Federal Employees: Human Resources Management Flexibilities in Emergency Situations

Barbara L. Schwemle
Analyst in American National Government
Government and Finance Division

Summary

Federal executive branch departments and agencies have available to them various human resources management flexibilities which can be utilized in emergency situations, such as those which resulted from Hurricanes Katrina and Rita and which could occur during a pandemic influenza outbreak. The Office of Personnel Management has issued guidance on these flexibilities, which supplements the basic policies governing staffing, compensation, leave sharing, and telework in Title 5 of the United States Code. Legislation (S. 1000, H.R. 4106, and proposed amendments to S. 3268) to enhance telework in the federal government is pending in the 110th Congress.

Over the last several years, federal departments and agencies have received guidance from the Office of Personnel Management (OPM) on the various human resources (HR) flexibilities available to them to facilitate management in emergency situations. Notably, these issuances occurred following the September 11, 2001, terrorist attacks and in the aftermath of the devastation wrought by Hurricanes Katrina and Rita which occurred back-to-back in the Gulf Coast region of the United States in late Summer 2005.1 Most

---

recently, OPM reiterated the guidance\(^2\) as part of fulfilling its responsibilities, under the President’s national strategy on pandemic influenza, to provide direction on human capital management and COOP planning criteria, and to update telework documents.\(^3\) The agency also includes a Federal Hiring Flexibilities Resource Center, described as “a toolkit,” on its website.\(^4\) In a December 18, 2006, memorandum, OPM encouraged agencies located in the Gulf Coast region devastated by Hurricane Katrina to evaluate using the various human resources flexibilities, and in particular, recruitment, relocation, and retention incentives, to meet their human capital needs.\(^5\) The HR flexibilities relate to staffing, compensation, leave transfer, and telework.

Table 1, below, provides information on selected flexibilities.

### Table 1. HR Flexibilities for Emergency Situations

<table>
<thead>
<tr>
<th>Flexibility and Authority</th>
<th>Brief Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Appointments in Remote or Isolated Locations [5 C.F.R. §213.3102(i)(1)]</td>
<td>Agencies can appoint individuals for up to one year to work less than 1040 hours per year. Such appointments can be extended indefinitely in one-year increments. A remote or isolated location is “outside the local commuting area of a population center from which an employee can reasonably be expected to travel on short notice under adverse weather or road conditions which are normal for the area.”</td>
</tr>
<tr>
<td>Excepted Service(^6) Appointment — 30-Day Critical Hiring Need [5 C.F.R. §213.3102(i)(2)]</td>
<td>Agencies can appoint individuals for 30 days and may extend the appointment for up to an additional 30 days if continued employment is essential to the agency’s operations. The same individual may not be employed for more than 60 days in a 12-month period. The agency may determine the qualification requirements. (For both senior-level and lower-level positions.)</td>
</tr>
<tr>
<td>Excepted Service Appointment — Temporary Emergency Need [5 C.F.R. §213.3102(i)(3)]</td>
<td>OPM has authorized agencies to appoint individuals for up to one year to fill positions affected by or needed to respond to the devastation of Hurricane Katrina. (For both senior-level and lower level positions.)</td>
</tr>
</tbody>
</table>

---


\(^6\) Excepted Service positions are not covered by the procedures governing the competitive service. Qualification standards and requirements for these positions are established by the individual agencies. The Title 5 rules on appointment (except for veterans preference), pay, and classification do not apply. Excepted service agencies include the Central Intelligence Agency, the Defense Intelligence Agency, the Federal Bureau of Investigation, and the National Security Agency.

\(^7\) OPM September 6, 2005, Memorandum.
<table>
<thead>
<tr>
<th>Flexibility and Authority</th>
<th>Brief Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Appointment of Faculty Members</td>
<td>Agencies can appoint faculty members to scientific, professional, or analytical positions. Appointees must be bona fide faculty members from accredited colleges and universities, have special qualifications for the position, and not work more than 130 days per year.</td>
</tr>
<tr>
<td>Use of Private Sector Temporary Help Service Firms</td>
<td>Agencies can contract for up to 120 workdays with private sector temporary help service firms to quickly provide specific services (but not for the SES, managerial, or supervisory positions). A contract may be extended for an additional 120 workdays. The firm is the legally responsible employer for all aspects of employment.</td>
</tr>
<tr>
<td>Reemployment Priority List (RPL)(^8)</td>
<td>Agencies can use the RPL as a source of qualified individuals who are available for temporary appointments (generally, one year with up to one additional year), term appointments (more than one year but not more than four years), or permanent appointments in the competitive service. An exception to choosing someone from the RPL may be granted when an individual on the RPL or with a higher ranking cannot assume duties without undue interruption to the agency.</td>
</tr>
<tr>
<td>Competitive Service(^9) Appointment — 120-Day</td>
<td>Agencies can make appointments of 120 days or less without first selecting a surplus or displaced employee who is eligible for appointment under an Agency Career Transition Assistance Plan (CTAP) or an Interagency Career Transition Assistance Plan (ICTAP). For appointments of longer duration, the CTAP and the ICTAP may be used to identify well-qualified federal employees available for immediate employment.</td>
</tr>
<tr>
<td>Direct-Hire Authority</td>
<td>OPM may authorize agencies (government-wide or individually) to appoint candidates directly to positions without regard to 5 U.S.C. §§3309-3318. In approving the direct hire of candidates, OPM must determine that a severe shortage of candidates or a critical hiring need exists. OPM has approved the direct hire of medical officers, nurses, diagnostic radiologic technicians, and pharmacists at all grade levels and in all locations.</td>
</tr>
<tr>
<td>Senior Executive Service (SES)(^10) — Limited Emergency Appointments</td>
<td>Upon agency request, OPM may authorize agencies to appoint career employees to the SES for up to 18 months to meet a bona-fide, unanticipated, urgent need. The appointment cannot be renewed.</td>
</tr>
<tr>
<td>Reemploying Annuities and Waiving Dual Compensation Restrictions</td>
<td>Upon agency request, OPM may authorize agencies to reemploy retirees. OPM, upon request, will grant agency heads the authority to waive the restrictions that prohibit federal retirees from getting the full combined value of their salary and annuity upon reemployment.</td>
</tr>
<tr>
<td>Reemploying Recipients of Voluntary Separation Incentives (commonly referred to as buyouts)</td>
<td>Upon agency request, OPM may authorize agencies to rehire federal employees who retired or separated with buyouts. Laws authorizing buyouts may have included a requirement that the buyout be repaid upon government reemployment. Agencies may request that OPM grant a repayment waiver.</td>
</tr>
<tr>
<td>Premium Pay for Emergency Overtime Work</td>
<td>Agencies may make exceptions to the biweekly limitation on premium pay. When an agency head determines that an emergency posing a direct threat to life or property exists, an employee performing overtime work in connection with the emergency will generally be covered by an annual, rather than a biweekly, pay limitation. Under the annual limitation, the total of basic and premium pay in a calendar year may not exceed the greater of the annual rate of pay for GS-15, step 10 (including any applicable special rate or locality rate), or Level V of the Executive Schedule.</td>
</tr>
</tbody>
</table>

\(^8\) The Reemployment Priority List (RPL) is the mechanism agencies use to give reemployment consideration to their former competitive service employees separated by reduction in force (RIF) or fully recovered from a compensable injury after more than one year.

\(^9\) Competitive Service positions require applicants to compete against one another in open competition based on job-related criteria to obtain employment. The positions are subject to the civil service laws codified at Title 5 of the United States Code and to oversight by the Office of Personnel Management. Employees are to be selected from among the best-qualified and without discrimination.

\(^10\) Senior Executive Service (SES) positions are classified above grade 15 of the General Schedule or in level IV or V of the Executive Schedule, or an equivalent position, and are not filled by presidential appointment by and with the advice and consent of the Senate. Members of the SES, among other duties, direct the work of an organizational unit and exercise important policymaking, policy-determining, or other executive functions. (5 U.S.C. §3132(a)(2))
Recruitment Incentives
Agencies may pay recruitment incentives to newly appointed employees (or employees reappointed after a 90-day break-in service) after determining that it is likely to be difficult to fill positions in the absence of such incentives. A service agreement of at least six months is required.11

Relocation Incentives
Agencies may pay relocation incentives to current employees who must permanently or temporarily relocate to accept positions in different geographic areas after determining that it is likely to be difficult to fill positions in the absence of such incentives. Establishment of residency and a service agreement for a specified period are required. Generally, relocation incentives are approved on a case-by-case basis.12

Retention Incentives
Agencies may pay retention incentives to current employees after determining that the employees unusually high or unique qualifications or a special need for the employees services makes it essential to retain the employees who likely would leave federal service in the absence of such incentives. Groups or categories of employees may be authorized to receive retention incentives.13

Emergency Leave Transfer Program14
OPM, at the President’s direction, may establish an emergency leave transfer program to assist employees affected by an emergency or major disaster (including floods, earthquakes, tornadoes, and bombings) which severely adversely affects substantial numbers of employees. Under the program, executive agency employees could donate unused annual leave to affected employees in their own or other agencies. The President has authorized OPM to establish such an emergency leave transfer program to assist employees affected by Hurricane Katrina if such is needed.15 Legislation authorizing emergency leave transfer for the judicial branch was enacted as P.L. 109-229 on May 31, 2006.16

---


16 In the wake of President Bush’s authorization for emergency leave transfer in the executive branch, the Judicial Conference of the United States requested legislative authority for the same (continued...)
Pending Legislation on Telework

The Telework Enhancement Act of 2007 (S. 1000, as ordered to be reported) and the Telework Improvements Act of 2008 (H.R. 4106, as passed by the House of Representatives) are pending in the 110th Congress. Two Senate amendments that

16 (...continued)


19 Senator Ted Stevens, for himself and Senator Mary Landrieu, introduced S. 1000 on March 27, 2007, and it was referred to the Senate Committee on Homeland Security and Governmental Affairs. The Subcommittee on Oversight of Government Management, the Federal Workforce, and the District of Columbia conducted a hearing on the bill on June 12, 2007. The full committee marked up the bill and ordered it to be reported, by voice vote, on November 14, 2007. Representative Danny Davis, for himself and Representatives John Sarbanes, Henry Waxman, Tom Davis, Frank Wolf, and Elijah Cummings, and Delegate Eleanor Holmes Norton, introduced H.R. 4106 on November 7, 2007, and it was referred to the House Committee on Oversight and Government Reform. A day before the bill’s introduction, on November 6, 2007, the House Subcommittee on Federal Workforce, Postal Service, and the District of Columbia conducted a

(continued...)

<table>
<thead>
<tr>
<th>Flexibility and Authority</th>
<th>Brief Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Telework [P.L. 106-346, §359, Oct. 23, 2000; 114 Stat. 1356, at 1356A-36; 5 U.S.C. §6120 note]</td>
<td>OPM encourages greater use of telework — working at a location other than an employee’s “official duty station” — during emergency situations to ensure continuity of operations and to reduce fuel consumption and traffic congestion. A telework center is one type of alternative worksite housing workstations that can be rented by employers. The General Services Administration (GSA) operates telework centers in Maryland, Virginia, and West Virginia.</td>
</tr>
</tbody>
</table>
include provisions to enhance telework were offered to S. 3268, the Stop Excessive Energy Speculation Act of 2008, and also are pending. The legislation and amendments would require executive branch agency heads to establish policies under which employees (with some exceptions) could be eligible to participate in telework. S. 1000 also would cover legislative branch employees. The policies would have to be developed within 180 days after the act’s enactment. Under the legislation, employee participation in telework would be required to the maximum extent possible without diminishing either employee performance or agency operations. In the executive branch, employees not eligible for telework generally would include those whose duties involve the daily handling of secure materials, contact with persons, the use of special equipment, or physical presence. The bills could require Telework Managing Officers to be appointed; training to be provided to managers, supervisors, and employees; and various reports to be prepared.

H.R. 4106 would require the Comptroller General (CG) to evaluate the telework policies in the executive branch. The CG would be required to issue an annual report that would provide, for each agency, information on the number of employees overall, and the number and percentage of employees, (1) eligible to telework; (2) who teleworked an average of at least once a week on a regular basis, determined based on time spent actually teleworking; and (3) who teleworked an average of at least 20% of the hours that they worked in every two administrative workweeks, determined based on time spent teleworking. In addition, the report would include information on the number and percentage of employees who teleworked at least once a month on a regular basis, determined based on time spent teleworking; the number and percentage of employees who were not authorized to telework and the reasons why not; the number and percentage of employees who were authorized to telework and then later stopped teleworking, including the reasons why they stopped and whether stopping was voluntary or due to other factors, such as office coverage needs or productivity; and the extent to which barriers to telework have been identified and eliminated. Information on telework’s impact (if any) on an agency’s recruitment and retention of employees and on the performance of an agency’s employees, and the level of employee satisfaction with an agency’s telework policies, based on feedback, would be included in the report. H.R. 4106 also would require the CG to determine the compliance of agencies with the act and identify best practices in telework programs.

19 (...continued)

...