

Office of Personnel Management

§ 550.163

of section 5545(c) of title 5, United States Code, and this subpart.

[33 FR 12458, Sept. 4, 1968, as amended at 35 FR 6311, Apr. 18, 1970]

§ 550.162 Payment provisions.

(a) Except as otherwise provided in this section, an employee's premium pay on an annual basis under § 550.141 or § 550.151 begins on the date that he enters on duty in the position concerned for purposes of basic pay, and ceases on the date that he ceases to be paid basic pay in the position.

(b) When an employee is in a position in which conditions warranting premium pay on an annual basis under § 550.141 or § 550.151 exist only during a certain period of the year, such as during a given season, an agency may pay the employee premium pay on an annual basis only during the period he is subject to these conditions.

(c) An agency may continue to pay an employee premium pay on an annual basis under § 550.141 or § 550.151:

(1) For a period of not more than 10 consecutive prescribed workdays on temporary assignment to other duties in which conditions do not warrant payment of premium pay on an annual basis, and for a total of not more than 30 workdays in a calendar year while on such a temporary assignment.

(2) For an aggregate period of not more than 60 prescribed workdays on temporary assignment to a formally approved program for advanced training duty directly related to duties for which premium pay on an annual basis is payable.

An agency may not continue to pay an employee premium pay on an annual basis under this paragraph for more than 60 workdays in a calendar year.

(d) When an employee is not entitled to premium pay on an annual basis under § 550.141, he is entitled to be paid for overtime, night, holiday, and Sunday work in accordance with other sections of this subpart.

(e) An agency shall continue to pay an employee premium pay on an annual basis under § 550.141 or § 550.151 while he is on leave with pay during a period in which premium pay on an annual basis is payable under paragraphs (a), (b), and (c) of this section.

(f) Unless an agency discontinues authorization of premium pay under § 550.141 or § 550.151 for all similar positions, it may not discontinue authorization of such premium pay for an individual employee's position—

(1) During a period of paid leave elected by the employee and approved by the agency in lieu of benefits under the Federal Employees' Compensation Act, as amended (5 U.S.C. 8101 *et seq.*), following a job-related injury;

(2) During a period of continuation of pay under the Federal Employees' Compensation Act, as amended (5 U.S.C. 8101 *et seq.*);

(3) During a period of leave without pay, if the employee is in receipt of benefits under the Federal Employees' Compensation Act, as amended (5 U.S.C. 8101 *et seq.*). (Note: No premium pay is payable during leave without pay; however, the continued authorization may prevent a reduction in an employee's retirement benefits if the leave without pay period occurs during the employee's high-3 average salary period.)

[33 FR 12458, Sept. 4, 1968, as amended at 35 FR 6312, Apr. 18, 1970; 64 FR 69175, Dec. 10, 1999]

§ 550.163 Relationship to other payments.

(a) An employee receiving premium pay on an annual basis under § 550.141 may not receive premium pay for regular overtime work or work at night or on a holiday or on Sunday under any other section of this subpart. An agency shall pay the employee in accordance with §§ 550.113 and 550.114 for irregular or occasional overtime work.

(b) An employee receiving premium pay on an annual basis under § 550.151 may not receive premium pay for irregular or occasional overtime work under any other section of this subpart. An agency shall pay the employee in accordance with other sections of this subpart for regular overtime work, and work at night, on Sundays, and on holidays.

(c) Overtime, night, holiday, or Sunday work paid under any statute other than subchapter V of chapter 55 of title 5, United States Code, is not a basis for payment of premium pay on an annual basis under § 550.141 or § 550.151.

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(d) (1) Except as provided in paragraph (d)(2) of this section, premium pay on an annual basis under § 550.141 or § 550.151 is not base pay and is not included in the base used in computing foreign and nonforeign allowances and differentials, or any other benefits or deductions that are computed on base pay alone.

(2) Premium pay on an annual basis under § 550.141 is base pay for the purpose of section 5595(c), section 8114(e), section 8331(3), and section 8704(c) of title 5, United States Code.

(e) Premium pay on an annual basis under § 550.141 or § 550.151 may not be paid to a criminal investigator receiving availability pay under § 550.181.

[33 FR 12458, Sept. 4, 1968, as amended at 33 FR 19897, Dec. 28, 1968; 35 FR 6312, Apr. 18, 1970; 59 FR 66151, Dec. 23, 1994]

§ 550.164 Construction and computation of existing aggregate rates.

(a) Pursuant to section 208(b) of the act of September 1, 1954 (68 Stat. 1111), nothing in this subpart relating to the payment of premium pay on an annual basis may be construed to decrease the existing aggregate rate of pay of an employee on the rolls of an agency immediately before the date section 5545(c) of title 5, United States Code, is made applicable to him by administrative action.

(b) When it is necessary to determine an employee's existing aggregate rate of pay (referred to in this section as existing aggregate rate), an agency shall determine it on the basis of the earnings the employee would have received over an appropriate period (generally 1 year) if his tour of duty immediately before the date section 5545(c) of title 5, United States Code, is made applicable to him had remained the same. In making this determination, basic pay and premium pay for overtime, night, holiday, and Sunday work are included in the earnings the employee would have received. Premium pay for irregular or occasional overtime work may be included only if it was of a significant amount in the past and the conditions which required it are expected to continue.

(c) An agency shall recompute an employee's rate of pay based on premium

pay on an annual basis when he received subsequent increases in his rate of basic pay in order to determine whether or not the employee should continue to receive an existing aggregate rate or be paid premium pay on an annual basis.

(d) Except as otherwise provided by statute, an agency may not use subsequent increases in an employee's rate of basic pay to redetermine or increase the employee's existing aggregate rate. However, these increases shall be used for other pay purposes, such as the computation of retirement deductions and annuities, payment of overseas allowances and post differentials, and determination of the highest previous rate under part 531 of this chapter.

(e) When an agency elects to pay an employee premium pay on an annual basis, he is entitled to continue to receive hourly premium pay properly payable under sections 5542, 5543, 5545 (a) and (b), and 5546 of title 5, United States Code, until his base pay plus premium pay on an annual basis equals or exceeds his existing aggregate rate. When this occurs, the agency shall pay the employee his base pay plus premium pay on an annual basis.

(f) Except when terminated under paragraph (e) of this section, an agency shall continue to pay an employee an existing aggregate rate so long as:

(1) He remains in a position to which § 550.141, § 550.151, or § 550.162(c) is applicable;

(2) His tour of duty does not decrease in length; and

(3) He continues to perform equivalent night, holiday, and irregular or occasional overtime work.

(g) If an employee who is entitled to an existing aggregate rate moves from one position to another in the same agency, both of which are within the scope of section 5545(c) of title 5, United States Code, he is entitled to be paid an existing aggregate rate in the new position such as he would have received had he occupied that position when the agency elected to make section 5545(c) applicable to it.