

PT-810

Revised: November 2007

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Law Enforcement Availability Pay

- Regulations are under 5 CFR 550.181 through 550.187.
- Covers each employee who meets the definition of criminal investigator in 5 CFR 550.103 and fulfills the requirements and conditions of 5 U.S.C. 5545a and 5 CFR 550.181 through 550.186.
- Availability pay is fixed at 25% of a criminal investigator's rate of basic pay (as defined in 5 CFR 550.103) or the maximum amount that may be paid to avoid exceeding the maximum earnings limitation on premium pay for law enforcement officers (LEO) in 5 U.S.C. 5547(c).
- Replaces administratively uncontrollable overtime (AUO) and standby duty pay for criminal investigators. (5 CFR 550.186(a))
- Organizations must ensure that an investigator is required to be available (generally and reasonably accessible) a sufficient number of unscheduled hours of duty to allow the investigator to meet the minimum requirement. Three conditions under which a criminal investigator may not be entitled to availability pay:
 - the investigator voluntarily “opts-out” and requests not to be assigned to be available to perform unscheduled duty because of a family or personal hardship (See 5 CFR 550.182(f))
 - the investigator does not perform a sufficient amount of unscheduled duty to meet the minimum requirement even though the supervisor and the investigator have certified that he or she is expected to meet the substantial hours requirement for entitlement to availability pay. (An involuntary suspension of availability pay as a result of a denial or cancellation of an availability certification is an adverse action under 5 U.S.C. 7512(4) and 5 CFR part 752). (5 CFR 550.184(g)(1) and 5 CFR 550.184(e))
 - the investigator is unable to perform unscheduled duty for an extended period due to a physical or health condition. (5 CFR 550.182(g)(2))

- Supervisors and investigators must certify annually that a criminal investigator is/will be expected to meet the substantial hours requirement for availability pay during the upcoming 1-year period. (5 CFR 550.184)
- To determine if the substantial hours requirement is met, the total unscheduled duty hours for the annual period is divided by the number of regular workdays. (5 CFR 550.183)
 - regular workday means a day during the basic work week when the investigator works at least 4 hours, excluding overtime compensated under 5 U.S.C. 5542 and 550.111, unscheduled duty hours, training, travel, approved leave, excused absence, and holidays.
 - total unscheduled duty means any unscheduled duty hours on a regular work day and the hours of unscheduled duty the investigator actually worked on days that are not regular work days.
- Availability pay is paid during periods of work, agency-sanctioned training, approved leave, holidays, travel, and excused absence for relocation. Components may pay availability pay during initial periods of training, i.e., training provided by the agency to “law enforcement officer interns” before they are expected to perform the duties of law enforcement officers. (5 CFR 550.185)
- Availability pay is considered basic pay for advances in pay, severance pay, workers’ compensation, retirement, TSP, life insurance, and lump-sum payments for annual leave. (5 CFR 550.186 (b) and 5 CFR 550.1205(b)(5)(ii))
- Criminal investigators who receive availability pay are not covered by the FLSA overtime and minimum wage provisions. (5 CFR 550.186(c))
- Under the Family and Medical Leave Act, an employee is able to be absent from work (including absence in a paid leave status) for extended periods without loss of benefits or other entitlements. If an employee invokes a family or personal medical emergency, under 5 CFR 550.183, the time spent on approved leave (including leave without pay if such is approved) cannot be used to determine whether the employee meets the substantial hours requirement and, therefore, would have no effect on the employee’s ability to comply with the annual certification requirement.