

SERVICE AGREEMENTS ENTERED INTO ON OR AFTER
DECEMBER 29, 1979; ADVANCE AUTHORIZATION

Section 5 of Pub. L. 96-166 provided that any service agreement entered into on or after Dec. 29, 1979, pursuant to this section, as amended by section 2 of Pub. L. 96-166, shall be effective only to such extent or in such amounts as are provided in advance in appropriation Acts.

TIME OF ENTRY INTO ALLOWANCE AGREEMENTS AND
FOR COMMENCEMENT OF ALLOWANCE

Section 2(c) of Pub. L. 95-603 provided that no agreement be entered into under this section before 60th day after Nov. 6, 1978, and that no agreement provide for payment of any allowance under such section for any pay period beginning before later of such 60th day, or Oct. 1, 1978.

EX. ORD. NO. 12109. DELEGATION OF AUTHORITY TO
DIRECTOR OF OFFICE OF PERSONNEL MANAGEMENT

Ex. Ord. No. 12109, Dec. 28, 1978, 44 F.R. 1067, provided: By the authority vested in me as President of the United States of America by Section 5948 of Title 5 and Section 301 of Title 3 of the United States Code, it is hereby ordered as follows:

1-101. The Director of the Office of Personnel Management is hereby designated and empowered to exercise, in consultation with the Director of the Office of Management and Budget, the authority of the President under Section 5948 of Title 5 of the United States Code, to prescribe regulations, criteria, and conditions with regard to the payment of comparability allowances to recruit and retain certain Federal physicians.

1-102. Until the Office of Personnel Management is established (on or before January 1, 1979), pursuant to Reorganization Plan No. 2 of 1978 (43 FR 36037) [set out under section 1101 of this title], the Civil Service Commission shall exercise the authority delegated under this Order to the Director of the Office of Personnel Management.

JIMMY CARTER.

§ 5949. Hostile fire pay

(a) The head of an Executive agency may pay an employee hostile fire pay at the rate of \$150 for any month in which the employee was—

- (1) subject to hostile fire or explosion of hostile mines;
- (2) on duty in an area in which the employee was in imminent danger of being exposed to hostile fire or explosion of hostile mines and in which, during the period on duty in that area, other employees were subject to hostile fire or explosion of hostile mines; or
- (3) killed, injured, or wounded by hostile fire, explosion of a hostile mine, or any other hostile action.

(b) An employee covered by subsection (a)(3) who is hospitalized for the treatment of his or her injury or wound may be paid hostile fire pay under this section for not more than three additional months during which the employee is so hospitalized.

(c) An employee may be paid hostile fire pay under this section in addition to other pay and allowances to which entitled, except that an employee may not be paid hostile fire pay under this section for periods of time during which the employee receives payment under section 5925 of this title because of exposure to political violence or payment under section 5928 of this title.

(Added Pub. L. 107-107, div. A, title XI, §1111(a), Dec. 28, 2001, 115 Stat. 1238.)

EFFECTIVE DATE

Pub. L. 107-107, div. A, title XI, §1111(c), Dec. 28, 2001, 115 Stat. 1238, as amended by Pub. L. 108-375, div. A, title X, §1084(h)(3), Oct. 28, 2004, 118 Stat. 2064, provided that: "Section 5949 of title 5, United States Code, as added by subsection (a), is effective as if enacted into law on September 11, 2001, and may be applied with respect to any hostile action that took place on or after that date."

Subpart E—Attendance and Leave

CHAPTER 61—HOURS OF WORK

SUBCHAPTER I—GENERAL PROVISIONS

- Sec. 6101. Basic 40-hour workweek; work schedules; regulations.
- [6102. Repealed.]
- 6103. Holidays.
- 6104. Holidays; daily, hourly, and piece-work basis employees.
- 6105. Closing of Executive departments.
- 6106. Time clocks; restrictions.

SUBCHAPTER II—FLEXIBLE AND COMPRESSED
WORK SCHEDULES

- 6120. Purpose.
- 6121. Definitions.
- 6122. Flexible schedules; agencies authorized to use.
- 6123. Flexible schedules; computation of premium pay.
- 6124. Flexible schedules; holidays.
- 6125. Flexible schedules; time-recording devices.
- 6126. Flexible schedules; credit hours; accumulation and compensation.
- 6127. Compressed schedules; agencies authorized to use.
- 6128. Compressed schedules; computation of premium pay.
- 6129. Administration of leave and retirement provisions.
- 6130. Application of programs in the case of collective bargaining agreements.
- 6131. Criteria and review.
- 6132. Prohibition of coercion.
- 6133. Regulations; technical assistance; program review.

AMENDMENTS

1982—Pub. L. 97-221, §2(b), July 23, 1982, 96 Stat. 233, inserted "SUBCHAPTER I—GENERAL PROVISIONS" before item 6101 and inserted "SUBCHAPTER II—FLEXIBLE AND COMPRESSED WORK SCHEDULES" and items 6120 to 6133 after item 6106.

1972—Pub. L. 92-392, §7(b), Aug. 19, 1972, 86 Stat. 573, struck out item 6102 "Eight-hour day; 40-hour work week; wage-board employees".

SUBCHAPTER I—GENERAL PROVISIONS

AMENDMENTS

1982—Pub. L. 97-221, §2(a)(1), July 23, 1982, 96 Stat. 227, added subchapter I heading so as to designate existing provisions as "SUBCHAPTER I—GENERAL PROVISIONS".

§ 6101. Basic 40-hour workweek; work schedules; regulations

(a)(1) For the purpose of this subsection, "employee" includes an employee of the government of the District of Columbia and an employee whose pay is fixed and adjusted from time to time under section 5343 or 5349 of this title, or by a wage board or similar administrative authority serving the same purpose, but does not in-

clude an employee or individual excluded from the definition of employee in section 5541(2) of this title, except as specifically provided under this paragraph.

(2) The head of each Executive agency, military department, and of the government of the District of Columbia shall—

(A) establish a basic administrative workweek of 40 hours for each full-time employee in his organization; and

(B) require that the hours of work within that workweek be performed within a period of not more than 6 of any 7 consecutive days.

(3) Except when the head of an Executive agency, a military department, or of the government of the District of Columbia determines that his organization would be seriously handicapped in carrying out its functions or that costs would be substantially increased, he shall provide, with respect to each employee in his organization, that—

(A) assignments to tours of duty are scheduled in advance over periods of not less than 1 week;

(B) the basic 40-hour workweek is scheduled on 5 days, Monday through Friday when possible, and the 2 days outside the basic workweek are consecutive;

(C) the working hours in each day in the basic workweek are the same;

(D) the basic nonovertime workday may not exceed 8 hours;

(E) the occurrence of holidays may not affect the designation of the basic workweek; and

(F) breaks in working hours of more than 1 hour may not be scheduled in a basic workday.

(4) Notwithstanding paragraph (3) of this subsection, the head of an Executive agency, a military department, or of the government of the District of Columbia may establish special tours of duty, of not less than 40 hours, to enable employees to take courses in nearby colleges, universities, or other educational institutions that will equip them for more effective work in the agency. Premium pay may not be paid to an employee solely because his special tour of duty established under this paragraph results in his working on a day or at a time of day for which premium pay is otherwise authorized.

(5) The Architect of the Capitol may apply this subsection to employees under the Office of the Architect of the Capitol or the Botanic Garden. The Librarian of Congress may apply this subsection to employees under the Library of Congress.

(b)(1) For the purpose of this subsection, “agency” and “employee” have the meanings given them by section 5541 of this title.

(2) To the maximum extent practicable, the head of an agency shall schedule the time to be spent by an employee in a travel status away from his official duty station within the regularly scheduled workweek of the employee.

(c) The Office of Personnel Management may prescribe regulations, subject to the approval of the President, necessary for the administration of this section insofar as this section affects employees in or under an Executive agency.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 514; Pub. L. 90-83, §1(43), Sept. 11, 1967, 81 Stat. 207; Pub. L.

92-392, §6, Aug. 19, 1972, 86 Stat. 573; Pub. L. 94-183, §2(25), Dec. 31, 1975, 89 Stat. 1058; Pub. L. 95-454, title IX, §906(a)(2), Oct. 13, 1978, 92 Stat. 1224.)

HISTORICAL AND REVISION NOTES
1966 ACT

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
(a), (b)	5 U.S.C. 944(a).	June 30, 1945, ch. 212, § 604(a), 59 Stat. 303. Sept. 1, 1954, ch. 1208, § 210, 68 Stat. 1112.
(c)	5 U.S.C. 944(d) (less last 27 words).	June 30, 1945, ch. 212, § 604(e) (less last 27 words), 59 Stat. 304.

In subsection (a), the words “in the departmental and the field services” are omitted as unnecessary.

In subsections (a) and (b), the words “an Executive agency, a military department” are coextensive with and substituted for “the several departments and independent establishments and agencies in the executive branch, including Government-owned or controlled corporations” and “such department, establishment, or agency” in view of the definitions in sections 105 and 102. The words “a military department” are included to preserve the application of the source law. Before enactment of the National Security Act Amendments of 1949 (63 Stat. 578), the Department of the Army, the Department of the Navy, and the Department of the Air Force were Executive departments. The National Security Act Amendments of 1949 established the Department of Defense as an Executive Department including the Department of the Army, the Department of the Navy, and the Department of the Air Force as military departments, not as Executive departments. However, the source law for this section which was in effect in 1949, remained applicable to the Secretaries of the military departments by virtue of section 12(g) of the National Security Act Amendments of 1949 (63 Stat. 591), which is set out in the reviser’s note for section 301.

Subsection (d) is added on authority of former sections 901(d) and 2358(a) (as applicable to the Federal Employees Pay Act of 1945, as amended) which are carried into section 5541, and to include individuals employed by the government of the District of Columbia as they are not included in the definition of “employee” in section 2105.

Subsection (e) is added on authority of former section 945, which is carried into section 5548. The words “an Executive agency” are substituted for “the executive branch of the Government” to conform to the definition in section 105. Applicability of this section to employees of the General Accounting Office is based on former section 933a.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

1967 ACT

<i>Section of title 5</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
6101(a)	5:6101(a)-(d).	[None.]
(1)-(3), (5). 6101(a)(4) ...	5 App.: 944(a)(3).	June 29, 1966, Pub. L. 89-478, 80 Stat. 231.
6101(b)	5 App.: 912b (last sentence).	Oct. 29, 1965, Pub. L. 89-301, § 16, 79 Stat. 1123.
6101(c)	5:6101(e).	[None.]

In subsection (a)(4), the words “without regard to the requirements of such paragraph” are omitted as redundant in view of the words “notwithstanding paragraph (3) of this subsection” at the beginning thereof. The words “an Executive agency, a military department” are coextensive with and substituted for “each such department, establishment, or agency” and to conform to subsections (a)(2) and (a)(3). The words “officers” and

“officer” are omitted as included in “employees” and “employee”. The word “pay” is substituted for “compensation” to conform to the style of title 5, United States Code.

Subsection (b)(1) is added on authority of former sections 901 and 902 of title 5, which are now codified in 5 U.S.C. 5541.

In subsection (b)(2), the words “head of an agency” are substituted for “head of any department, independent establishment, or agency, including Government-owned or controlled corporations, or of the municipal government of the District of Columbia, or the head of any legislative or judicial agency to which this title applies” to conform to the definition of “agency” in 5 U.S.C. 5541, which is made applicable to this subsection by subsection (b)(1). The word “officer” is omitted as included in “employee”.

AMENDMENTS

1978—Subsec. (c). Pub. L. 95-454 substituted “Office of Personnel Management” for “Civil Service Commission”.

1975—Subsec. (a)(4). Pub. L. 94-183 substituted “educational” for “education”.

1972—Subsec. (a)(1). Pub. L. 92-392 defined “employee” to include an employee whose pay is fixed and adjusted from time to time under section 5343 or 5349 of this title or by a wage board or similar administrative authority serving the same purpose and exclude certain employees “except as specifically provided under this paragraph”.

TERMINATION DATE OF 1982 AMENDMENT

Pub. L. 97-221, § 5, July 23, 1982, 96 Stat. 234, as amended by Pub. L. 99-69, July 22, 1985, 99 Stat. 167; Pub. L. 99-109, Sept. 30, 1985, 99 Stat. 482; Pub. L. 99-140, Oct. 31, 1985, 99 Stat. 563, which had provided that enactment of subchapter II of this chapter, amendment of sections 3401 and 6106 of this title, and enactment of provisions set out as notes under sections 6101 and 6106 of this title, should not be in effect after Dec. 31, 1985, was repealed by Pub. L. 99-190, § 140, Dec. 19, 1985, 99 Stat. 1324, and also by Pub. L. 99-196, Dec. 23, 1985, 99 Stat. 1350.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as a note under section 1101 of this title.

EFFECTIVE DATE OF 1972 AMENDMENT

Amendment by Pub. L. 92-392 effective on first day of first applicable pay period beginning on or after 90th day after Aug. 19, 1972, see section 15(a) of Pub. L. 92-392, set out as an Effective Date note under section 5341 of this title.

SHORT TITLE OF 1982 AMENDMENT

Pub. L. 97-221, § 1, July 23, 1982, 96 Stat. 227, provided: “That this Act [enacting subchapter II of this chapter, amending sections 3401 and 6106 of this title, and enacting provisions set out as notes under this section and section 6106 of this title] may be cited as the ‘Federal Employees Flexible and Compressed Work Schedules Act of 1982.’”

DELEGATION OF FUNCTIONS

Functions vested in Office of Personnel Management under this section insofar as it affects officers and employees in or under the executive branch of the government to be performed without approval of President, see section 1(1) of Ex. Ord. No. 11228, June 14, 1965, 30 F.R. 7739, set out as a note under section 301 of Title 3, The President.

FEDERAL EMPLOYEES FLEXIBLE AND COMPRESSED WORK SCHEDULES

Pub. L. 95-390, §§ 1-306, Sept. 29, 1978, 92 Stat. 755-762, as amended by Pub. L. 97-160, Mar. 26, 1982, 96 Stat. 21, provided that:

“SHORT TITLE

“SECTION 1. This Act [enacting section 5550a of this title and this note] may be cited as the ‘Federal Employees Flexible and Compressed Work Schedules Act of 1978’.

“CONGRESSIONAL FINDINGS

“SEC. 2. The Congress finds that new trends in the usage of 4-day workweeks, flexible work hours, and other variations in workday and workweek schedules in the private sector appear to show sufficient promise to warrant carefully designed, controlled, and evaluated experimentation by Federal agencies to determine whether and in what situations such varied work schedules can be successfully used by Federal agencies on a permanent basis. The Congress also finds that there should be sufficient flexibility in the work schedules of Federal employees to allow such employees to meet the obligations of their faith.

“DEFINITIONS

“SEC. 3. For purposes of this Act (other than title IV) [this note]—

“(1) the term ‘agency’ means an Executive agency and a military department (as such terms are defined in sections 105 and 102, respectively, of title 5, United States Code);

“(2) the term ‘employ’ has the meaning given it by section 2105 of title 5, United States Code;

“(3) the term ‘Commission’ means the United States Civil Service Commission; and

“(4) the term ‘basic work requirement’ means the number of hours, excluding overtime hours, which an employee is required to work or is required to account for by leave or otherwise.

“EXPERIMENTAL PROGRAMS

“SEC. 4. (a)(1) Within 180 days after the effective date of this section, and subject to the requirements of section 302 and the terms of any written agreement referred to in section 302(a), the Commission shall establish a program which provides for the conducting of experiments by the Commission under titles I and II of this Act. Such experimental program shall cover a sufficient number of positions throughout the executive branch, and a sufficient range of worktime alternatives, as to provide an adequate basis on which to evaluate the effectiveness and desirability of permanently maintaining flexible or compressed work schedules within the executive branch.

“(2) Each agency may conduct one or more experiments under titles I and II of this Act. Such experiments shall be subject to such regulations as the Commission may prescribe under section 305 of this Act.

“(b) The Commission shall, not later than 90 days after the effective date of this section, establish a master plan which shall contain guidelines and criteria by which the Commission will study and evaluate experiments conducted under titles I and II of this Act. Such master plan shall provide for the study and evaluation of experiments within a sample of organizations of different size, geographic location, and functions and activities, sufficient to insure adequate evaluation of the impact of varied work schedules on—

“(1) the efficiency of Government operations;

“(2) mass transit facilities and traffic;

“(3) levels of energy consumption;

“(4) service to the public;

“(5) increased opportunities for full-time and part-time employment; and

“(6) individuals and families generally.

“(c) The Commission shall provide educational material, and technical aids and assistance, for use by an agency before and during the period such agency is conducting experiments under this Act [enacting section 5550a of this title and this note].

“(d) If the head of an agency determines that the implementation of an experimental program referred to in subsection (a) would substantially disrupt the agency

in carrying out its functions, such agency head shall request the Commission to exempt such agency from the requirements of any experiment conducted by the Commission under subsection (a). Such request shall be accompanied by a report detailing the reasons for such determination. The Commission shall exempt an agency from such requirements only if it finds that including the agency within the experiment would not be in the best interest of the public, the Government, or the employees. The filing of such a request with the Commission shall exclude the agency from the experiment until the Commission has made its determination or until 180 days after the date the request is filed, whichever first occurs.

“TITLE I—FLEXIBLE SCHEDULING OF WORK HOURS

“DEFINITIONS

“SEC. 101. For purposes of this title—

“(1) the term ‘credit hours’ means any hours, within a flexible schedule established under this title, which are in excess of an employee’s basic work requirement and which the employee elects to work so as to vary the length of a workweek or a workday; and

“(2) the term ‘overtime hours’ means all hours in excess of 8 hours in a day or 40 hours in a week which are officially ordered in advance, but does not include credit hours.

“FLEXIBLE SCHEDULING EXPERIMENTS

“SEC. 102. (a) Notwithstanding section 6101 of title 5, United States Code, experiments may be conducted in agencies [agencies] to test flexible schedules which include—

“(1) designated hours and days during which an employee on such a schedule must be present for work; and

“(2) designated hours during which an employee on such a schedule may elect the time of such employee’s arrival at and departure from work, solely for such purpose or, if and to the extent permitted, for the purpose of accumulating credit hours to reduce the length of the workweek or another workday.

An election by an employee referred to in paragraph (2) shall be subject to limitations generally prescribed to ensure that the duties and requirements of the employee’s position are fulfilled.

“(b) Notwithstanding any other provision of this Act [enacting section 5550a of this title and this note], but subject to the terms of any written agreement under section 302(a)—

“(1) any experiment under subsection (a) of this section may be terminated by the Commission if it determines that the experiment is not in the best interest of the public, the Government, or the employees; or

“(2) if the head of an agency determines that any organization within the agency which is participating in an experiment under subsection (a) is being substantially disrupted in carrying out its functions or is incurring additional costs because of such participation, such agency head may—

“(A) restrict the employees’ choice of arrival and departure time,

“(B) restrict the use of credit hours, or

“(C) exclude from such experiment any employee or group of employees.

“(c) Experiments under subsection (a) shall terminate not later than the first day of the second pay period beginning after July 4, 1982.

“COMPUTATION OF PREMIUM PAY

“SEC. 103. (a) For purposes of determining compensation for overtime hours in the case of an employee participating in an experiment under section 102—

“(1) the head of an agency may, on request of the employee, grant the employee compensatory time off

in lieu of payment for such overtime hours, whether or not irregular or occasional in nature and notwithstanding the provisions of sections 5542(a), 5543(a)(1), 5544(a), and 5550 of title 5, United States Code, section 4107(e)(5) of title 38, United States Code section 7 of the Fair Labor Standards Act, as amended [section 207 of Title 29, Labor], or any other provision of law; or

“(2) the employee shall be compensated for such overtime hours in accordance with such provisions, as applicable.

“(b) Notwithstanding the provisions of law referred to in paragraph (1) of subsection (a), an employee shall not be entitled to be compensated for credit hours worked except to the extent authorized under section 106 or to the extent such employee is allowed to have such hours taken into account with respect to the employee’s basic work requirement.

“(c)(1) Notwithstanding section 5545(a) of title 5, United States Code, premium pay for nightwork will not be paid to an employee otherwise subject to such section solely because the employee elects to work credit hours, or elects a time of arrival or departure, at a time of day from which such premium pay is otherwise authorized; except that—

“(A) if an employee is on a flexible schedule under which—

“(i) the number of hours during which such employee must be present for work, plus

“(ii) the number of hours during which such employee may elect to work credit hours or elect the time of arrival at and departure from work, which occur outside of the night work hours designated in or under such section 5545(a) total less than 8 hours, such premium pay shall be paid for those hours which, when combined with such total, do not exceed 8 hours, and

“(B) if an employee is on a flexible schedule under which the hours that such employee must be present for work include any hours designated in or under such section 5545(a), such premium pay shall be paid for such hours so designated.

“(2) Notwithstanding section 5343(f) of title 5, United States Code, and 4107(e)(2) of title 38, United States Code, night differential will not be paid to any employee otherwise subject to either of such sections solely because such employee elects to work credit hours, or elects a time of arrival or departure, at a time of day for which night differential is otherwise authorized; except that such differential shall be paid to an employee on a flexible schedule under this title—

“(A) in the case of an employee subject to such section 5343(f), for which all or a majority of the hours of such schedule for any day fall between the hours specified in such section, or

“(B) in the case of an employee subject to such section 4107(e)(2), for which 4 hours of such schedule fall between the hours specified in such section.

“HOLIDAYS

“SEC. 104. Notwithstanding sections 6103 and 6104 of title 5, United States Code, if any employee on a flexible schedule under this title is relieved or prevented from working on a day designated as a holiday by Federal statute or Executive order, such employee is entitled to pay with respect to that day for 8 hours (or, in the case of a part-time employee, an appropriate portion of the employee’s biweekly basic work requirement as determined under regulations prescribed by the Commission).

“TIME-RECORDING DEVICES

“SEC. 105. Notwithstanding section 6106 of title 5, United States Code, the Commission or an agency may use recording clocks as part of its experiments under this title.

“CREDIT HOURS; ACCUMULATION AND COMPENSATION

“SEC. 106. (a) Subject to any limitation prescribed by the Commission or the agency, a full-time employee on

a flexible schedule can accumulate not more than 10 credit hours, and a part-time employee can accumulate not more than one-eighth of the hours in such employee's biweekly basic work requirement, for carryover from a biweekly pay period to a succeeding biweekly pay period for credit to the basic work requirement for such period.

“(b) Any employee who is on a flexible schedule experiment under this title and who is no longer subject to such an experiment shall be paid at such employee's then current rate of basic pay for—

“(1) in the case of a full-time employee, not more than 10 credit hours accumulated by such employee, or

“(2) in the case of a part-time employee, the number of credit hours (not in excess of one-eighth of the hours in such employee's biweekly basic work requirement) accumulated by such employee.

“TITLE II—4-DAY WEEK AND OTHER COMPRESSED WORK SCHEDULES

“DEFINITIONS

“SEC. 201. For purposes of this title—

“(1) the term ‘compressed schedule’ means—

“(A) in the case of a full-time employee, an 80-hour biweekly basic work requirement which is scheduled for less than 10 workdays, and

“(B) in the case of a part-time employee, a biweekly basic work requirement of less than 80 hours which is scheduled for less than 10 workdays; and

“(2) the term ‘overtime hours’ means any hours in excess of those specified hours which constitute the compressed schedule.

“COMPRESSED SCHEDULE EXPERIMENTS

“SEC. 202. (a) Notwithstanding section 6101 of title 5, United States Code, experiments may be conducted in agencies to test a 4-day work-week or other compressed schedule.

“(b)(1) An employee in a unit with respect to which an organization of Government employees has not been accorded exclusive recognition shall not be required to participate in any experiment under subsection (a) unless a majority of the employees in such unit who, but for this paragraph, would be included in such experiment have voted to be so included.

“(2) Upon written request to any agency by an employee, the agency, if it determines that participation in an experiment under subsection (a) would impose a personal hardship on such employee, shall—

“(A) except such employee from such experiment; or

“(B) reassign such employee to the first position within the agency—

“(i) which becomes vacant after such determination,

“(ii) which is not included within such experiment,

“(iii) for which such employee is qualified, and

“(iv) which is acceptable to the employee.

A determination by an agency under this paragraph shall be made not later than 10 days after the day on which a written request for such determination is received by the agency.

“(c) Notwithstanding any other provision of this Act [enacting section 5550a of this title and this note], but subject to the terms of any written agreement under section 302(a), any experiment under subsection (a) may be terminated by the Commission, or the agency, if it determines that the experiment is not in the best interest of the public, the Government, or the employees.

“(d) Experiments under subsection (a) shall terminate not later than the end of the first day of the second pay period beginning after July 4, 1982.

“COMPUTATION OF PREMIUM PAY

“SEC. 203. (a) The provisions of sections 5542(a), 5544(a), and 5550(2) of title 5, United States Code, sec-

tion 4107(e)(5) of title 38, United States Code, section 7 of the Fair Labor Standards Act, as amended [section 207 of Title 29, Labor], or any other law, which relate to premium pay for overtime work, shall not apply to the hours which constitute a compressed schedule.

“(b) In the case of any full-time employee, hours worked in excess of the compressed schedule shall be overtime hours and shall be paid for as provided by whichever statutory provisions referred to in subsection (a) are applicable to the employee. In the case of any part-time employee on a compressed schedule, overtime pay shall begin to be paid after the same number of hours of work after which a full-time employee on a similar schedule would begin to receive overtime pay.

“(c) Notwithstanding section 5544(a), 5546(a), or 5550(1) of title 5, United States Code, or any other applicable provision of law, in the case of any full-time employee on a compressed schedule who performs work (other than overtime work) on a tour of duty for any workday a part of which is performed on a Sunday, such employee is entitled to pay for work performed during the entire tour of duty at the rate of such employee's basic pay, plus premium pay at a rate equal to 25 percent of such basic pay rate.

“(d) Notwithstanding section 5546(b) of title 5, United States Code, an employee on a compressed schedule who performs work on a holiday designated by Federal statute or Executive order is entitled to pay at the rate of such employee's basic pay, plus premium pay at a rate equal to such basic pay rate, for such work which is not in excess of the basic work requirement of such employee for such day. For hours worked on such a holiday in excess of the basic work requirement for such day, the employee is entitled to premium pay in accordance with the provisions of section 5542(a) or 5544(a) of title 5, United States Code, as applicable, or the provisions of section 7 of the Fair Labor Standards Act, as amended [section 207 of Title 29, Labor], whichever provisions are more beneficial to the employee.

“TITLE III—ADMINISTRATIVE PROVISIONS

“ADMINISTRATION OF LEAVE AND RETIREMENT PROVISIONS

“SEC. 301. For purposes of administering sections 6303(a), 6304, 6307(a) and (c), 6323, 6326, and 8339(m) of title 5, United States Code, in the case of an employee who is in any experiment under title I or II, references to a day or workday (or to multiples or parts thereof) contained in such sections shall be considered to be references to 8 hours (or to the respective multiples or parts thereof).

“APPLICATION OF EXPERIMENTS IN THE CASE OF NEGOTIATED CONTRACTS

“SEC. 302. (a) Employees within a unit with respect to which an organization of Government employees has been accorded exclusive recognition shall not be included within any experiment under title I or II of this Act except to the extent expressly provided under a written agreement between the agency and such organization.

“(b) The Commission or an agency may not participate in a flexible or compressed schedule experiment under a negotiated contract which contains premium pay provisions which are inconsistent with the provisions of section 103 or 203 of this Act, as applicable.

“PROHIBITION OF COERCION

“SEC. 303. (a) An employee may not directly or indirectly intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce, any other employee for the purpose of interfering with—

“(1) such employee's rights under title I to elect a time of arrival or departure, to work or not to work credit hours, or to request or not to request compensatory time off in lieu of payment for overtime hours; or

“(2) such employee’s right under section 202(b)(1) to vote whether or not to be included within a compressed schedule experiment or such employee’s right to request an agency determination under section 202(b)(2).

For the purpose of the preceding sentence, the term ‘intimidate, threaten, or coerce’ includes, but is not limited to, promising to confer or conferring any benefit (such as appointment, promotion, or compensation), or effecting or threatening to effect any reprisal (such as deprivation of appointment, promotion, or compensation).

“(b) Any employee who violates the provisions of subsection (a) shall, upon a final order of the Commission, be—

“(1) removed from such employee’s position, in which event that employee may not thereafter hold any position as an employee for such period as the Commission may prescribe;

“(2) suspended without pay from such employee’s position for such period as the Commission may prescribe; or

“(3) disciplined in such other manner as the Commission shall deem appropriate.

The commission shall prescribe procedures to carry out this subsection under which an employee subject to removal, suspension, or other disciplinary action shall have rights comparable to the rights afforded an employee subject to removal or suspension under subchapter III of chapter 73 of title 5, United States Code, relating to certain prohibited political activities.

“REPORTS

“SEC. 304. Not later than 2½ years after the effective date of titles I and II of this Act, the Commission shall—

“(1) prepare an interim report containing recommendations as to what, if any, legislative or administrative action shall be taken based upon the results of experiments conducted under this Act [enacting section 5550a of this title and this note], and

“(2) submit copies of such report to the President, the Speaker of the House, and the President pro tempore of the Senate.

The Commission shall prepare a final report with regard to experiments conducted under this Act [enacting section 5550a of this title and this note] and shall submit copies of such report to the President, the Speaker of the House, and the President pro tempore of the Senate not later than 3 years after such effective date.

“REGULATIONS

“SEC. 305. The Commission shall prescribe regulations necessary for the administration of the foregoing provisions of this Act [enacting section 5550a of this title and this note].

“EFFECTIVE DATE

“SEC. 306. The provisions of section 4 and titles I and II of this Act shall take effect on the 180th day after—

“(1) the date of the enactment of this Act [Sept. 29, 1978], or

“(2) October 1, 1978, whichever date is later.”

SAVINGS PROVISIONS; 1982 AMENDMENT

Pub. L. 97-221, § 4, July 23, 1982, 96 Stat. 234, provided that:

“(a) Except as provided in subsection (b), each flexible or compressed work schedule established by any agency under the Federal Employees Flexible and Compressed Work Schedules Act of 1978 (5 U.S.C. 6101 note) in existence on the date of enactment of this Act [July 23, 1982] shall be continued by the agency concerned.

“(b)(1) During the 90-day period after the date of the enactment of this Act [July 23, 1982] any flexible or compressed work schedule referred to in subsection (a) may be reviewed by the agency concerned. If, in reviewing the schedule, the agency determines in writing that—

“(A) the schedule has reduced the productivity of the agency or the level of services to the public, or has increased the cost of the agency operations, and

“(B) termination of the schedule will not result in an increase in the cost of the agency operations (other than a reasonable administrative cost relating to the process of terminating a schedule), the agency shall, notwithstanding any provision of a negotiated agreement, immediately terminate such schedule and such termination shall not be subject to negotiation or to administrative review (except as the President may provide) or to judicial review.

“(2) If a schedule established pursuant to a negotiated agreement is terminated under paragraph (1), either the agency or the exclusive representative concerned may, by written notice to the other party within 90 days after the date of such termination, initiate collective bargaining pertaining to the establishment of another flexible or compressed work schedule under subchapter II of chapter 61 of title 5, United States Code, which would be effective for the unexpired portion of the term of the negotiated agreement.”

§ 6102. Repealed. Pub. L. 92-392, § 7(a), Aug. 19, 1972, 86 Stat. 573]

Section, Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 515, provided for eight-hour day and 40-hour workweek for wage-board employees. See sections 5544(a) and 6101(a)(1) of this title.

EFFECTIVE DATE OF REPEAL

Repeal effective on first day of first applicable pay period beginning on or after 90th day after Aug. 19, 1972, see section 15(a) of Pub. L. 92-392, set out as an Effective Date note under section 5341 of this title.

§ 6103. Holidays

(a) The following are legal public holidays:

New Year’s Day, January 1.

Birthday of Martin Luther King, Jr., the third Monday in January.

Washington’s Birthday, the third Monday in February.

Memorial Day, the last Monday in May.

Independence Day, July 4.

Labor Day, the first Monday in September.

Columbus Day, the second Monday in October.

Veterans Day, November 11.

Thanksgiving Day, the fourth Thursday in November.

Christmas Day, December 25.

(b) For the purpose of statutes relating to pay and leave of employees, with respect to a legal public holiday and any other day declared to be a holiday by Federal statute or Executive order, the following rules apply:

(1) Instead of a holiday that occurs on a Saturday, the Friday immediately before is a legal public holiday for—

(A) employees whose basic workweek is Monday through Friday; and

(B) the purpose of section 6309¹ of this title.

(2) Instead of a holiday that occurs on a regular weekly non-workday of an employee whose basic workweek is other than Monday through Friday, except the regular weekly non-workday administratively scheduled for the employee instead of Sunday, the workday immediately before that regular weekly non-

¹ See References in Text note below.

workday is a legal public holiday for the employee.

(3) Instead of a holiday that is designated under subsection (a) to occur on a Monday, for an employee at a duty post outside the United States whose basic workweek is other than Monday through Friday, and for whom Monday is a regularly scheduled workday, the legal public holiday is the first workday of the workweek in which the Monday designated for the observance of such holiday under subsection (a) occurs.

This subsection, except subparagraph (B) of paragraph (1), does not apply to an employee whose basic workweek is Monday through Saturday.

(c) January 20 of each fourth year after 1965, Inauguration Day, is a legal public holiday for the purpose of statutes relating to pay and leave of employees as defined by section 2105 of this title and individuals employed by the government of the District of Columbia employed in the District of Columbia, Montgomery and Prince Georges Counties in Maryland, Arlington and Fairfax Counties in Virginia, and the cities of Alexandria and Falls Church in Virginia. When January 20 of any fourth year after 1965 falls on Sunday, the next succeeding day selected for the public observance of the inauguration of the President is a legal public holiday for the purpose of this subsection.

(d)(1) For purposes of this subsection—

(A) the term “compressed schedule” has the meaning given such term by section 6121(5); and

(B) the term “adverse agency impact” has the meaning given such term by section 6131(b).

(2) An agency may prescribe rules under which employees on a compressed schedule may, in the case of a holiday that occurs on a regularly scheduled non-workday for such employees, and notwithstanding any other provision of law or the terms of any collective bargaining agreement, be required to observe such holiday on a workday other than as provided by subsection (b), if the agency head determines that it is necessary to do so in order to prevent an adverse agency impact.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 515; Pub. L. 90-363, §1(a), June 28, 1968, 82 Stat. 250; Pub. L. 94-97, Sept. 18, 1975, 89 Stat. 479; Pub. L. 98-144, §1, Nov. 2, 1983, 97 Stat. 917; Pub. L. 104-201, div. A, title XVI, §1613, Sept. 23, 1996, 110 Stat. 2739; Pub. L. 105-261, div. A, title XI, §1107, Oct. 17, 1998, 112 Stat. 2142.)

In subsection (a), former sections 87, 87a, and 87b are combined and restated for clarity. The names of all holidays are inserted for ready reference in a like manner to that used in former section 87c.

In subsection (c), the year “1965” is substituted for “1957”.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

REFERENCES IN TEXT

Section 6309 of this title, referred to in subsec. (b)(1)(B), was repealed by Pub. L. 94-183, §2(26), Dec. 31, 1975, 89 Stat. 1058.

AMENDMENTS

- 1998—Subsec. (b)(3). Pub. L. 105-261 added par. (3).
- 1996—Subsec. (d). Pub. L. 104-201 added subsec. (d).
- 1983—Subsec. (a). Pub. L. 98-144 inserted item relating to birthday of Martin Luther King, Jr.
- 1975—Subsec. (a). Pub. L. 94-97 changed Veterans Day from fourth Monday in October to November 11.
- 1968—Subsec. (a). Pub. L. 90-363 added Columbus Day, the second Monday in October, to the enumerated legal public holidays, and substituted provisions that Washington’s Birthday, Memorial Day, and Veterans Day are to be celebrated on the third Monday in February, the last Monday in May, and the fourth Monday in October, respectively, for provisions that the above mentioned public holidays are to be celebrated on February 22, May 30, and November 11, respectively.

EFFECTIVE DATE OF 1983 AMENDMENT

Section 2 of Pub. L. 98-144 provided that: “The amendment made by the first section of this Act [amending this section] shall take effect on the first January 1 that occurs after the two-year period following the date of the enactment of this Act [Nov. 2, 1983].”

EFFECTIVE DATE OF 1975 AMENDMENT

Pub. L. 94-97 provided that the amendment made by Pub. L. 94-97 is effective Jan. 1, 1978.

EFFECTIVE DATE OF 1968 AMENDMENT

Section 2 of Pub. L. 90-363 provided that: “The amendment made by subsection (a) of the first section of this Act [amending this section] shall take effect on January 1, 1971.”

REFERENCES IN LAWS OF THE UNITED STATES TO OBSERVANCES OF LEGAL PUBLIC HOLIDAYS

Section 1(b) of Pub. L. 90-363 provided that: “Any reference in a law of the United States (in effect on the effective date of the amendment made by subsection (a) of this section) [January 1, 1971] to the observance of a legal public holiday on a day other than the day prescribed for the observance of such holiday by section 6103(a) of title 5, United States Code, as amended by subsection (a), shall on and after such effective date be considered a reference to the day for the observance of such holiday prescribed in such amended section 6103(a).”

EXECUTIVE ORDER NO. 10358

Ex. Ord. No. 10358, June 9, 1952, 17 F.R. 1529, as amended by Ex. Ord. No. 11226, May 27, 1965, 30 F.R. 7213; Ex. Ord. No. 11272, Feb. 23, 1966, 31 F.R. 3111, which related to the observance of holidays, was revoked by Ex. Ord. No. 11582, Feb. 11, 1971, 36 F.R. 2957, set out below.

EX. ORD. NO. 11582. OBSERVANCE OF HOLIDAYS

Ex. Ord. No. 11582, Feb. 11, 1971, 36 F.R. 2957, provided: By virtue of the authority vested in me as President of the United States, it is hereby ordered as follows:

SECTION 1. Except as provided in section 7, this order shall apply to all executive departments, independent agencies, and Government corporations, including their field services.

HISTORICAL AND REVISION NOTES

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
(a)	5 U.S.C. 87. 5 U.S.C. 87a.	June 28, 1894, ch. 118, 28 Stat. 96. May 13, 1938, ch. 210, 52 Stat. 351. June 1, 1954, ch. 250, 68 Stat. 168.
	5 U.S.C. 87b.	Dec. 26, 1941, ch. 631, 55 Stat. 862.
(b)	5 U.S.C. 87c.	Sept. 22, 1959, Pub. L. 86-362, §§1, 2, 73 Stat. 643, 644.
(c)	[Uncodified].	Jan. 11, 1957, Pub. L. 85-1, 71 Stat. 3.

SEC. 2. As used in this order:

(a) *Holiday* means the first day of January, the third Monday of February, the last Monday of May, the fourth day of July, the first Monday of September, the second Monday of October, the fourth Monday of October, the fourth Thursday of November, the twenty-fifth day of December, or any other calendar day designated as a holiday by Federal statute or Executive order.

(b) *Workday* means those hours which comprise in sequence the employee's regular daily tour of duty within any 24-hour period, whether falling entirely within one calendar day or not.

SEC. 3. (a) Any employee whose basic workweek does not include Sunday and who would ordinarily be excused from work on a holiday falling within his basic workweek shall be excused from work on the next workday of his basic workweek whenever a holiday falls on Sunday.

(b) Any employee whose basic workweek includes Sunday and who would ordinarily be excused from work on a holiday falling within his basic workweek shall be excused from work on the next workday of his basic workweek whenever a holiday falls on a day that has been administratively scheduled as his *regular* weekly nonworkday in lieu of Sunday.

SEC. 4. The holiday for a full-time employee for whom the head of a department has established the first 40 hours of duty performed within a period of not more than six days of the administrative workweek as his basic workweek because of the impracticability of prescribing a regular schedule of definite hours of duty for each workday, shall be determined as follows:

(a) If a holiday occurs on Sunday, the head of the department shall designate in advance either Sunday or Monday as the employee's holiday and the employee's basic 40-hour tour of duty shall be deemed to include eight hours on the day designated as the employee's holiday.

(b) If a holiday occurs on Saturday, the head of the department shall designate in advance either the Saturday or the preceding Friday as the employee's holiday and the employee's basic 40-hour tour of duty shall be deemed to include eight hours on the day designated as the employee's holiday.

(c) If a holiday occurs on any other day of the week, that day shall be the employee's holiday, and the employee's basic 40-hour tour of duty shall be deemed to include eight hours on that day.

(d) When a holiday is less than a full day, proportionate credit will be given under paragraph (a), (b), or (c) of this section.

SEC. 5. Any employee whose workday covers portions of two calendar days and who would, except for this section, ordinarily be excused from work scheduled for the hours of any calendar day on which a holiday falls, shall instead be excused from work on his entire workday which commences on any such calendar day.

SEC. 6. In administering the provisions of law relating to pay and leave of absence, the workdays referred to in sections 3, 4, and 5 shall be treated as holidays in lieu of the corresponding calendar holidays.

SEC. 7. The provisions of this order shall apply to officers and employees of the Post Office Department and the United States Postal Service (except that sections 3, 4, 5, and 6 shall not apply to the Postal Field Service) until changed by the Postal Service in accordance with the Postal Reorganization Act.

SEC. 8. Executive Order No. 10358 of June 9, 1952, entitled *Observance of Holidays by Government Agencies* and amendatory Executive Orders No. 11226 of May 27, 1965, and No. 11272 of February 23, 1966, are revoked.

SEC. 9. This order is effective as of January 1, 1971.

RICHARD NIXON.

§ 6104. Holidays; daily, hourly, and piece-work basis employees

When a regular employee as defined by section 2105 of this title or an individual employed regularly by the government of the District of Co-

lumbia, whose pay is fixed at a daily or hourly rate, or on a piece-work basis, is relieved or prevented from working on a day—

(1) on which agencies are closed by Executive order, or, for individuals employed by the government of the District of Columbia, by order of the Mayor;

(2) by administrative order under regulations issued by the President, or, for individuals employed by the government of the District of Columbia, by the Council of the District of Columbia; or

(3) solely because of the occurrence of a legal public holiday under section 6103 of this title, or a day declared a holiday by Federal statute, Executive order, or, for individuals employed by the government of the District of Columbia, by order of the Mayor;

he is entitled to the same pay for that day as for a day on which an ordinary day's work is performed.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 516; Pub. L. 90-623, §1(15), Oct. 22, 1968, 82 Stat. 1313; Pub. L. 96-54, §2(a)(38), Aug. 14, 1979, 93 Stat. 383.)

HISTORICAL AND REVISION NOTES

Derivation	U.S. Code	Revised Statutes and Statutes at Large
.....	5 U.S.C. 86a.	June 29, 1938, ch. 818, §1, 52 Stat. 1246. June 11, 1954, ch. 283, 68 Stat. 249. July 18, 1958, Pub. L. 85-533, §2, 72 Stat. 377.

The enumeration of holidays is eliminated as unnecessary in view of section 6103.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1979—Pub. L. 96-54 substituted "Mayor" for "Commissioner" in pars. (1) and (3), and "Council of the District of Columbia" for "District of Columbia Council" in par. (2).

1968—Pub. L. 90-623 substituted "Commissioner" for "Board of Commissioners" in pars. (1) and (3), and "District of Columbia Council" for "Board of Commissioners" in par. (2).

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96-54 effective July 12, 1979, see section 2(b) of Pub. L. 96-54, set out as a note under section 305 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90-623 intended to restate without substantive change the law in effect on Oct. 22, 1968, see section 6 of Pub. L. 90-623, set out as a note under section 5334 of this title.

EX. ORD. NO. 10552. DELEGATION OF AUTHORITY TO PROMULGATE REGULATIONS

Ex. Ord. No. 10552, Aug. 10, 1954, 19 F.R. 5079, as amended by Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, provided:

By virtue of the authority vested in me by section 301 of title 3 of the United States Code, 65 Stat. 713, it is declared that the Office of Personnel Management be, and it is hereby, designated and empowered to exercise, without the approval, ratification, or other action of the President, the authority vested in the President by the joint resolution of June 29, 1938, 52 Stat. 1246, as

amended by the act of June 11, 1954, 68 Stat. 249 [this section], to promulgate regulations under which certain employees of the Government may be prevented or relieved from working by administrative order.

§ 6105. Closing of Executive departments

An Executive department may not be closed as a mark to the memory of a deceased former official of the United States.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 516.)

HISTORICAL AND REVISION NOTES

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
.....	5 U.S.C. 28.	Mar. 3, 1893, ch. 211, § 4, 27 Stat. 715.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

§ 6106. Time clocks; restrictions

A recording clock may not be used to record time of an employee of an Executive department in the District of Columbia, except that the Bureau of Engraving and Printing may use such recording clocks.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 516; Pub. L. 97-221, § 6(a), July 23, 1982, 96 Stat. 234.)

HISTORICAL AND REVISION NOTES

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
.....	5 U.S.C. 27.	Feb. 24, 1899, ch. 187, § 1 (14th par. on p. 864), 30 Stat. 864.

The words "District of Columbia" are substituted for "Washington" as a clearer statement.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1982—Pub. L. 97-221 substituted "District of Columbia, except that the Bureau of Engraving and Printing may use such recording clocks" for "District of Columbia".

EFFECTIVE DATE OF 1982 AMENDMENT

Section 6(b) of Pub. L. 97-221 provided that: "The amendment made by this section [amending this section] shall take effect October 1, 1982. Section 5 of this Act [set out in the Termination Date of 1982 Amendment note under section 6101 of this title] shall not apply to the amendment made by this section."

SUBCHAPTER II—FLEXIBLE AND COMPRESSED WORK SCHEDULES

AMENDMENTS

1982—Pub. L. 97-221, § 2(a)(2), July 23, 1982, 96 Stat. 227, added subchapter II heading as part of enactment of sections 6120 to 6133 of this title.

§ 6120. Purpose

The Congress finds that the use of flexible and compressed work schedules has the potential to improve productivity in the Federal Government and provide greater service to the public. (Added Pub. L. 97-221, § 2(a)(2), July 23, 1982, 96 Stat. 227.)

EXPANDING FAMILY-FRIENDLY WORK ARRANGEMENTS IN EXECUTIVE BRANCH

Memorandum of President of the United States, July 11, 1994, 59 F.R. 36017, provided:

Memorandum for the Heads of Executive Departments and Agencies

In order to recruit and retain a Federal work force that will provide the highest quality of service to the American people, the executive branch must implement flexible work arrangements to create a "family-friendly" workplace. Broad use of flexible work arrangements to enable Federal employees to better balance their work and family responsibilities can increase employee effectiveness and job satisfaction, while decreasing turnover rates and absenteeism. I therefore adopt the National Performance Review's recommendation that a more family-friendly workplace be created by expanding opportunities for Federal workers to participate in flexible work arrangements, consistent with the mission of the executive branch to serve the public.

The head of each executive department or agency (hereafter collectively "agency" or "agencies") is hereby directed to establish a program to encourage and support the expansion of flexible family-friendly work arrangements, including: job sharing; career part-time employment; alternative work schedules; telecommuting and satellite work locations. Such a program shall include:

- (1) identifying agency positions that are suitable for flexible work arrangements;
- (2) adopting appropriate policies to increase the opportunities for employees in suitable positions to participate in such flexible work arrangements;
- (3) providing appropriate training and support necessary to implement flexible work arrangements; and
- (4) identifying barriers to implementing this directive and providing recommendations for addressing such barriers to the President's Management Council.

I direct the Director of the Office of Personnel Management ("OPM") and the Administrator of General Services ("GSA") to take all necessary steps to support and encourage the expanded implementation of flexible work arrangements. The OPM and GSA shall work in concert to promptly review and revise regulations that are barriers to such work arrangements and develop legislative proposals, as needed, to achieve the goals of this directive. The OPM and GSA also shall assist agencies, as requested, to implement this directive.

The President's Management Council, in conjunction with the Office of Management and Budget, shall ensure that any guidance necessary to implement the actions set forth in this directive is provided.

Independent agencies are requested to adhere to this directive to the extent permitted by law.

This directive is for the internal management of the executive branch and is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable by a party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.

The Director of the Office of Management and Budget is authorized and directed to publish this directive in the Federal Register.

WILLIAM J. CLINTON.

§ 6121. Definitions

For purposes of this subchapter—

- (1) "agency" means any Executive agency, any military department, the Government Printing Office, the Library of Congress, the Architect of the Capitol, and the Botanic Garden;
- (2) "employee" has the meaning given the term in subsection (a) of section 2105 of this title, except that such term also includes an employee described in subsection (c) of that section;

(3) “basic work requirement” means the number of hours, excluding overtime hours, which an employee is required to work or is required to account for by leave or otherwise;

(4) “credit hours” means any hours, within a flexible schedule established under section 6122 of this title, which are in excess of an employee’s basic work requirement and which the employee elects to work so as to vary the length of a workweek or a workday;

(5) “compressed schedule” means—

(A) in the case of a full-time employee, an 80-hour biweekly basic work requirement which is scheduled for less than 10 workdays, and

(B) in the case of a part-time employee, a biweekly basic work requirement of less than 80 hours which is scheduled for less than 10 workdays;

(6) “overtime hours”, when used with respect to flexible schedule programs under sections 6122 through 6126 of this title, means all hours in excess of 8 hours in a day or 40 hours in a week which are officially ordered in advance, but does not include credit hours;

(7) “overtime hours”, when used with respect to compressed schedule programs under sections 6127 and 6128 of this title, means any hours in excess of those specified hours which constitute the compressed schedule; and

(8) “collective bargaining”, “collective bargaining agreement”, and “exclusive representative” have the same meanings given such terms—

(A) by section 7103(a)(12), (8), and (16) of this title, respectively, in the case of any unit covered by chapter 71 of this title; and

(B) in the case of any other unit, by the corresponding provisions applicable under the personnel system covering this unit.

(Added Pub. L. 97–221, §2(a)(2), July 23, 1982, 96 Stat. 227; amended Pub. L. 101–163, title III, §312, Nov. 21, 1989, 103 Stat. 1065; Pub. L. 104–106, div. A, title X, §1041, Feb. 10, 1996, 110 Stat. 433; Pub. L. 111–68, div. A, title I, §1302(1), Oct. 1, 2009, 123 Stat. 2034.)

AMENDMENTS

2009—Par. (1). Pub. L. 111–68 substituted “the Library of Congress, the Architect of the Capitol, and the Botanic Garden” for “and the Library of Congress”.

1996—Par. (2). Pub. L. 104–106 amended par. (2) generally. Prior to amendment, par. (2) read as follows: “‘employee’ has the meaning given it by section 2105 of this title;”.

1989—Par. (1). Pub. L. 101–163 inserted “the Government Printing Office,” after “military department.”.

§ 6122. Flexible schedules; agencies authorized to use

(a) Notwithstanding section 6101 of this title, each agency may establish, in accordance with this subchapter, programs which allow the use of flexible schedules which include—

(1) designated hours and days during which an employee on such a schedule must be present for work; and

(2) designated hours during which an employee on such a schedule may elect the time of such employee’s arrival at and departure from work, solely for such purpose or, if and to

the extent permitted, for the purpose of accumulating credit hours to reduce the length of the workweek or another workday.

An election by an employee referred to in paragraph (2) shall be subject to limitations generally prescribed to ensure that the duties and requirements of the employee’s position are fulfilled.

(b) Notwithstanding any other provision of this subchapter, but subject to the terms of any written agreement referred to in section 6130(a) of this title, if the head of an agency determines that any organization within the agency which is participating in a program under subsection (a) is being substantially disrupted in carrying out its functions or is incurring additional costs because of such participation, such agency head may—

(1) restrict the employees’ choice of arrival and departure time,

(2) restrict the use of credit hours, or

(3) exclude from such program any employee or group of employees.

(Added Pub. L. 97–221, §2(a)(2), July 23, 1982, 96 Stat. 228.)

§ 6123. Flexible schedules; computation of premium pay

(a) For purposes of determining compensation for overtime hours in the case of an employee participating in a program under section 6122 of this title—

(1) the head of an agency may, on request of the employee, grant the employee compensatory time off in lieu of payment for such overtime hours, whether or not irregular or occasional in nature and notwithstanding the provisions of sections 5542(a), 5543(a)(1) and section¹ 5544(a) of this title, section 7453(e) of title 38, section 7 of the Fair Labor Standards Act (29 U.S.C. 207), or any other provision of law; or

(2) the employee shall be compensated for such overtime hours in accordance with such provisions, as applicable.

(b) Notwithstanding the provisions of law referred to in subsection (a)(1) of this section, an employee shall not be entitled to be compensated for credit hours worked except to the extent authorized under section 6126 of this title or to the extent such employee is allowed to have such hours taken into account with respect to the employee’s basic work requirement.

(c)(1) Notwithstanding section 5545(a) of this title, premium pay for nightwork will not be paid to an employee otherwise subject to such section solely because the employee elects to work credit hours, or elects a time of arrival or departure, at a time of day for which such premium pay is otherwise authorized, except that—

(A) if an employee is on a flexible schedule under which—

(i) the number of hours during which such employee must be present for work, plus

(ii) the number of hours during which such employee may elect to work credit hours or

¹So in original. The word “section” probably should not appear.

elect the time of arrival at and departure from work,

which occur outside of the nightwork hours designated in or under such section 5545(a) total less than 8 hours, such premium pay shall be paid for those hours which, when combined with such total, do not exceed 8 hours, and

(B) if an employee is on a flexible schedule under which the hours that such employee must be present for work include any hours designated in or under such section 5545(a), such premium pay shall be paid for such hours so designated.

(2) Notwithstanding section 5343(f) of this title, and section 7453(b) of title 38, night differential will not be paid to any employee otherwise subject to either of such sections solely because such employee elects to work credit hours, or elects a time of arrival or departure, at a time of day for which night differential is otherwise authorized, except that such differential shall be paid to an employee on a flexible schedule under this subchapter—

(A) in the case of an employee subject to subsection (f) of such section 5343, for which all or a majority of the hours of such schedule for any day fall between the hours specified in such subsection, or

(B) in the case of an employee subject to subsection (b) of such section 7453, for which 4 hours of such schedule fall between the hours specified in such subsection.

(Added Pub. L. 97-221, §2(a)(2), July 23, 1982, 96 Stat. 228; amended Pub. L. 102-40, title IV, §403(c)(2), May 7, 1991, 105 Stat. 240; Pub. L. 102-378, §2(44)(D), Oct. 2, 1992, 106 Stat. 1352.)

AMENDMENTS

1992—Subsec. (a)(1). Pub. L. 102-378 substituted “5543(a)(1) and section 5544(a)” for “5543(a)(1), 5544(a), and 5550”.

1991—Subsec. (a)(1). Pub. L. 102-40, §403(c)(2)(A), substituted “section 7453(e)” for “section 4107(e)(5)”.

Subsec. (c)(2). Pub. L. 102-40, §403(c)(2)(B), in introductory provisions substituted “section 7453(b)” for “section 4107(e)(2)” and in subpar. (B) substituted “subsection (b) of such section 7453” for “subsection (e)(2) of such section 4107”.

§ 6124. Flexible schedules; holidays

Notwithstanding sections 6103 and 6104 of this title, if any employee on a flexible schedule under section 6122 of this title is relieved or prevented from working on a day designated as a holiday by Federal statute or Executive order, such employee is entitled to pay with respect to that day for 8 hours (or, in the case of a part-time employee, an appropriate portion of the employee's biweekly basic work requirement as determined under regulations prescribed by the Office of Personnel Management).

(Added Pub. L. 97-221, §2(a)(2), July 23, 1982, 96 Stat. 229.)

§ 6125. Flexible schedules; time-recording devices

Notwithstanding section 6106 of this title, the Office of Personnel Management or any agency may use recording clocks as part of programs under section 6122 of this title.

(Added Pub. L. 97-221, §2(a)(2), July 23, 1982, 96 Stat. 229.)

§ 6126. Flexible schedules; credit hours; accumulation and compensation

(a) Subject to any limitation prescribed by the Office of Personnel Management or the agency, a full-time employee on a flexible schedule can accumulate not more than 24 credit hours, and a part-time employee can accumulate not more than one-fourth of the hours in such employee's biweekly basic work requirement, for carryover from a biweekly pay period to a succeeding biweekly pay period for credit to the basic work requirement for such period.

(b) Any employee who is on a flexible schedule program under section 6122 of this title and who is no longer subject to such a program shall be paid at such employee's then current rate of basic pay for—

(1) in the case of a full-time employee, not more than 24 credit hours accumulated by such employee, or

(2) in the case of a part-time employee, the number of credit hours (not in excess of one-fourth of the hours in such employee's biweekly basic work requirement) accumulated by such employee.

(Added Pub. L. 97-221, §2(a)(2), July 23, 1982, 96 Stat. 230.)

§ 6127. Compressed schedules; agencies authorized to use

(a) Notwithstanding section 6101 of this title, each agency may establish programs which use a 4-day workweek or other compressed schedule.

(b)(1) An employee in a unit with respect to which an organization of Government employees has not been accorded exclusive recognition shall not be required to participate in any program under subsection (a) unless a majority of the employees in such unit who, but for this paragraph, would be included in such program have voted to be so included.

(2) Upon written request to any agency by an employee, the agency, if it determines that participation in a program under subsection (a) would impose a personal hardship on such employee, shall—

(A) except such employee from such program; or

(B) reassign such employee to the first position within the agency—

(i) which becomes vacant after such determination,

(ii) which is not included within such program,

(iii) for which such employee is qualified, and

(iv) which is acceptable to the employee.

A determination by an agency under this paragraph shall be made not later than 10 days after the day on which a written request for such determination is received by the agency.

(Added Pub. L. 97-221, §2(a)(2), July 23, 1982, 96 Stat. 230.)

§ 6128. Compressed schedules; computation of premium pay

(a) The provisions of sections 5542(a) and 5544(a) of this title, section 7453(e) of title 38,

section 7 of the Fair Labor Standards Act (29 U.S.C. 207), or any other law, which relate to premium pay for overtime work, shall not apply to the hours which constitute a compressed schedule.

(b) In the case of any full-time employee, hours worked in excess of the compressed schedule shall be overtime hours and shall be paid for as provided by the applicable provisions referred to in subsection (a) of this section. In the case of any part-time employee on a compressed schedule, overtime pay shall begin to be paid after the same number of hours of work after which a full-time employee on a similar schedule would begin to receive overtime pay.

(c) Notwithstanding section 5544(a) or 5546(a) of this title, or any other applicable provision of law, in the case of any full-time employee on a compressed schedule who performs work (other than overtime work) on a tour of duty for any workday a part of which is performed on a Sunday, such employee is entitled to pay for work performed during the entire tour of duty at the rate of such employee's basic pay, plus premium pay at a rate equal to 25 percent of such basic pay rate.

(d) Notwithstanding section 5546(b) of this title, an employee on a compressed schedule who performs work on a holiday designated by Federal statute or Executive order is entitled to pay at the rate of such employee's basic pay, plus premium pay at a rate equal to such basic pay rate, for such work which is not in excess of the basic work requirement of such employee for such day. For hours worked on such a holiday in excess of the basic work requirement for such day, the employee is entitled to premium pay in accordance with the provisions of section 5542(a) or 5544(a) of this title, as applicable, or the provisions of section 7 of the Fair Labor Standards Act (29 U.S.C. 207) whichever provisions are more beneficial to the employee.

(Added Pub. L. 97-221, §2(a)(2), July 23, 1982, 96 Stat. 230; amended Pub. L. 102-40, title IV, §403(c)(3), May 7, 1991, 105 Stat. 240; Pub. L. 102-378, §2(44)(E), Oct. 2, 1992, 106 Stat. 1352.)

AMENDMENTS

1992—Subsec. (a). Pub. L. 102-378, §2(44)(E)(i), substituted “5542(a) and 5544(a)” for “5542(a), 5544(a), and 5550(2)”.

Subsec. (c). Pub. L. 102-378, §2(44)(E)(ii), substituted “5544(a) or 5546(a)” for “5544(a), 5546(a), or 5550(1)”.

1991—Subsec. (a). Pub. L. 102-40 substituted “section 7453(e)” for “section 4107(e)(5)”.

§ 6129. Administration of leave and retirement provisions

For purposes of administering sections 6303(a), 6304, 6307(a) and (d), 6323, 6326, 6327, and 8339(m) of this title, in the case of an employee who is in any program under this subchapter, references to a day or workday (or to multiples or parts thereof) contained in such sections shall be considered to be references to 8 hours (or to the respective multiples or parts thereof).

(Added Pub. L. 97-221, §2(a)(2), July 23, 1982, 96 Stat. 231; amended Pub. L. 103-329, title VI, §629(a)(2)(A), (b)(2), Sept. 30, 1994, 108 Stat. 2423.)

AMENDMENTS

1994—Pub. L. 103-329 substituted “6307(a) and (d)” for “6307(a) and (c)” and inserted “6327,” after “6326,”.

§ 6130. Application of programs in the case of collective bargaining agreements

(a)(1) In the case of employees in a unit represented by an exclusive representative, any flexible or compressed work schedule, and the establishment and termination of any such schedule, shall be subject to the provisions of this subchapter and the terms of a collective bargaining agreement between the agency and the exclusive representative.

(2) Employees within a unit represented by an exclusive representative shall not be included within any program under this subchapter except to the extent expressly provided under a collective bargaining agreement between the agency and the exclusive representative.

(b) An agency may not participate in a flexible or compressed schedule program under a collective bargaining agreement which contains premium pay provisions which are inconsistent with the provisions of section 6123 or 6128 of this title, as applicable.

(Added Pub. L. 97-221, §2(a)(2), July 23, 1982, 96 Stat. 231.)

§ 6131. Criteria and review

(a) Notwithstanding the preceding provisions of this subchapter or any collective bargaining agreement and subject to subsection (c) of this section, if the head of an agency finds that a particular flexible or compressed schedule under this subchapter has had or would have an adverse agency impact, the agency shall promptly determine not to—

(1) establish such schedule; or

(2) continue such schedule, if the schedule has already been established.

(b) For purposes of this section, “adverse agency impact” means—

(1) a reduction of the productivity of the agency;

(2) a diminished level of services furnished to the public by the agency; or

(3) an increase in the cost of agency operations (other than a reasonable administrative cost relating to the process of establishing a flexible or compressed schedule).

(c)(1) This subsection shall apply in the case of any schedule covering employees in a unit represented by an exclusive representative.

(2)(A) If an agency and an exclusive representative reach an impasse in collective bargaining with respect to an agency determination under subsection (a)(1) not to establish a flexible or compressed schedule, the impasse shall be presented to the Federal Service Impasses Panel (hereinafter in this section referred to as the “Panel”).

(B) The Panel shall promptly consider any case presented under subparagraph (A), and shall take final action in favor of the agency's determination if the finding on which it is based is supported by evidence that the schedule is likely to cause an adverse agency impact.

(3)(A) If an agency and an exclusive representative have entered into a collective bargaining agreement providing for use of a flexible or compressed schedule under this subchapter and the head of the agency determines under subsection

(a)(2) to terminate a flexible or compressed schedule, the agency may reopen the agreement to seek termination of the schedule involved.

(B) If the agency and exclusive representative reach an impasse in collective bargaining with respect to terminating such schedule, the impasse shall be presented to the Panel.

(C) The Panel shall promptly consider any case presented under subparagraph (B), and shall rule on such impasse not later than 60 days after the date the Panel is presented the impasse. The Panel shall take final action in favor of the agency's determination to terminate a schedule if the finding on which the determination is based is supported by evidence that the schedule has caused an adverse agency impact.

(D) Any such schedule may not be terminated until—

(i) the agreement covering such schedule is renegotiated or expires or terminates pursuant to the terms of that agreement; or

(ii) the date of the Panel's final decision, if an impasse arose in the reopening of the agreement under subparagraph (A) of this paragraph.

(d) This section shall not apply with respect to flexible schedules that may be established without regard to the authority provided under this subchapter.

(Added Pub. L. 97-221, §2(a)(2), July 23, 1982, 96 Stat. 231.)

§ 6132. Prohibition of coercion

(a) An employee may not directly or indirectly intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce, any other employee for the purpose of interfering with—

(1) such employee's rights under sections 6122 through 6126 of this title to elect a time of arrival or departure, to work or not to work credit hours, or to request or not to request compensatory time off in lieu of payment for overtime hours; or

(2) such employee's right under section 6127(b)(1) of this title to vote whether or not to be included within a compressed schedule program or such employee's right to request an agency determination under section 6127(b)(2) of this title.

(b) For the purpose of subsection (a), the term "intimidate, threaten, or coerce" includes, but is not limited to, promising to confer or conferring any benefit (such as appointment, promotion, or compensation), or effecting or threatening to effect any reprisal (such as deprivation of appointment, promotion, or compensation).

(Added Pub. L. 97-221, §2(a)(2), July 23, 1982, 96 Stat. 232.)

§ 6133. Regulations; technical assistance; program review

(a) The Office of Personnel Management shall prescribe regulations necessary for the administration of the programs established under this subchapter.

(b)(1) The Office shall provide educational material, and technical aids and assistance, for use by an agency in connection with establishing

and maintaining programs under this subchapter.

(2) In order to provide the most effective materials, aids, and assistance under paragraph (1), the Office shall conduct periodic reviews of programs established by agencies under this subchapter particularly insofar as such programs may affect—

- (A) the efficiency of Government operations;
- (B) mass transit facilities and traffic;
- (C) levels of energy consumption;
- (D) service to the public;
- (E) increased opportunities for full-time and part-time employment; and
- (F) employees' job satisfaction and nonwork-life.

(c)(1) With respect to employees in the Library of Congress, the authority granted to the Office of Personnel Management under this subchapter shall be exercised by the Librarian of Congress.

(2) With respect to employees in the Government Printing Office, the authority granted to the Office of Personnel Management under this subchapter shall be exercised by the Public Printer.

(3) With respect to employees of the Architect of the Capitol and the Botanic Garden, the authority granted to the Office of Personnel Management under this subchapter shall be exercised by the Architect of the Capitol.

(Added Pub. L. 97-221, §2(a)(2), July 23, 1982, 96 Stat. 233; amended Pub. L. 101-163, title III, §312, Nov. 21, 1989, 103 Stat. 1065; Pub. L. 111-68, div. A, title I, §1302(2), Oct. 1, 2009, 123 Stat. 2034.)

AMENDMENTS

- 2009—Subsec. (c)(3). Pub. L. 111-68 added par. (3).
- 1989—Subsec. (c). Pub. L. 101-163 designated existing provisions as par. (1) and added par. (2).

CHAPTER 63—LEAVE

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