduty status because of an unjustified or unwarranted personnel action. The enactment of this legislation is necessary

if Federal employees truly are to be made whole upon the correction of an unjustified or unwarranted personnel action.

SECTION ANALYSIS

Subsection (a) of the first section of the bill amends section 5596 (b) (2) of title 5, United States Code. Under the existing provisions of section 5596, an employee who is restored to duty following a period of separation resulting from an unjustified or unwarranted personnel action is deemed for all purposes to have performed service for the agency during the period of separation except that he may not be credited with annual leave in excess of the maximum amount of leave that is authorized for the employee by law or regulation, (generally, 240 hours).

Subsection (a) amends section 5592 (b) (2) so as to permit restoration of all of the annual leave that an employee would have earned during the period of separation. However, any annual leave which is in excess of the employee's annual leave ceiling shall be credited to a separate leave account. The restored leave then will be available for use by the employee within reasonable time limits to be prescribed by regulations of the Civil Service Commission. The amendment further provides that, in the case of an employee who separates from the service or who enters on active duty in the armed services, any leave credited under this provision which is unused and still available to the employee under the time limits prescribed by the Commission shall be included in the lump-sum payment authorized under section 5551 or 5552 (1), as applicable, of title 5.

With respect to employees who enter on active duty in the armed services, the annual leave credited under the provision may not be retained to the credit of the employee under section 5552 (2) of title 5. The employee will be required to take a lump-sum payment for such leave.

Subsection (b) of the first section of the bill provides that the amendment made by subsection (a) shall apply to any employee found, on or after March 30, 1966, to have undergone an unjustified or unwarranted personnel action and who was or is entitled to the benefits provided under section 5596 of title 5. Thus, the effective date of the amendment to section 5596 corresponds to the effective date of the Back Pay Act of 1966.

Section 2 of the bill applies to former employees who are not on the rolls of the Government on the date of the enactment of the act. This section provides that a claim may be filed by a former employee for annual leave which was not credited under section 5596 of title 5 (or under the Back Pay Act of 1966) because it was in an amount that would have caused the amount of leave to the employee's credit to exceed his authorized annual leave ceiling. The claim must be filed with the agency by which the former employee was employed at the time the lump-sum payment provisions of 5 U.S.C. 5551 last became applicable to him and must be filed within 3 years immediately following the date of the enactment of the act.

Section 3 of the bill extends similar benefits to employees of the U.S. Postal Service, former employees of the Postal Service, and former employees of the former Post Office Department. Under this section such employees and former employees may file claims for

annual leave which was accrued before July 1, 1971, but was not credited under section 5596 of title 5 because it was in an amount that would have caused the amount of leave to the employee's credit to exceed his annual leave ceiling. The claims must be filed with the Postal Service within 3 years immediately following the date of the enactment of the act.

Costs

The committee is not able to estimate the cost resulting from the enactment of this legislation, but believes that it would be minimal.

COMPLIANCE WITH CLAUSE 2(1)(3) OF RULE XI

With respect to the requirements of clause 2(1)(3) of rule XI of the Rules of the House of Representatives—

(A) The Subcommittee on Retirement and Employee Benefits is vested under committee rules with legislative and oversight jurisdiction and responsibility over the subject matter of H.R. 7976 and, as a result of the hearings held on this matter, concluded that the law should be revised in the manner provided under this legislation;

(B) The measure does not provide new budget authority or new or increased tax expenditures within the meaning of section 3 of the Congressional Budget Act of 1974, and thus a statement required by section 308(a) of that act is not necessary;

(C) No estimate or comparison of costs has been received by the committee from the Director of the Congressional Budget Office, pursuant to section 403 of the Congressional Budget Act of 1974; and

(D) The committee has received no report from the Committee on Government Operations of oversight findings and recommendations arrived at pursuant to clause 2(b)(2) of rule X.

INFLATIONARY IMPACT STATEMENT

Pursuant to clause 2(1)(4) of rule XI of the Rules of the House of Representatives, the committee has concluded that the enactment of H.R. 7976 will have no inflationary impact on prices and costs in the operation of the national economy.

ADMINISTRATIVE VIEWS

Set forth below are reports from the Deputy Comptroller General of the United States and the Chairman of the Civil Service Commission on H.R. 3251, a bill similar to H.R. 7976.

COMPTROLLER GENERAL OF THE UNITED STATES,
Washington, D.C., June 11, 1975.

B-132095.

Hon. DAVID N. HENDERSON,
Chairman, Committee on Post Office and Civil Service,
House of Representatives.

DEAR MR. CHAIRMAN: By letter of May 30, 1975, you requested our report on H.R. 3231, 94th Congress, 1st session, a bill to amend title

H.R. 447

5, United States Code, to provide that excess annual leave lost by a Federal employee because of an unjustified or unwarranted personnel action shall be restored to such employee in the same manner as if lost because of administrative error.

Section 3 of Public Law 93-181, approved December 14, 1973, 87 Stat. 705, added subsection 6304(d) of title 5, United States Code. That section provides limited exceptions, under several conditions, to the normal rule that requires any annual leave in excess of the maximum permissible carryover be automatically forfeited at the end of the leave year. One of the conditions is where administrative error causes the loss of annual leave accruable after June 30, 1960. The proposed legislation would extend the same benefit to actions under 5 U.S.C. § 5596 in those cases where an employee has undergone an unjustified or unwarranted personnel action.

Enactment of the legislation is recommended.

Sincerely yours,

R. F. KELLER,

Deputy Comptroller General of the United States.

U.S. CIVIL SERVICE COMMISSION,
Washington, D.C., June 3, 1975.

Hon. DAVID N. HENDERSON,
Chairman, Committee on Post Office and Civil Service, House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: This letter is in response to your request for the Commission's views on H.R. 3251, a bill to amend title 5, United States Code, to provide that excess annual leave lost by a Federal employee because of an unjustified or unwarranted personnel action shall be restored to such employee in the same manner as if lost because of administrative error.

The bill would amend section 5596 of title 5, United States Code, to permit restoration of all annual leave the employee would have earned during a period of separation resulting from an unjustified or unwarranted personnel action. The restoration would be effective in accordance with provisions of section 6304(d), as implemented by Civil Service Commission regulations.

The Commission had supported the concept of restoring leave lost through administrative error and it supports the basic objective of this bill. We believe that it is only fair to restore annual leave above the maximum leave ceiling to an employee who was unjustifiably or unwarrantedly separated and then restored with back pay. If the employee had remained on the rolls, he would have been entitled to earn leave appropriate for his leave category which would have been available for his use.

Under existing law, leave restored to correct an unjustified or unwarranted personnel action may not exceed the leave carry-over limit of 240 hours. Section 6304(d) does not impose a similar limit on leave restored to correct an administrative error.

Our regulations implementing section 6304(d) provide for the restoration of annual leave, but require that the restored leave be placed in a separate account which is available for use in succeeding years. The agency must schedule the leave to be taken within 2 years of the

H.R. 447

leave year in which the annual leave is restored. If the employee is separated from the Government, for whatever reason, he receives a lump-sum payment for the dollar value of the annual leave.

Last year, we considered seeking legislation to amend section 5596 of title 5, United States Code, to overcome certain difficulties in making employees whole in back pay cases. We believed such legislation was necessary, primarily because of some long established prohibitions issued by the Comptroller General, e.g., no retroactive promotion. While we were in the process of preparing such legislation, the Comptroller General issued a series of landmark decisions, starting in October 1974, which removed some of these restrictions. These decisions led us to conclude we could broaden and otherwise refine our regulations under existing law. Commission staff worked closely with the staff of the General Accounting Office in the preparation of the significant revisions to these regulations, and also consulted with agencies and unions.

The only remaining concern in this effort has been the amount of annual leave that should be restored to an employee who was unjustifiably or unwarrantedly separated and later awarded back pay. However, it was clear that existing restrictions on such restoration could only be overcome by a change in the law. H.R. 3251 will meet that need, except as discussed below.

The Commission opposes that feature of the bill which would authorize the retroactive application of the provisions of H.R. 3251 back to 1960. If the 1960 date is enacted, employees would become eligible for restoration of annual leave which, prior to 1966, could not have been restored, since there was no law which permitted any restoration. We do not oppose making an employee "whole" under the back pay law if the retroactive restoration of leave is limited to that date on which restoration of leave in back pay cases was first provided, i.e., the Back Pay Act of 1966.

The Office of Management and Budget advises that from the standpoint of the administration's program there is no objection to the submission of this report.

By direction of the Commission:

Sincerely yours,

ROBERT HAMPTON,
Chairman.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

TITLE 5, UNITED STATES CODE

Subpart D—Pay and Allowances

H.R. 447

CHAPTER 55—PAY ADMINISTRATION

SUBCHAPTER IX—SEVERANCE PAY AND BACK PAY

§ 5596. Back pay due to unjustified personnel action

(a) For the purpose of this section, "agency" means—

- (1) an Executive agency;
- (2) the Administrative Office of the United States Courts;
- (3) the Library of Congress;
- (4) the Government Printing Office; and
- (5) the government of the District of Columbia.

(b) An employee of an agency who, on the basis of an administrative determination or a timely appeal, is found by appropriate authority under applicable law or regulation to have undergone an unjustified or unwarranted personnel action that has resulted in the withdrawal or reduction of all or a part of the pay, allowances, or differentials of the employee—

(1) is entitled on correction of the personnel action, to receive for the period for which the personnel action was in effect an amount equal to all or any part of the pay, allowances, or differentials, as applicable, that the employee normally would have earned during that period if the personnel action had not occurred, less any amounts earned by him through other employment during that period; and

[(2) for all purposes, is deemed to have performed service for the agency during that period except that the employee may not be credited, under this section, leave in an amount that would cause the amount of leave to his credit to exceed the maximum amount of the leave authorized for the employee by law or regulation.]

(2) for all purposes, is deemed to have performed service for the agency during that period except that—

(A) annual leave restored under this paragraph which is in excess of the maximum leave accumulation permitted by law shall be credited to a separate leave account for the employee and shall be available for use by the employee within the time limits prescribed by regulations of the Civil Service Commission, and

(B) annual leave credited under subparagraph (A) of this paragraph but unused and still available to the employee under regulations prescribed by the Commission shall be included in the lump-sum payment under section 5551 or 5552 (1) of this title but may not be retained to the credit of the employee under section 5552 (2) of this title.

ANNUAL LEAVE RESTORATION FOLLOWING UNJUSTIFIED PERSONNEL ACTION

DECEMBER 11, 1975.—Ordered to be printed

Mr. McGEE, from the Committee on Post Office and Civil Service,
submitted the following

REPORT

[To accompany H.R. 7976]

The Committee on Post Office and Civil Service, to which was referred the bill (H.R. 7976) to amend title 5, United States Code, to provide that annual leave lost because of an unjustified or unwarranted personnel action shall be restored to the employee, and for other purposes, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE

Existing law provides that when an employee has been restored to duty following an unjustified or unwarranted personnel action he shall be deemed to have performed service for the period of absence from duty, except that he may not be credited with annual leave in excess of 30 days. H.R. 7976 provides that such an employee would be credited with all annual leave he would have earned during the period of separation, including leave in excess of 30 days.

ACTION ON H.R. 7976

The House Subcommittee on Retirement and Employee Benefits held public hearings on H.R. 3251, a similar bill, on June 3 and 5, 1975. The subcommittee unanimously recommended H.R. 7976 to the full Committee, which reported it September 3, 1975. A companion bill, S. 2296, introduced by Senator Cranston, was referred to the Senate Post Office and Civil Service Committee.

BACKGROUND

Current law creates an anomaly in the way the crediting of annual leave in excess of the statutorially limited 30 days is allowed.

The Back Pay Act of 1966 (5 U.S.C. 5596) governs the restitution in pay, leave, and fringe benefits of an employee found to have undergone an unjustified or unwarranted personnel action. It restores what he lost because of the unjustified or unwarranted action but it provides that he may not be credited with more than 30 days of annual leave. Any annual leave which would cause the leave balance to exceed 30 days is forfeited. 5 U.S.C. 6304(a) provides that, ordinarily, an employee cannot accumulate more than 30 days of annual leave.

Yet Public Law 93-181 (5 U.S.C. 6304) provides that all annual leave lost because of administrative error, exigencies of the public business, or sickness on the part of the employee is creditable, including leave in excess of the 30 days stipulated by 5 U.S.C. 6304(a). It provides that annual leave in excess of the maximum permitted by law shall be credited to a separate leave account for the employee and shall be available for use by the employee under regulations prescribed by the Civil Service Commission.

On the one hand leave in excess of 30 days is disallowed in the case of an employee who has lost leave because of an unjustified or unwarranted personnel action. On the other hand, leave lost is creditable in excess of 30 days if the leave was lost because of administrative error, exigencies of the public business or the sickness of the employee.

The Civil Service Commission has considered whether the provisions of Public Law 93-181 would permit restoration of leave lost as the result of unjustified or unwarranted personnel actions. In view of the fact that Public Law 93-181 does not amend the Back Pay Act of 1966 which specifically limits restoration of lost leave to 30 days, the Commission concluded that new legislation would be needed if an employee were to be allowed credit for annual leave lost in excess of 30 days when he is restored to duty following an unjustified or unwarranted personnel action.

The Committee believes that if administrative error constitutes justification for full restoration of total leave lost, certainly an unjustified or unwarranted personnel action likewise justifies such restoration. The purpose of the Back Pay Act of 1966—to make an employee whole upon the correction of an unjustified or unwarranted personnel action—can be totally achieved by amending the Act to include restoration of the benefits which would have accrued to the employee had the action never been taken. Accordingly H.R. 7976 amends the Back Pay Act of 1966 (5 U.S.C. 5596) to provide for restoration to an employee of all the annual leave he would have earned during the period he was in a nonduty status because of an unjustified or unwarranted personnel action. This includes leave in excess of 30 days.

FURTHER PROVISIONS

H.R. 7976 also provides:

In the case of (1) an employee who separates from the service or (2) enters on active duty in the armed forces, any leave credited and available shall be included in the lump-sum payment authorized by law.

S.R. 536

119-73

The effective date of the amendment to the Back Pay Act is March 30, 1966, the same as the effective date of the Act itself.

In the case of a former employee not on the rolls on the date of enactment of H.R. 7976, the bill provides that his claim must be filed with the agency employing the former employee at the time the lump-sum provisions became applicable to him. He must file within three years after the date of enactment of H.R. 7976.

The bill extends benefits to employees of the U.S. Postal Service, former employees of the Postal Service and former employees of the old Post Office Department.

SECTIONAL ANALYSIS

Subsection (a) of the first section of the bill amends section 5596(b)(2) of title 5, United States Code. Under the existing provisions of section 5596, an employee who is restored to duty following a period of separation resulting from an unjustified or unwarranted personnel action is deemed for all purposes to have performed service for the agency during the period of separation except that he may not be credited with annual leave in excess of the maximum amount of leave that is authorized for the employee by law or regulation (generally, 240 hours).

Subsection (a) amends section 5596(b)(2) so as to permit restoration of all of the annual leave that an employee would have earned during the period of separation. However, any annual leave which is in excess of the employee's annual leave ceiling shall be credited to a separate leave account. The restored leave then will be available for use by the employee within reasonable time limits to be prescribed by regulations of the Civil Service Commission. The amendment further provides that, in the case of an employee who separates from the service or who enters on active duty in the armed services, any leave credited under this provision which is unused and still available to the employee under the time limits prescribed by the Commission shall be included in the lump-sum payment authorized under section 5551 or 5552(1), as applicable, of title 5.

With respect to employees who enter on active duty in the armed services, the annual leave credited under the provision may not be retained to the credit of the employee under section 5552(2) of title 5. The employee will be required to take a lump-sum payment for such leave.

Subsection (b) of the first section of the bill provides that the amendment made by subsection (a) shall apply to any employee found, on or after March 30, 1966, to have undergone an unjustified or unwarranted personnel action and who was or is entitled to the benefits provided under section 5596 of title 5. Thus, the effective date of the amendment to section 5596 corresponds to the effective date of the Back Pay Act of 1966.

Section 2 of the bill applies to former employees who are not on the rolls of the Government on the date of the enactment of the act. This section provides that a claim may be filed by a former employee for annual leave which was not credited under section 5596 of title 5 (or under the Back Pay Act of 1966) because it was in an amount that would have caused the amount of leave to the employee's credit to

exceed his authorized annual leave ceiling. The claim must be filed with the agency by which the former employee was employed at the time the lump-sum payment provisions of 5 U.S.C. 5551 last became applicable to him and must be filed within 3 years immediately following the date of the enactment of the act.

Section 3 of the bill extends similar benefits to employees of the U.S. Postal Service, former employees of the Postal Service, and former employees of the former Post Office Department. Under this section such employees and former employees may file claims for annual leave which was accrued before July 1, 1971, but was not credited under section 5596 of title 5 because it was in an amount that would have caused the amount of leave to the employee's credit to exceed his annual leave ceiling. The claims must be filed with the Postal Service within 3 years immediately following the date of the enactment of the act.

COST

The cost of enactment of this legislation cannot be estimated, but the Committee believes it would be minimal.

AGENCY VIEWS

The views of the United States Civil Service Commission and those of the Comptroller General follow:

U.S. CIVIL SERVICE COMMISSION,
Washington, D.C., December 10, 1975.

HON. GALE W. MCGEE,
Chairman, Committee on Post Office and Civil Service, U.S. Senate,
Washington, D.C.

DEAR MR. CHAIRMAN: This letter is in response to your request for the Commission's views on S. 2296, and H.R. 7976 which passed the House and is now before your Committee; these identical bills are intended "To amend title 5, United States Code to provide that annual leave lost by a Federal employee because of an unjustified or unwarranted personnel action shall be restored to the employee, and for other purposes".

The bills would amend section 5596 of title 5, United States Code to remove the current restriction on restoring that portion of annual leave in excess of the existing maximum carryover, so that all annual leave the employee would have earned during a period of separation resulting from an unjustified or unwarranted personnel action can be restored.

The Commission supports the enactment of either H.R. 7976, or S. 2296 (with the language change noted below). We believe that it is only fair to restore annual leave to an employee, above the maximum leave accumulation amounts prescribed in section 6304 of title 5, United States Code, when that employee was unjustifiably or unwarrantedly separated and then restored with back pay. If the employee had remained on the rolls, he would have been entitled to earn and use the amount of leave appropriate for his leave category.

The Commission endorsed the concept of restoring all annual leave lost through administrative error, without regard to maximum accu-

mulation limitations, which was added to section 6304 by Public Law 93-181 and had the same basic objective as these bills. Our regulations implementing section 6304(d) require the restored leave which had been lost through administrative error to be scheduled and used no later than the end of the leave year ending two years after the date of restoration. Any restored leave unused at the expiration of the two year limit is again forfeited with no further right to restoration.

On reviewing the bills, it appears there is some language, inadvertently, left out of S. 2296. The missing language, which is found in H.R. 7976, would be inserted after "Postal Service" on line 15, page 4, as follows: "within three years immediately following the date of the enactment of this Act. Payment shall be by the Postal Service . . ."

The Office of Management and Budget advises that from the standpoint of the Administration's program there is no objection to the submission of this report.

By direction of the Commission:

Sincerely yours,

ROBERT HAMPTON,
Chairman.

COMPTROLLER GENERAL OF THE UNITED STATES,
Washington, D.C., November 14, 1975.

B-132095.

HON. GALE W. MCGEE,
Chairman, Committee on Post Office and Civil Service,
U.S. Senate.

DEAR MR. CHAIRMAN: By letter of October 13, 1975, you requested our views and comments on H.R. 7976, 94th Cong., 1st Sess., a bill "[t]o amend title 5, United States Code, to provide that annual leave lost by a Federal employee because of an unjustified or unwarranted personnel action shall be restored to the employee, and for other purposes."

Section 3 of Public Law 93-181, approved December 14, 1973, 87 Stat. 705, added section 6304(d) of title 5, United States Code. That section provides limited exceptions, under several conditions, to the normal rule that requires any annual leave in excess of the maximum permissible carryover be automatically forfeited at the end of the leave year. One of the conditions is where administrative error causes the loss of annual leave accruable after June 30, 1960. The proposed legislation would extend the same benefit to actions under 5 U.S.C. § 5596 in those cases where an employee has undergone an unjustified or unwarranted personnel action. The effective date of the proposal would be March 30, 1966, the effective date of section 5596.

Enactment of the legislation is recommended.

Sincerely yours,

ROBERT F. KELLER,
Deputy Comptroller General of the United States.

CHANGES IN EXISTING LAW

In compliance with subsection 4 of rule XXIX of the Standing Rules of the Senate, changes in existing law made by the bill as re-

ported are shown as follows (existing law in which no change is proposed is shown in roman; existing law proposed to be omitted is enclosed in black brackets; new matter is shown in italic) :

TITLE 5, UNITED STATES CODE

* * * * *

Subpart D—Pay and Allowances

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CHAPTER 55—PAY ADMINISTRATION

* * * * *

SUBCHAPTER IX—SEVERANCE PAY AND BACK PAY

* * * * *

§ 5596. Back pay due to unjustified personnel action

(a) For the purpose of this section, "agency" means—

- (1) an Executive agency;
- (2) the Administrative Office of the United States Courts;
- (3) the Library of Congress;
- (4) the Government Printing Office; and
- (5) the government of the District of Columbia.

(b) An employee of an agency who, on the basis of an administrative determination or a timely appeal, is found by appropriate authority under applicable law or regulation to have undergone an unjustified or unwarranted personnel action that has resulted in the withdrawal or reduction of all or a part of the pay, allowances, or differentials of the employee—

(1) is entitled on correction of the personnel action, to receive for the period for which the personnel action was in effect an amount equal to all or any part of the pay, allowances, or differentials, as applicable, that the employee normally would have earned during that period if the personnel action had not occurred, less any amounts earned by him through other employment during that period; and

[(2) for all purposes, is deemed to have performed service for the agency during that period except that the employee may not be credited, under this section, leave in an amount that would cause the amount of leave to his credit to exceed the maximum amount of the leave authorized for the employee by law or regulation.]

(2) for all purposes, is deemed to have performed service for the agency during that period except that—

(A) *annual leave restored under this paragraph which is in excess of the maximum leave accumulation permitted by law shall be credited to a separate leave account for the employee and shall be available for use by the employee within the time limits prescribed by regulations of the Civil Service Commissions, and*

(B) annual leave credited under subparagraph (A) of this paragraph but unused and still available to the employee under regulations prescribed by the Commission shall be included in the lump-sum payment under section 5551 or 5552 (1) of this title but may not be retained to the credit of the employee under section 5552(2) of this title.

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Ninety-fourth Congress of the United States of America

AT THE FIRST SESSION

*Begun and held at the City of Washington on Tuesday, the fourteenth day of January,
one thousand nine hundred and seventy-five*

An Act

To amend title 5, United States Code, to provide that annual leave lost by a Federal employee because of an unjustified or unwarranted personnel action shall be restored to the employee, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) section 5596(b)(2) of title 5, United States Code, relating to unjustified personnel actions, is amended to read as follows:

“(2) for all purposes, is deemed to have performed service for the agency during that period except that—

“(A) annual leave restored under this paragraph which is in excess of the maximum leave accumulation permitted by law shall be credited to a separate leave account for the employee and shall be available for use by the employee within the time limits prescribed by regulations of the Civil Service Commission, and

“(B) annual leave credited under subparagraph (A) of this paragraph but unused and still available to the employee under regulations prescribed by the Commission shall be included in the lump-sum payment under section 5551 or 5552(1) of this title but may not be retained to the credit of the employee under section 5552(2) of this title.”

(b) The amendment made by subsection (a) shall apply to any employee found, on or after March 30, 1966, to have undergone an unjustified or unwarranted personnel action the correction of which entitles or entitles such employee to the benefits provided under section 5596 of title 5, United States Code.

SEC. 2. With respect to former employee (except a former employee referred to in section 3 of this Act) who is not on the rolls on the date of the enactment of this Act, annual leave which was not credited under section 5596 of title 5, United States Code, because it was in an amount that would have caused the amount of leave to the employee's credit to exceed the maximum amount of the leave authorized for the employee by law or regulation, is subject to credit and liquidation by lump-sum payment only if a claim therefor is filed within three years immediately following the date of the enactment of this Act with the agency by which the employee was employed when the lump-sum payment provisions of section 5551 of title 5, United States Code, last became applicable to such employee. Payment shall be by that agency at the salary rate in effect on the date the lump-sum payment provisions became applicable.

SEC. 3. (a) With respect to a former employee of the Post Office Department or a former employee of the United States Postal Service who had prior civilian service with the Post Office Department or other Federal agency, who is not on the rolls on the date of the enactment of this Act, annual leave which was accrued before July 1, 1971, but was not credited under section 5596 of title 5, United States Code, because it was in an amount that would have caused the amount of leave to his credit to exceed the maximum amount of the leave authorized for the employee by law or regulation, is subject to credit and

H. R. 7976—2

liquidation by lump-sum payment only if a claim therefor is filed within 3 years immediately following the date of enactment of this Act with the Postal Service. Payment shall be by the Postal Service at the salary rate in effect on the date the lump-sum payment provisions of section 5551 of title 5, United States Code, or comparable provisions of regulations of the Postal Service, as appropriate, last became applicable to the former employee.

(b) With respect to a present employee of the Postal Service who had prior Federal civilian service with the Post Office Department or other Federal agency, annual leave which was accrued before July 1, 1971, but was not credited under section 5596 of title 5, United States Code, because it was in an amount that would have caused the amount of leave to the employee's credit to exceed the maximum amount of the leave authorized for the employee by law or regulation, is subject to credit and liquidation by lump-sum payment only if a claim therefor is filed with the Postal Service within three years immediately following the date of the enactment of this Act. Payment shall be by the Postal Service at the salary rate in effect on the date of the enactment of this Act.

Speaker of the House of Representatives.

*Vice President of the United States and
President of the Senate.*

December 16, 1975

Dear Mr. Director:

The following bills were received at the White House on December 16th:

- ✓ S. 2757 ✓
- ✓ H.R. 1753 ✓
- ✓ H.R. 2110 ✓
- ✓ H.R. 4865 ✓
- ✓ H.R. 6642 ✓
- ✓ H.R. 7976 ✓
- ✓ H.R. 10647 ✓

Please let the President have reports and recommendations as to the approval of these bills as soon as possible.

Sincerely,

Robert D. Linder
Chief Executive Clerk

The Honorable James T. Lynn
Director
Office of Management and Budget
Washington, D. C.