



FIELD ADVISORY SERVICES

REFERENCE GUIDE

SEVERANCE PAY

813-PT13

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References: Law: 5 U.S.C. 5595
Regulations: 5 CFR 550.701-550.713
U.S. Office of Personnel Management, Office of Compensation Policy, CPQ
96-1, January 23, 1996
U.S. Department of Labor, FECA Bulletin No. 96-2, November 4, 1992

Definition: Severance pay is paid to an employee who is involuntarily separated from Federal civilian employment after serving for at least 12 continuous months. The amount of severance pay is computed on the basis of years of civilian service and age at separation. It is paid out by the agency from which separated through a series of payments made at the same pay period intervals that were applicable to the employee before separation.

However, the FY96 National Defense Authorization Act permits, but does not require, DoD and the military departments to grant, upon request by the employee, payment of severance pay in one lump sum. This authority expires September 30, 1999 (extended to September 30, 2003).

Coverage: Full-time or part-time permanent employees as defined by 5 U.S.C. 5595. Also, full-time temporary employees whose temporary appointments are made within 3 days after a qualifying appointment.

Certain employees are ineligible--for example, employees with intermittent work schedules, Executive Schedule employees, Schedule C employees, noncareer SES employees, reemployed military or civilian retirees, worker's compensation recipients, and individuals separated for misconduct.

SEVERANCE PAY

Severance pay may be paid to certain Federal employees who are involuntarily separated from the service. The amount is computed on the basis of basic pay at time of separation, years of creditable Federal service, and age, if over 40. It is paid at the same rate and at the same intervals as salary is paid unless issued in one lump sum.

There are limitations on eligibility for severance pay. For example, if, when separated, an employee is receiving payments from the Labor Department's Office of Workers - Compensation Programs for a job-related injury, he or she is not entitled to severance pay. Neither is an employee who is entitled to an immediate annuity which includes a reduced annuity (Discontinued Service Retirement) or a disability annuity. Eligibility for retired or retainer pay earned as member of the uniformed services is also disqualifying.

The most frequently asked questions about severance pay are:

ELIGIBILITY

1. Who is eligible for severance pay?

In addition to the limitations mentioned above, an employee must have been serving under one of the following types of appointments at the time of separation:

- (1) A career or career-conditional appointment in the competitive service or the equivalent in the excepted service;
- (2) A temporary appointment provided it followed service under a qualifying appointment by not more than three days;
- (3) A career appointment in the Senior Executive Service;
- (4) An excepted appointment without time limitation, except under Schedule C or an equivalent appointment made for similar reasons.

In addition, the employee must have been currently employed for a continuous period of at least 12 months. Also, he or she must not have declined a "reasonable offer" of another position.

2. What is a "reasonable offer?"

For purposes of entitlement to severance pay, a reasonable offer is:

- (1) In the employee's agency and commuting area;
- (2) Of the same tenure and work schedule as the employee's current position;
- (3) Not lower than two grades or pay levels below the employee's current grade or pay level.

Furthermore, the offer must have been made in writing and the employee must have also met the established qualification requirements. (See 5 CFR 550.703.)

3. Who determines whether an employee is entitled to severance pay?

The separating agency makes this determination.

4. Under what circumstances may employees who resign before being involuntarily separated be treated as “involuntarily separated” for purposes of qualifying for severance pay?

Under current severance pay regulations, employees who resign because they expect to be involuntarily separated are considered to have been involuntarily separated for severance pay purposes **ONLY IF** they resign after receiving:

(1) a specific written notice stating that the employee will be involuntarily separated by a particular action (e.g., reduction in force (RIF)) on a particular date; or

(2) a general written notice of RIF or transfer of function, under 5 CFR 550.706, that announces that **ALL** positions in the competitive area will be abolished or transferred to another commuting area by a particular date.

However, if the specific or general notice is canceled before the resignation is effected, the resignation would not be qualifying for severance pay purposes.

If the specific notice deals with involuntary separation by RIF procedures, the notice must meet the conditions in 5 CFR part 351, subpart H. A general notice has no standing under the RIF program and is not subject to RIF rules. Therefore, a general notice cannot be used to meet the RIF notice requirements in 5 CFR part 351, subpart H.

A Certification of Expected Separation under 5 CFR 351.807 is not a qualifying specific or general notice under the severance pay regulations.

Entitlement to certain benefits--such as training assistance, priority placement rights, appeal rights, etc.--may be affected by an employee's decision to resign in advance of an actual involuntary separation action. The employing agency should inform affected employees of these implications before they accept a resignation.

Even if a resignation is considered an “involuntary separation” under the severance pay rules, the employee may not be eligible for severance pay under 5 U.S.C. 5595 and 5 CFR part 550, subpart G, for other reasons. The employee must meet all applicable eligibility requirements described in 5 CFR 550.701-550.713.

5. What exactly constitutes a qualifying “general notice” under 5 CFR 550.706?

A general notice is a written notice which states that (1) all employees in the affected competitive area will be terminated due to abolishment of their positions, or (2) all positions in the affected competitive area will be transferred to another commuting area as part of a transfer of function. The notice must state the specific date by which all positions are scheduled to be abolished or

transferred. (EXAMPLE: "All positions in this competitive area will be abolished no later than [insert date].") It should also expressly state that a resignation after receipt of the notice will constitute an involuntary separation for severance pay purposes, as long as the notice is not canceled prior to the effective date of the resignation. The general notice must be distributed to all employees in the affected competitive area. (See 5 CFR 351.402 for definition of "competitive area.")

Under current regulations, there is no limit on the maximum amount of time between the issuance of the general notice and the scheduled date of position abolishment or transfer of function.

NOTE: A general notice may not be used to effect an employee's separation. To effect an employee's separation, a specific written notice must be issued to the employee in accordance with applicable statutory and regulatory requirements. Thus, in the case of a RIF separation, a 60-day minimum notice period is generally required. (See 5 CFR 351.801 for exceptions.)

6. Does a person who has been separated from Federal service lose his or her severance pay if he or she refuses a "reasonable" job offer under the Priority Placement Program (PPP)?

The person does not lose his or her severance pay, but his or her name will be removed from the PPP. Once vested, an employee's severance pay is not affected because he or she is no longer an "employee." An employee is defined as "an individual employed in or under an agency." However, if an employee refuses a reasonable job offer, as defined under 5 CFR 550.703, prior to being separated, he or she would lose his or her entitlement to severance pay.

7. Does an employee who had two temporary appointments after being separated from a full-time career appointment meet the definition of "qualifying appointment" for severance pay purposes?

Yes, in cases where a temporary appointment follows service under a qualifying appointment by not more than 3 days, the employee meets the definition of "qualifying appointment." His or her severance pay will be determined on the basis of his or her rate of basic pay at the time of separation, age, and years of creditable service.

8. If a career employee on a permanent position voluntarily accepts a time-limited position, is he or she eligible for severance pay upon the termination of that temporary appointment?

Yes. An employee, serving under a qualifying appointment, is entitled to severance pay. A time-limited appointment is deemed qualifying when entered within 3 calendar days after the end of another position designated as qualifying as defined under 5 CFR 550.703.

9. If an employee resigns, will he or she be entitled to severance pay?

Generally speaking, a resignation is a voluntary separation and would not entitle an employee to severance pay (see question 4). However, resignation is considered involuntary for purposes of severance pay, (provided the employee has not declined a reasonable offer in the agency before

separation) if the employee received a specific notice in writing from his or her agency that he or she is to be involuntarily separated and the notice of separation is not canceled before the resignation is effected. Separations (terminations) due to misconduct, delinquency or inefficiency do not confer severance pay entitlement.

OTHER COMPENSATION

- 10. If entitlement to an immediate annuity at the time of separation is a bar to severance pay, is severance pay discontinued if the employee becomes entitled to an annuity beginning at some later time?**

Entitlement to an annuity beginning at a later time has no effect on an employee's entitlement to severance pay. However, retroactive entitlement could result in an overpayment of severance pay. (See below.)

- 11. What impact occurs when an employee starts drawing severance pay but later becomes entitled to a disability annuity?**

Since the disability annuity will be retroactive to the date of separation from the service, the employee will have to return all severance pay received.

- 12. Is entitlement to unemployment compensation a bar to severance pay?**

No. However, entitlement to severance pay has a bearing on unemployment compensation. An employee should check with his or her state unemployment office.

- 13. May an employee separated through RIF, receiving workers' compensation at the time of separation, begin to receive severance pay at the time the workers' compensation ends?**

No. The employee is not entitled to severance pay because the employee was receiving workers' compensation at the time of separation. However, the employee may request that the workers' compensation be interrupted and the severance pay begun at the time of separation. When the severance pay entitlement ends, the employee may then reapply for the workers' compensation. If the employee still qualifies for workers' compensation, those payments may be resumed.

- 14. An employee, affected by RIF, is entitled to severance pay and continuation of health insurance benefits. Should the employee's share of his health insurance premium be deducted from severance pay?**

No. Under 5 CFR 550.709, each severance payment must equal to the employee's rate of basic pay less taxes and Medicare, and when appropriate, contributions under FICA.

15. Is severance pay, and the period covered by the severance pay, creditable for retirement or leave accrual purposes?

No, when a person receives severance pay, he or she is no longer a Federal employee.

16. May an employee accept other employment and still receive severance pay?

Yes, unless the new employment is in the Federal service. (Subsequent NAF employment is not considered employment in the Federal Government.) If an employee accepts a temporary appointment with the Federal Government, the severance pay is suspended during the temporary employment and then resumed upon termination of the appointment. If he or she accepts an appointment without time limitation with the Federal Government (including the Postal Service) regardless whether the tour of duty is full-time or part-time, the employee loses his or her entitlement to severance pay. Further entitlement to severance pay will depend upon the nature of any subsequent separation.

17. If an employee receives severance pay in a lump sum payment and is subsequently reemployed by the Federal Government within the timeframe covered by the severance pay, is he or she liable to the Government for any overpayment of severance pay?

Yes. Under a lump sum payment, the employee must repay to DoD (or military department, if applicable) an amount equal to the amount of severance pay applicable to the period from the start of Federal reemployment to the end of the calculated severance pay period.

SEVERANCE PAY COMPUTATION

18. How is the amount of severance pay determined?

Severance pay is determined on the basis of the rate of basic pay at the time of separation and years of creditable service. If the employee is over 40 years of age, an age adjustment allowance is also a part of the formula.

An employee is entitled to a basic allowance of one week's basic salary for each year of creditable service up to 10 years, and two weeks salary for each year of service thereafter. An age adjustment allowance is computed on the basis of 10 percent of the basic allowance for each year the employee's age exceeds 40 years of age.

For example, if an employee is 45 years old with 20 years of creditable service with a basic weekly salary of \$100, the severance pay fund would be computed as follows:

Basic Allowance:

\$100 (weekly salary) x 10 (first 10 years)	= \$1, 000
\$100 (weekly salary) x 2 x 10 (years in excess of 10)	= <u>\$2, 000</u>
	\$3, 000

Age Adjustment Allowance:

$$\text{\$3,000 (basic allowance) x 5 (years over 40) x 10\%} = \underline{\text{\$1,500}}$$

Severance Pay Fund:

$$\begin{array}{r} \text{\$3,000 (basic allowance) + \$1,500 (age adjustment allowance)} \\ \text{Total} \quad \text{\$4,500} \end{array}$$

19. Is there any limit on the amount of severance pay an employee can receive?

Yes. The total severance pay an employee is eligible to receive is limited to one year's pay at the rate of pay received at the time of separation. This is a lifetime limitation. Therefore, if an employee is in a position to receive severance pay a second time, severance pay may not continue after the sum of the two periods reaches 52 weeks.

Suppose, as in Question No. 17, the total severance pay to which an employee is entitled is \$4,500. Because pay at the time of separation is \$100 it will take 45 weeks to pay the entire severance pay. After receiving severance pay for 20 weeks, the former employee is reemployed in the Federal Government under an appointment without time limitation, and the severance pay is terminated. He or she works for three full years and is again separated under circumstances entitling him or her to severance pay. The employee is now 48 years of age and has 23 years of creditable service. At the time of the second separation the basic weekly pay is \$125. The severance pay fund is computed as follows:

Basic Allowance:

$$\begin{array}{r} \text{\$125 (weekly salary) x 10 (first 10 years)} \quad = \text{\$1,250} \\ \text{\$125 (weekly salary) x 2 x 13 (years in excess of 10)} \quad = \underline{\text{\$3,250}} \\ \text{\$4,500} \end{array}$$

Age Adjustment Allowance:

$$\text{\$4,500 (basic allowance) x 8 (years over 40) x 10\%} = \underline{\text{\$3,600}}$$

Severance Pay Fund:

$$\text{\$4,500 (basic allowance) + \$3,600 (age adjustment allowance)} = \text{\$8,100}$$

The severance pay fund equals \$8,100. It will take 64 and 8/10 weeks (\$8,100 divided by \$125) to pay the entire severance pay. However, because total severance pay may not exceed 52 weeks, and because the employee had already received 20 weeks of severance pay, he or she is entitled to only 32 weeks of pay at \$125 a week.

20. An employee is now working part-time but until a few months ago, was a full-time employee. What salary will his or her severance pay be based on?

Severance pay is based upon the salary of the position of record at the time of qualifying separation. Therefore, the severance pay will be computed based upon the salary as a part-time employee. The exception is for employees whose established work schedules require alternating full-time and part-time work during the 26 biweekly pay periods immediately before separation.

21. What is creditable service? Does it include military service?

Creditable service for severance pay purposes is any service which is creditable for leave accrual purposes. Military service which precedes civilian service is not creditable for severance pay purposes. Military service which interrupts civilian service is creditable.

22. Does severance pay include COLA's like in Alaska and Hawaii?

No. The rate of basic pay, as defined under 5 CFR 550.703, is exclusive of additional pay of any kind beyond locality and some stated premium pays.

A Severance Pay Computation

Ref.: 5 CFR 550.707 and 550.712

Scenario:

Salary: \$32,217 Separation Date: 12-07-95
DOB: 12-07-33 (age: 62) Service for Severance Pay Calculation: 20 years
SCD: 12-06-75 Prior Severance Pay Disbursed: 10 weeks

Step 1. 5 CFR (550.707 (a)(1))

Per Annum Salary: \$32,217 divided by 2087 (hours in work year) equals
\$15.44 (Rounded hourly rate of pay)

\$15.44 times 40 equals \$617.60 (\$618 rounded weekly rate of
pay on date of separation)

Entitlement: One week of weekly pay for each full year of creditable service through first 10 years.

\$618 times 10 years equals \$6,180

Step 2. 5 CFR (550.707(a)(2))

Entitlement: Two weeks of weekly pay for each full year of creditable service beyond 10 years.

\$618 times 20 (2 weeks times 10 years) equals \$12,360

Step 3. 5 CFR (550.707(a)(3))

Entitlement: 25% of the otherwise applicable amount for each full 3 months of creditable service beyond final year.

None

Step 4. 5 CFR (550.707(b))

Entitlement: Basic severance pay entitlement for the last 26 biweekly pay periods.

Assumption: Employee is a full-time General Schedule employee for the full 26 bi-weekly pay periods prior to separation with no annual premium pay standby duties.

Entitlement of this employee: (30 weeks) \$618 times 30 weeks equals \$18,540.

Step 5. 5 CFR (550.707(c))

Entitlement: 2.5 percent of the basic severance pay allowance for each full 3 months of age over 40 years.

Basic Severance Pay Allowance: \$18,540

.025 times 88 (22 years times 4 quarters) equals 220% (2.2 multiplication factor)

\$18,540 times 2.2 equals \$40,788 (age adjustment allowance)

Step 6. 5 CFR (550.712)

Recredit of Service: Recompute severance pay allowance on the basis of creditable service and age and deduct the number of weeks for which severance pay previously was received.

\$618 times 10 weeks (previous severance allowance paid) equals \$6,180

\$40,788 (age adjustment allowance) minus \$6,180 (recredit of service) equals \$34,608

Step 7. 5 CFR 5 U.S.C. 5595 (c)

Total severance pay may not exceed 1 year's pay at the rate received immediately before separation.

Per Annum Salary: \$32,217

Maximum Severance Pay Entitlement: \$32,217