



DEFENSE INFORMATION SYSTEMS AGENCY

P. O. BOX 4502
ARLINGTON, VIRGINIA 22204-4502

IN REPLY
REFER TO: Civilian Personnel Division (MPS1)

26 OCT 2006

MEMORANDUM FOR DISTRIBUTION

SUBJECT: Leave Restoration for BRAC Affected Employees

Reference: DISA, Memo, MPS1, Use or Lose Annual Leave (Annual Leave Maximum Accumulation), 14 Sep 06

1. After the release of the Use of Lose Annual Leave memorandum dated 14 September 2006, a number of employees have contacted MPS1 with questions and concerns about restoration of leave as it is impacted by BRAC. In an effort to address those specific concerns and generally clarify the BRAC-leave issue, please note the following:

a. With the exception of a few employees, whose locations are identified in Enclosure (1), virtually all NCR DISA employees are considered BRAC-affected for the purposes of restored leave.

b. As explained in subject memorandum, BRAC-affected employees are excepted from the "use-or-lose" process requirements, (i.e. scheduling and using excess leave prior to the end of the leave year, etc.). If you are BRAC-affected, you do not have to schedule and use your leave before the end of the leave year (6 January 2007).

c. Defense Finance and Accounting Service (DFAS) has identified all BRAC-affected employees in their accounting/payroll system by geographic area. If you work in a BRAC-affected facility/activity, DFAS/payroll will automatically identify any leave, which would normally be "use or lose leave", as BRAC-restored leave and will establish a specific BRAC leave account for you.

d. There are currently no plans to send out specific notices to individuals notifying them of a new BRAC leave account. The account will be identified on your Leave and Earnings Statement (LES) once DFAS/payroll determines that you had excess leave after the end of the leave year (6 January 2007 for the current leave year) and you are eligible for leave restoration under BRAC regulations. You do not have to take any personal action in order to have your leave restored for BRAC purposes.

e. When your leave is restored for BRAC purposes, your LES will specifically list the total of your BRAC leave balance in the leave balances block where all other leave is listed. The BRAC leave will be distinct from all other leave.

26 OCT 2006

f. If, by 10 February 2007 (two pay periods after the beginning of the new leave year) you do not have a BRAC leave designation on your LES and you believe you are entitled to restored BRAC leave, please send an e-mail to Angela.McDaniel@disa.mil. Indicate that you expected to have restored BRAC leave and that it has not appeared on your LES; indicate the amount of leave you expected; and request an examination of your leave accounts for BRAC purposes. In order to expedite your request for someone to look into your BRAC leave issue, please type "Expected BRAC Leave" in the Subject Line.

g. Conditions for lump sum payment of unused BRAC restored leave are covered in the Use or Lose (Annual Leave Maximum Accumulation), memorandum dated 14 Sept 2006 in Enclosure (2).

h. For purposes of using the leave, the code for BRAC leave in ATAAPS is "LO".

2. If you still have questions about BRAC restored leave, please contact Ms. Angela McDaniel, Employee Relations Specialist, at (703) 607-4403 or the e-mail address identified in paragraph f.

2 Enclosures:

- (1) BRAC Coded Sites
- (2) 14 Sept 2006 Memo


CARRIE K. BAZEMORE
Chief, Civilian Personnel
Division

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Commander, DISA USSTRATCOM
Commander, DISA USTRANSCOM
Commander, DISA CONUS

NCR Locations that coded for BRAC. Exceptions to BRAC are indicated at the right.

GEOLOC	DUTY NAME	ORG CODE/EXEMPT FROM BRAC
110010001	Washington, DC	WH/DWH (WHCA) & JC (Joint Staff Support Center)
110015001	Bolling AFB	WH/DWH (WHCA)
240840017	Indian Head	JT (JITC-Indian Head)
510040510	Alexandria	
510100013	Arlington	
510930610	Falls Church	

The following org is also exempt from BRAC coding and is not located in the NCR area:

240030003	Annapolis	JS (Joint Spectrum Center)
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The following orgs ARE to be coded for BRAC and are not located in the NCR area:

222180103	Slidell	TE (Slidell)
341065025	Ft. Monmouth	(GE-not all of GE, but only those with this GEOLOC)



DEFENSE INFORMATION SYSTEMS AGENCY

P. O. Box 4602
ARLINGTON, VIRGINIA 22204-4602

IN REPLY
REFER TO

Civilian Personnel Division (MPS1)

14 Sept 2006

MEMORANDUM FOR DISTRIBUTION

SUBJECT: Use or Lose Annual Leave (Annual Leave Maximum Accumulations)

References: (a) 5 U.S.C. § 6304
(b) 5 CFR (Code of Federal Regulations), Part 630, Absence and Leave
(c) DISAI 220-15-55, Chapter 630, Section B

1. As the leave year ends, employees and supervisors are encouraged to examine annual leave balances and determine whether employees have accrued leave that must be used or forfeited.
2. By references (a) through (c), most general schedule and wage grade employees may carry up to two hundred forty (240) hours of annual leave from one leave year to the next. Any leave over that amount is considered "use or lose" leave.
3. In order to avoid forfeiture of annual leave that exceeds the two hundred forty hours limitation, employees are required to schedule, in writing, any use or lose annual leave no later than 25 November 2006 and use such leave no later than 6 January 2007.
4. Exceptions exist to the two hundred forty hour leave limitation:
 - a. Enclosure (1) details the exceptions to leave forfeiture.
 - b. Additionally, employees of activities affected by the Base Realignment and Closure Commission (BRAC) may be excepted from the two hundred forty hour leave limitation. For DISA, these activities include: consolidation and realignment of JTF-GNO with DISA Headquarters to Ft. Meade, MD; consolidation and realignment of OSD Support Personnel and DSO to Ft. Belvoir, VA; consolidation and realignment of DISA Headquarters Operations to Ft Meade, MD; realignment of Civilian Personnel Office functions to Indianapolis, IN and Ft. Meade, MD.; DISA Continuity of Operations (COOP) and Test Facility in Slidell, Louisiana; and DISA employees at Ft. Monmouth, New Jersey. Enclosure (2) details the exceptions for those affected by BRAC.
5. Lastly, employees may donate a portion of their use or lose leave to a recipient in the DISA Leave Transfer Program by filling out DISA Form 118, Leave Donor Application. Additional information about use or lose leave is provided on Enclosure (1).

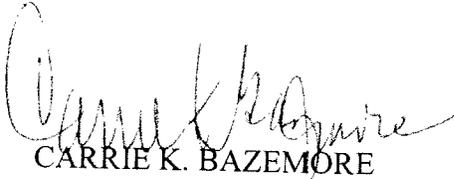
Enclosure (2)

14 Sept 2006

DISA Memo, MPS1, Use or Lose Annual Leave (Annual Leave Maximum Accumulations)

6. You may contact your servicing Human Resources Specialist for assistance and additional information; or you may contact Ms. Angela McDaniel of the Employee Relations Office (MPS12) at (703) 607-4403.

- 2 Enclosures:
- 1 Use or Use Leave Additional Information
 - 2 Civilian Personnel Management
Service Guidance on Restored Leave
and BRAC, 30 JUN 2006


CARRIE K. BAZEMORE
Chief, Civilian Personnel
Division

USE OR LOSE LEAVE ADDITIONAL INFORMATION

1. Public Law 93-181 suspended, under three conditions, the normal rule requiring that any annual leave in excess of the maximum permissible carry-over be automatically forfeited at the end of the leave year. The three conditions are as follows:

a. **Administrative Error.** This is a retroactive provision. When an error causes the loss of annual leave otherwise accrued, the leave may be restored even though the error may have occurred in a previous year.

b. **Scheduled Annual Leave Lost Through Exigencies of Public Business.** Annual leave must have been scheduled and approved, in writing, before the start of the third biweekly pay period (25 November 2006), prior to the end of the leave year in order for an employee to be eligible for restored leave. Supervisors are responsible for ensuring an employee's leave is scheduled and approved before this date. The leave may be scheduled for use during the last three pay periods of the leave year. The exigency must have been of such importance that the employee could not be excused from duty, and there was no reasonable alternative to cancellation of the scheduled leave. Only heads of major staff elements, i.e., Agency Director, Principal Directors, Directors, and Commanders of DISA field activities, are authorized to determine what constitutes a DISA exigency of public business. Routine business needs requiring the employee's presence are not generally considered exigencies.

c. **Sickness During a Period of Scheduled Annual Leave.** Annual leave may be restored when annual leave was scheduled in advance and a period of sickness or injury, for which sick leave was then approved, interfered with the usage of such scheduled annual leave. The sickness or injury must have occurred too late in the leave year or have been of such duration that the annual leave could not be rescheduled to avoid forfeiture.

2. Annual leave forfeited by a **DISA emergency essential employee** serving in a combat zone will be automatically restored, whether it was scheduled in advance or not.

3. The "**National Emergency by Reason of Certain Terrorist Attacks**" regulations established in November 2001 provide that the limitations on current restored annual leave (earned prior to the national emergency) will be canceled for the entire period during which an employee's services are determined to be essential for activities associated with the national emergency. A new time limit will be established at the end of the national emergency. The regulations also provide special time limits for use of leave restored as a result of the exigency caused by the national emergency. A full-time employee will be required to schedule and use excess annual leave of 416 hours or less by the end of the leave year in progress 2 years after the date the employee's services are no longer required by the national emergency. This period will be extended by one (1) leave year for each additional 208 hours of excess annual or any portion thereof.

4. A listing of employees in the DISA Voluntary Leave Transfer Program who are in need of leave donations is available on the MPS CMIS under Information and Downloads, MPS1 Civilian Personnel at <https://mps-cmis.ncr.disa.mil/VLTP.doc>. Annual leave donors should fax the completed DISA Form 118 to MPS4 at (703) 607-4511 or DSN 327-4511, or mailed to:

MPS4 PAYROLL
Building 2, Room 108
701 South Courthouse Road
Arlington, Virginia 22204-2199

Enclosure 1-2

**QUESTIONS & ANSWERS
ANNUAL LEAVE RESTORATION
AT
BASE REALIGNMENT AND CLOSURE (BRAC) CLOSING OR
REALIGNMENT INSTALLATIONS OR ACTIVITIES**

The Department of Defense (DoD) announced that the recommendations of the BRAC Commission went into effect on November 9, 2005. Employees assigned to DoD activities designated by the BRAC Commission for closure are entitled to have forfeited annual leave restored under section 6304(d)(3) of title 5, United States Code (U.S.C.). Employees assigned to DoD activities designated by the BRAC Commission for realignment are also entitled to have forfeited annual leave restored under 5 U.S.C. 6304(d)(3), provided that the realignment meets the definition of realignment in 10 U.S.C. 2687(e)(3) and meets the requirements of 10 U.S.C. 2687(a)(2).

Legislation

Q1. What are the pertinent parts of 5 U.S.C. 6304(d)?

A1. "5 U.S.C. 6304(d)(1) Annual leave which is lost by operation of this section because of ... (B) exigencies of the public business when the annual leave was scheduled in advance ... shall be restored to the employee.

(2) Annual leave restored under paragraph (1) of this subsection ... which is in excess of the maximum leave accumulation permitted by law shall be credited to a separate leave account for the employee and shall be available for use by the employee within the time limits prescribed by regulations of the Office of Personnel Management.

(3) (A) For the purpose of this subsection, the closure of, and any realignment with respect to, an installation of the Department of Defense pursuant to the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101-510; 10 U.S.C. 2687 note) during any period, and the closure of any other installation during the period beginning on October 1, 1992, and ending on December 31, 1997, shall be deemed to create an exigency of the public business and any leave that is lost by an employee of such installation by operation of this section (regardless of whether such leave was scheduled) shall be restored to the employee and shall be credited and available in accordance with paragraph (2).

(B) For the purpose of subparagraph (a), the term realignment means a base realignment (as defined in subsection (e)(3) of section 2687 of title 10) that meets the requirements of subsection (a)(2) of such section."

Q2. Can you provide information on the references used in 5 U.S.C. 6304(d)(3)?

A2. The pertinent parts of 10 U.S.C. 2687 covering base closures and realignments are:

"(a) Notwithstanding any provision of law, no action may be taken to effect or implement—

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(1) the closure of any military installation at which at least 300 civilian personnel are authorized to be employed;

(2) any realignment with respect to any military installation referred to in paragraph (1) involving a reduction by more than 1,000, or by more than 50 percent, in the number of civilian personnel authorized to be employed at such military installation at the time the Secretary of Defense or the Secretary of the military department concerned notifies the Congress under subsection (b) of the Secretary's plan to close or realign such installation...

(e) In this section...

(3) The term "realignment" includes any action which both reduces and relocates functions and civilian personnel positions, but does not include a reduction in force resulting from workload adjustments, reduced personnel or funding levels, skill imbalances, or other similar causes."

Q3. What is the definition of "military installation" that should be used in applying these regulations?

A3. The definition used should be in accordance with 10 U.S.C. 2687(e)(1), which states "The term "military installation" means a base, camp, post, station, yard, center, homeport facility for any ship, or other activity under the jurisdiction of the Department of Defense, including any leased facility, which is located within any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, or Guam. Such term does not include any facility used primarily for civil works, rivers and harbors projects, or flood control projects."

Q4. Does the closure and realignment action have to be under BRAC before 5 U.S.C. 6304(d)(3) can be applied?

A4. Yes, with the exception of closure actions that occurred between October 1, 1992, and December 31, 1997.

Intent

Q5. What does 5 U.S.C. 6304(d)(3) actually do?

A5. Section 6304(d)(3) allows automatic restoration of annual leave earned by employees assigned to installations or activities subject to BRAC. Under the normal procedures, in order to have forfeited leave restored, there must be written documentation that shows the employee scheduled use of the leave before the start of the third biweekly pay period prior to the end of the leave year. There must also be a determination by a management official that an exigency of the public business prevented the employee from using the scheduled leave. The provisions of 5 U.S.C. 6304(d)(3) allow forfeited leave to be restored without having to consider whether it was scheduled in advance, and they stipulate that a closure or realignment under BRAC shall be deemed to create an exigency of the public business.

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Coverage

Q6. Are all employees who work for an installation or activity scheduled for BRAC closure covered under 5 U.S.C. 6304(d)(3)?

A6. Yes, with the possible exception of those locations listed in the BRAC recommendations that are subject to a contingency that must be met before closure can be accomplished. In those cases, the issue of coverage under 5 U.S.C. 6304(d)(3) should be addressed to the Civilian Personnel Management Service.

Q7. Are all employees who work for an installation or activity scheduled for BRAC realignment covered under 5 U.S.C. 6304(d)(3)?

A7. No. The fact that an employee works on an installation or activity scheduled for BRAC realignment does not itself mean that the employee is covered under 5 U.S.C. 6304(d)(3). For an employee to be covered, the realignment must meet the definition of realignment in 10 U.S.C. 2687(e)(3) and meet the requirements of 10 U.S.C. 2687(a)(2).

Q8. We have employees working in an activity scheduled for BRAC closure but the installation where their activity is located is not scheduled for BRAC closure or realignment. Are employees in this activity covered?

A8. Yes. Employees working in the activity scheduled for BRAC closure are covered under 5 U.S.C. 6304(d)(3).

Q9. We have employees working in an activity that is not identified in the BRAC report for closure or realignment but their activity must relocate because the installation their activity is on is scheduled to close. Are the employees in this activity eligible for BRAC restored leave?

A9. It is not necessary that an activity be specifically named in the BRAC report in order for its employees to be entitled to BRAC restored leave. If an activity must be realigned due to a BRAC closure (i.e., its functions and employees must be relocated because the host installation is closing), then the employees are entitled to BRAC restored leave (provided that the numerical criteria in 10 U.S.C. 2687(a)(2) are met, as with any realignment).

Q10. A tenant activity on an installation that is not closing is identified for realignment in the BRAC report and the activity and its positions will relocate to another installation. Are the employees of the tenant activity eligible for BRAC leave, even though the losing installation will ultimately gain a significant number of employees as a result of various BRAC realignments?

A10. In applying the numerical criteria for realignments in 10 U.S.C. 2687(a)(2) (i.e., that a realignment must reduce the civilian personnel strength by more than 1,000, or by more than 50 percent), tenant activities on host installations should be looked at

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discretely. If the tenant activity is being realigned and meets the numerical criteria, the employees of that tenant are entitled to BRAC restored leave. This is based on the definition of "military installation" in 10 U.S.C. 2687(e)(1), which includes "...other activity under the jurisdiction of the Department of Defense;" the term "other activity" would include tenant activities.

Q11. What about employees from a closing or realigning activity that is not relocating outside the commuting area. Are these employees covered under 5 U.S.C. 6304(d)(3)?

A11. Yes. The fact that the relocation may occur in the commuting area does not affect the determination of entitlement under 5 U.S.C. 6304(d)(3).

Q12. Does a commander have to decide, based on workload, which employees in the activity scheduled for BRAC closure or realignment are covered under 5 U.S.C. 6304(d)(3)?

A12. No.

Q13. We have SES members working in an activity scheduled for closure or realignment. Now that they are subject to forfeiture rules, would the provisions of 5 U.S.C. 6304(d)(3) apply to them?

A13. Yes.

Q14. Can non-U.S. citizen employees be covered under 5 U.S.C. 6304(d)(3)?

A14. Yes, as long as the non-U.S. citizen is covered under Subchapter I, Chapter 63 of title 5, U.S.C.

Q15. Are Government contractors, military members, and non-employee reservists covered under 5 U.S.C. 6304(d)(3)?

A15. No. Federal civil service employees covered by the annual and sick leave system established under 5 U.S.C. Chapter 63 are eligible for coverage under 5 U.S.C. 6304(d)(3). See 5 U.S.C. 6301(2) (A) for the applicable definition of employee.

Q16. When an employee is in a non-BRAC position and is temporarily promoted or reassigned to a position in an activity that is eligible for BRAC restored leave, does that employee become eligible for BRAC restored leave?

A16. No, the permanent position of an employee gives the entitlement to BRAC restored leave, so an employee temporarily promoted or reassigned to a BRAC activity would not be eligible for BRAC restored leave.

Leave Restoration and Payment

June 30, 2006

Enclosure (2)-4

Q17. Is BRAC restored leave placed in a special leave account?

A17. Yes. Leave in excess of the statutory maximum (normally 240 hours) is restored and is placed in a separate leave account.

Q18. What happens to active restored accounts (accounts on which the time limit for use is running) when employees become subject to 5 U.S.C. 6304(d)(3)? Is there any way to stop the clock from running on the active restored accounts?

A18. Yes. The time limits established under 5 CFR 630.306(a) and (b) are canceled for the period during which an employee is subject to 5 U.S.C. 6304(d)(3). Once the employee's coverage under 5 U.S.C. 6304(d)(3) ends, a new time limit is established for all the leave that had been restored to the employee prior to coverage under 5 U.S.C. 6304(d)(3).

Q19. What happens to leave restored under 5 U.S.C. 6304(d)(3) when an employee transfers from an installation or activity closed or realigned under BRAC to a non-BRAC installation?

A19. 5 U.S.C. 5551(c) requires the Department of Defense to pay a lump-sum payment to an employee for any unused annual leave that was restored under 5 U.S.C. 6304(d)(3) when the employee (1) transfers to a position in any other department or agency of the Federal Government or (2) moves to a position within DOD not located at an installation undergoing closure or realignment.

Q20. What happens to leave restored under 5 U.S.C. 6304(d)(3) when an employee is no longer eligible for restoration of leave under this provision, but has not separated nor moved to a position in a Federal agency or department outside of DoD or to a position within DoD not located at an installation being closed or realigned (for example, this might occur if an activity scheduled for realignment to another location ultimately does not move)?

A20. Because the employee has not separated or moved from a BRAC installation to a non-BRAC installation, the employee's restored leave account may not be liquidated by the payment of a lump-sum as required by 5 U.S.C. 5551(c). Instead, the special time limits established under 5 CFR 630.306(b) for using the restored leave will be applied. For example, a full-time employee with 416 hours or less is required to use the leave by the end of the leave year in progress 2 years after the date the employee is no longer subject to 5 U.S.C. 6304(d)(3). That period is extended by 1 leave year for each additional 208 hours of excess annual leave or any portion thereof.

Q21. Is an employee covered under 5 U.S.C. 6304(d)(3) eligible for a lump-sum payment if he moves to another BRAC activity?

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A21. No, because he is moving to another BRAC activity (and as long as the new activity meets the criteria in 10 U.S.C. 2687), the employee continues to be covered by the unlimited annual leave carryover provision.

Q22. When an employee in a position eligible for BRAC restored leave is temporarily promoted or reassigned to a non-BRAC position, what should happen to his/her BRAC restored leave?

A22. The permanent position of an employee gives the entitlement to BRAC restored leave, so until an employee is permanently moved to a non-BRAC position, the BRAC restored leave would stay in the employee's leave account (i.e., not be paid out).

Q23. If an employee covered by 5 U.S.C. 6304(d)(3) receives an offer from a non-BRAC activity prior to the end of the leave year, is that leave (current year) included in the lump-sum payment for annual leave restored under 5 U.S.C. 6304(d)(3)?

A23. No. Leave earned during the current leave year cannot be included in the lump-sum payment because it has not been restored under 5 U.S.C. 6304(d)(3).

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