

PT-813

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Severance Pay

References

- 5 U.S.C. 5595
- 5 CFR 550.701-550.714
- U.S. Department of Labor, FECA Bulletin No. 96-2, November 4, 1992

Overview

Severance pay is paid to an employee who is involuntarily separated from Federal civilian employment after completing at least 12 months of continuous service. The amount is computed using the employee's rate of basic pay at the time of separation, years of creditable Federal service, and age, if over 40. It is paid at the same rate and at the same pay period intervals as regular salary payments unless an employee elects to receive severance pay in a lump sum. The authority of the Department of Defense to make lump-sum severance payments expires on October 1, 2014.

Coverage

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

Certain employees are not eligible for severance pay -- for example, employees serving under nonqualifying appointments such as employees with intermittent work schedules, Executive Schedule employees, Schedule C employees, noncareer SES employees; reemployed military or civilian retirees; individuals separated for misconduct; and workers' compensation recipients unless the compensation is being received currently with pay or is the result of another individual's death.

There are also limits to eligibility for severance pay -- for example, employees eligible upon separation for an immediate annuity from a Federal civilian retirement system, including a reduced annuity (Discontinued Service Retirement), a disability annuity, or a deferred annuity (MRA + 10 FERS annuity). Eligibility for retired or retainer pay earned as a member of the uniformed services is also disqualifying.

The most frequently asked questions about severance pay are:

Eligibility

1. Who is eligible for severance pay?

In addition to the limitations mentioned above, an employee must have been serving under a qualifying appointment at the time of separation:

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

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

2. What is a "reasonable offer?"

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

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

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

A reasonable offer for purposes of severance pay eligibility under 5 CFR 550, subpart G, is not affected by an agency's decision to waive or modify qualifications to make the placement.

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

The separating agency makes this determination.

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

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

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

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

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

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

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

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

Even if a resignation is considered an "involuntary separation" under the severance pay rules, the employee may not be eligible for severance pay under 5 U.S.C. 5595 and 5 CFR part 550, subpart G, for other reasons. The employee must meet all applicable eligibility requirements described in 5 CFR 550.701-550.714.

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

A general notice is a written notice which states that (1) all employees in the affected competitive area will be terminated due to abolishment of their positions, or (2) all positions in the affected competitive area will be transferred to another commuting area as part of a transfer of function. The notice must state the specific date by which all positions are scheduled to be abolished or transferred (no more than 1 year after the date of the notice.) (EXAMPLE: "All positions in this competitive area will be abolished no later than [insert date].") It should also expressly state that a resignation after receipt of the notice will constitute an involuntary separation for severance pay purposes, as long as the notice is not canceled prior to the effective date of the resignation. The general notice must be distributed to all employees in the affected competitive area. (See 5 CFR 351.402 for definition of "competitive area.")

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

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

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

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

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

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

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

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

Generally speaking, a resignation is a voluntary separation and would not entitle an employee to severance pay (see question 4). However, resignation is considered involuntary for purposes of severance pay, (provided the employee has not declined a reasonable offer in the agency before separation) if the employee received a specific notice in writing from his or her agency that he or she is to be involuntarily separated and the notice of separation is not canceled before the resignation is effected. Separations (terminations) due to misconduct, delinquency or inefficiency do not confer severance pay entitlement.

Other Compensation

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

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

- 11. Members of the Retired Reserve are not eligible for reserve retired pay until age 60. If an employee who is a retired reservist is involuntarily separated from his Federal position, but he has not yet attained the age for reserve retired pay, is he eligible for severance pay, providing he meets the other eligibility requirements?**

Yes. Unless an employee is eligible to receive immediate payments from a Federal annuity (even if he has chosen to defer such payment), he or she is eligible for severance pay.

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

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

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

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

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

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

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

No. Under 5 CFR 550.709, the only deductions to severance pay are for income and Social Security taxes.

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

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

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

Yes, unless the new employment is in the Federal service. Severance pay will not begin if an employee is reemployed in another permanent position before separation. If an employee entitled to severance pay later accepts a position with the Federal Government or the government of the District of Columbia, the employee is no longer eligible for severance pay and severance pay terminates unless employed under a nonqualifying time-limited appointment.

If an employee entitled to severance pay accepts a temporary appointment within 3 calendar days following a qualifying appointment, the employee's entitlement to severance pay terminates. When the qualifying temporary appointment ends, severance pay is triggered by the involuntary separation resulting from the expiration of the time-limited appointment. The rate of basic pay earned in the temporary job is used to determine the employee's severance pay, and the payments are made by the activity employing the individual under the qualifying time-limited appointment.

If an employee entitled to severance pay is employed under a nonqualifying time-limited appointment, severance payments are suspended during the appointment. Severance pay resumes (without being recomputed) when the employee separates from the nonqualifying time-limited appointment. The activity that originally separated the employee involuntarily is responsible for the payments.

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

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

Severance Pay Computation

19. How is the amount of severance pay determined?

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

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

For example, if an employee is 45 years old with 20 years of creditable service with a basic weekly salary of \$1,000, the severance pay fund would be computed as follows:

Basic Allowance:

\$1,000 (weekly salary) x 10 (first 10 years)	= \$10,000
\$1,000 (weekly salary) x 2 x 10 (years in excess of 10)	= <u>\$20,000</u>
	\$30,000

Age Adjustment Allowance:

\$30,000 (basic allowance) x 5 (years over 40) x 10%	= <u>\$15,000</u>
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Severance Pay Fund:

\$30,000 (basic allowance) + \$15,000 (age adjustment allowance)	
	Total \$45,000

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

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

Suppose, as in Question No. 19, the total severance pay to which an employee is entitled is \$45,000. Because pay at the time of separation is \$1,000 per week, it will take 45 weeks to pay the entire severance pay. After receiving severance pay for 20 weeks, the former employee is reemployed in the Federal Government under an appointment without time limitation, and the severance pay is terminated. He or she works for three full years and is again separated under circumstances entitling him or her to severance pay. The employee is now 48 years of age and has 23 years of creditable service. At the time of the second separation the basic weekly pay is \$1,250. The severance pay fund is computed as follows:

Basic Allowance:

$$\begin{array}{r} \$1,250 \text{ (weekly salary)} \times 10 \text{ (first 10 years)} \\ \$1,250 \text{ (weekly salary)} \times 2 \times 13 \text{ (years in excess of 10)} \\ \hline \end{array} \begin{array}{r} = \$12,500 \\ = \$32,500 \\ \hline \$45,000 \end{array}$$

Age Adjustment Allowance:

$$\$45,000 \text{ (basic allowance)} \times 8 \text{ (years over 40)} \times 10\% = \underline{\$36,000}$$

Severance Pay Fund:

$$\$45,000 \text{ (basic allowance)} + \$36,000 \text{ (age adjustment allowance)} = \$81,000$$

The severance pay fund equals \$81,000. It will take 64 and 8/10 weeks (\$81,000 divided by \$1,250) to pay the entire severance pay. However, because total severance pay may not exceed 52 weeks, and because the employee had already received 20 weeks of severance pay, he or she is entitled to only 32 weeks of pay at \$1,250 a week.

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

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

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

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

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

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

Example
A Severance Pay Computation
 REF: 5 CFR 550.707 and 550.712

Annual Salary:	\$64,239
Hourly Rate of Pay:	\$30.78
Separation Date:	12-08-07
Date of Birth:	10-05-64
Service Computation Date:	11-22-85
Creditable Years of Service:	22 yrs, 16 days
Age Over 40 Years:	3 yrs, 2 mos, 3 days
Weeks of Severance Pay Previously Paid:	10.0 weeks

Basic Severance Pay Allowance	Calculations
Compute 1 week of basic pay for each full year of creditable service through first 10 years.	$\$30.78 \times 40 = \$1,231.20$ $\$1,231.20 \times 10 \text{ years} = \$12,312$
Compute 2 weeks of basic pay for each full year of creditable service beyond 10 years.	$\$1,231.20 \times 2 \text{ weeks} \times 12 \text{ years} =$ $\$29,548.80$
Compute 25 % of the applicable amount (1 week or 2 weeks of pay) for each full 3 months of creditable service beyond final full year.	None
The employee's Basic Allowance equals \$41,860.80 (\$12,312 + \$29,548.80).	
Age Adjustment Allowance	Calculations
Compute 2.5 percent of the basic severance pay allowance for each full 3 months of age over 40 years.	$.025 \times 12 \text{ (3 years} \times 4 \text{ quarters)} = 30\%$ $(.3 \text{ multiplication factor})$ $\$41,860.80 \text{ (basic severance pay allowance)} \times .3 = \$12,558.24$
The employee's Age Adjustment Allowance equals \$12,558.24 .	
The employee's Severance Pay Fund equals \$41,860.80 + \$12,558.24 = \$54,419.04 (44.2. weeks)	
<p>Severance pay fund means the total severance pay to which an employee is entitled during a single entitlement. However, total severance pay may not exceed 1 year's pay at the time of separation. Also, there is a lifetime limit of 52 weeks for each employee. Since the employee has already been paid 10 weeks of severance pay, he would be entitled only to 34.2 weeks for a total of \$42,107.04 (\$1,231.20. x 34.2).</p>	

Example	
A Severance Pay Computation—Firefighter-144 hrs/weekly (Non-Exempt) GS-6, Step 7, RUS REF: 5 CFR 550.707 and 550.712	
Annual Salary: \$40,751 Hourly Rate of Pay: \$14.79 (\$40,751 divided by 2756 = \$14.79) Biweekly pay (non-overtime hours) \$1,567.74 (106 x \$14.79) Biweekly pay (regularly scheduled overtime) \$562.02 (38 x \$14.79) Biweekly pay \$2,129.76 (\$1,567.74 + \$562.02) Weekly pay \$1,064.88(\$2,129.76 divided by 2) Separation Date: 09-01-07 Date of Birth: 02-26-62 Service Computation Date: 04-28-81 Creditable Years of Service: 26 yrs, 4 mos, 3 days Age Over 40 Years: 5 yrs, 6 mos, 5 days	
Basic Severance Pay Allowance	Calculations
Compute 1 week of basic pay for each full year of creditable service through first 10 years.	\$1,064.88 x 10 years = \$10,648.80
Compute 2 weeks of basic pay for each full year of creditable service beyond 10 years.	\$1064.88 x 2 weeks x 16 years = \$34,076.16
Compute 25 % of the applicable amount (1 week or 2 weeks of pay) for each full 3 months of creditable service beyond final full year.	\$1,064.88 x 2 = \$2,129.76x.25 = \$532.44
The employee's Basic Allowance equals \$45,257.40 (\$10,648.80 + \$34,076.16 + \$532.44).	
Age Adjustment Allowance	Calculations
Compute 2.5 percent of the basic severance pay allowance for each full 3 months of age over 40 years.	.025 x 22 qtrs(4 qtrs x 5 yrs =20 qtrs + 2 qtrs) = .55 multiplication factor \$45,257.40 (basic severance pay allowance) x .55 = \$24,891.57.
The employee's Age Adjustment Allowance equals \$24,891.57 .	

The employee's **Severance Pay Fund** equals $\$45,257.40 + \$24,891.57 = \mathbf{\$70,149.97}$
(65.8 weeks)

Severance pay fund means the total severance pay to which an employee is entitled during a single entitlement. However, total severance pay may not exceed 1 year's pay at the time of separation. Because the employee is a firefighter, the maximum amount of severance pay he is entitled to receive is **\$55,374** ($\$14.79 \times 144 = \$2,129.76$ biweekly pay x 26 pay periods). This amount includes his straight-time pay for regular overtime hours. He will be paid \$1,064.88 a week for 52 weeks.

NOTES:

1. In computing severance pay, service and age are counted in whole years and calendar quarters. For example, in computing the basic severance allowance, 10 yrs 7 months of service would be credited as 10 yrs and 2 calendar quarters. Age 47 and 5 months would count as age 47 and 1 calendar quarter.
2. Overtime standard for firefighters = 106 hours biweekly or 53 hours per week
3. Total severance pay may not exceed 1 year's pay at the rate received immediately before separation.
4. In accordance with 5 CFR 550.1305, the sum of pay for nonovertime hours that are part of a firefighter's regular tour of duty and the straight-time portion of overtime pay for hours in a firefighter's regular tour of duty is treated as basic pay for severance pay.