



DEFENSE FINANCE AND ACCOUNTING SERVICE  
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OCT - 6 2006

DFAS-NP

MEMORANDUM FOR DEPUTY ASSISTANT SECRETARY OF THE ARMY  
(FINANCIAL OPERATIONS)  
ASSISTANT SECRETARY OF THE NAVY (FINANCIAL  
MANAGEMENT AND COMPTROLLER) OFFICE OF  
FINANCIAL OPERATIONS  
DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE  
(FINANCE OPERATIONS)  
DIRECTOR, ADMINISTRATION AND MANAGEMENT  
COMPTROLLERS, DEFENSE AGENCIES  
RESOURCE MANAGERS, DOD FIELD ACTIVITIES  
DIRECTOR FOR FINANCIAL MANAGEMENT DIRECTORATE,  
INSPECTOR GENERAL, DOD

SUBJECT: Administrative Claims for Annual Leave under Butterbaugh v. Department of Justice, 336 F.3d 1332 (Fed. Cir. 2003) Update

This memorandum explains the updated procedures for filing an administrative claim for restoration of leave (annual or military) or payment for annual leave. The guidance is based on the June 7, 2006, memorandum from the Office of the Under Secretary of Defense, Personnel and Readiness (attachment 1). As a result of recent Merit Systems Protection Board (MSPB) decisions, DoD has determined that claims of DoD employees or former employees may be considered back to October 1, 1980. Originally, the 6-year statute of limitations under the Barring Act was applied to administrative claims. Therefore, employees or former employees may need to file amended claims that seek relief back to the first date they were improperly charged military leave subsequent to September 30, 1980. Procedures for filing an administrative claim with the Defense Finance and Accounting Service (DFAS) are provided (attachment 2) and will be posted on the DFAS web site at <http://www.dod.mil/dfas/>.

The recent MSPB rulings recognize that the burden of proof lies with the employee to show that he or she had to use annual or other types of leave to cover an absence for military leave as a result of being improperly charged military leave for non-workdays. What this means to an employee is that he or she must have some supporting evidence that he or she was actually charged military leave on non-workdays and that he or she had to use some other form of leave to cover the period of military duty. That evidence could include: civilian time and attendance (TA) records, civilian leave records and copies of the active duty orders for each period of the restoration request, or any other relevant documentation.

Employees and former employees should be advised that claims without supporting evidence may be held until the employee has furnished the evidence, and that DFAS may not

have copies of past TA records or leave records for the following reasons: (1) the National Archives and Records Administration (NARA) rules for retention of TA and leave records do not require that these types of records be retained for more than 6 years; (2) DFAS did not take over civilian pay responsibility for some DoD agencies until 1996, and in most instances, does not have any records that were created by those employing agencies; (3) only the Denver payroll office has records back to 1980, which are limited to employees of the Corps of Engineers. DFAS has a data repository of payroll records, but this repository only contains data from 1996 to present. Therefore, the only historical records for civilian leave and TA that are available at our payroll offices is for the years 1996 to present, with the exception of the records for the COE (attachment 3).

Legally, DFAS cannot unilaterally restore or pay for any mistakenly-charged military leave that cannot be supported by documentation showing the charging of annual leave or leave without pay. Where there is some supporting documentation, DFAS and individual employing agencies may consider settling cases with individual employees or with a group of employees. If an agency enters into a settlement (an agency decision) then DFAS' civilian payroll offices must be provided a copy of the management decision or the settlement agreement to make payments or restoration.

Procedures require that employees or former employees complete the attached claim form (attachment 4) and mark whether this is a new claim or an amended claim. Those who have already filed claims and received compensation or restored leave must file an amended claim for periods that were not already considered or paid for due to the application of the Barring Act rules. All claimants must provide the following documentation to the DFAS payroll office or the claim cannot be processed: a completed claim form with attached copies of the order to active duty or other types of documentation that support the dates for each period of claimed restoration, copies of the civilian time and attendance reports or leave records that shows charges to annual or leave without pay for the periods of active duty or other information to support the claim.

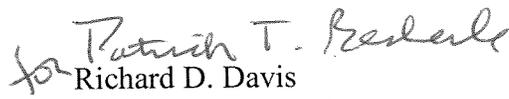
Administrative claims filed directly with DFAS must be submitted to the following address: DFAS-Indianapolis, Civilian Payroll, 8899 East 56<sup>th</sup> Street, Indianapolis, Indiana, 46249-1900, the central address for all of our payroll offices. This address is where information is imaged and flowed to the appropriate payroll office for processing. The toll free number for faxing is (866) 401-5849. The commercial numbers are: 317-510-9795 through 9798 (DSN 699). The claim form must indicate your current or last payroll office and your current or last employing agency. DFAS payroll office identification (ID) numbers (POIN) can be found on your DFAS Civilian Leave and Earnings Statements or you may use the information provided (attachment 5).

Employees in receipt of restored annual leave have the following time-period for use. Restored annual leave of 416 hours or less must be used by the employee by the end of the leave year beginning within 2 years after the date of restoration or the leave will be forfeited, in accordance with 5 U.S.C. 6304(d)(1)(a) and 5 CFR 630.306. The regulations provide that an agency shall extend this period by one leave year for each additional 208 hours of excess annual leave or any portion thereof that is restored to the employee.

There was a change to the military leave law that became effective on December 21, 2000, which stopped the practice of charging military leave for intervening weekends or non-workdays. The Defense Civilian Payroll System (DCPS) was updated with this change. Agencies and their supervisors and timekeepers were notified of this change and should have stopped charging military leave on those days. Further, some system edits have been implemented into DCPS to help prevent erroneous charging of military leave on an intervening weekend or a non-workday due to timekeeper error. However, if an employee can prove that military leave was mistakenly charged for non-workdays for periods after 2000, he or she should submit a claim with the required documentation.

Payroll offices will continue to process all existing claims and orders including administrative claims, orders and decisions of the Merit System Protection Board, Federal Courts and agency settlements for restored annual leave or adjustments to military leave. They will also continue to provide payroll information and documentation when properly requested by employees, Government agencies, or third parties.

Please provide widest dissemination to all customers. Questions regarding this subject may be directed to Linda Greeley of my staff who can be reached at (703) 607-5047 or via email at Linda.Greeley@DFAS.Mil.

  
Richard D. Davis  
Director, Policy and Performance  
Management

Attachments:  
As stated

cc: Director, Standards and Compliance, Finance Mission Area, DFAS  
National Security Agency (Attn: Brenda Zebron)  
Dept of Energy (Attn: Jerry Odegard)  
Dept of Health & Human Services (Attn: Jim Martin)  
Dept of Veterans Administration  
Environmental Protection Agency  
Service Liaisons