



U.S. SMALL BUSINESS ADMINISTRATION
WASHINGTON, D.C. 20416

November 5, 2012

The Honorable Adam Smith
Member, U.S. House of Representatives
2209 Pacific Avenue, Suite B
Tacoma, Washington 98402

Dear Representative Smith:

Thank you for your recent request for clarification on the leave policy for temporary, full-time employees in the U.S. Small Business Administration (SBA) Office of Disaster Assistance (ODA). Specifically, you asked about what happens to any outstanding or accrued leave when these employees complete their service. You may be using *temporary, full-time employees* to describe ODA employees in one of three categories.

The first category is employees on appointments not-to-exceed one year or less who work on a full-time work schedule during that appointment. Any annual leave accumulated by this type of employee would receive a lump sum payment when they leave our rolls due to their appointment ending, lack of work, budget reasons, etc. (See 5 Code Federal Regulation (CFR) 550.1203 (a)). Note that lump sum payments are not made for sick leave in an employee's account regardless of type of appointment; i.e. permanent, term, temporary, etc. Sick leave is banked in the employees leave account until it can be restored and used in the future.

The second group of our employees that you may consider as temporary, full-time are actually employees who were hired as term intermittent employees. Even though these employees are hired to work on an intermittent schedule, sometimes due to an increase in workload or disaster activity, management needs the employee to work for an extended period of time. Per 5 CFR 340.403, "When an agency is able to schedule work in advance on a regular basis, it has an obligation to document the change in work schedule from intermittent to part-time or full-time..." We have determined that if management fully expects the employee to be needed full-time for at least four full pay periods, then the work schedule should be changed to full-time. Once the employee is no longer needed to work on a regular basis, the work schedule will be returned to intermittent. The conditions surrounding the change in work schedule from intermittent to full-time is also outlined in the employment agreement signed by the intermittent employees. Since intermittent employees are not eligible to accrue or use leave, and it is uncertain when or if the employee will return to a full-time schedule in the future; these employees receive a lump-sum payment for any accumulated annual leave when returned to the intermittent schedule. Issuing a lump sum payment in these cases is supported by 5 CFR 550.1203(i) and Comptroller General Decisions.

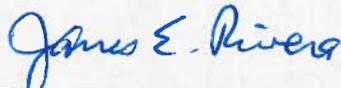
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The third group of employees to which you may be referring is term seasonal employees. These employees are expected to work at least six months in the year; their appointments may be extended up to a total of 4 years; and they are placed in and out of pay status depending on workload/disaster activity. Per the Office of Personnel Management's interpretation of 5 USC §6302(a), when management determines a date that the employee will be placed in nonpay because there is no more work for the employee to perform, the employee is no longer eligible to take leave after that date. Unfortunately, this means that many of our term seasonal employees may only have a few opportunities during their appointment to take annual leave since they are needed to work when deployed to assist with disaster activity.

We appreciate your support of the SBA Disaster Assistance Program. If you and your staff have any additional questions, please contact our Office of Congressional and Legislative Affairs at (202) 205-6700.

Sincerely,

A handwritten signature in blue ink that reads "James E. Rivera". The signature is written in a cursive style.

James E. Rivera
Associate Administrator
for Disaster Assistance