Federal Employees: Human Resources Management Flexibilities in Emergency Situations

Barbara L. Schwemle
Congressional Research Service

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Federal Employees: Human Resources Management Flexibilities in Emergency Situations

Abstract
[Excerpt] Federal executive branch departments and agencies have available to them various human resources management flexibilities which can be utilized in emergency situations, such as those which resulted from Hurricanes Katrina and Rita and which could occur during a pandemic influenza outbreak. The Office of Personnel Management has issued guidance on these flexibilities, which supplements the basic policies governing staffing, compensation, leave sharing, and telework in Title 5 of the United States Code. Legislation (S. 1000, H.R. 4106, and a provision in H.R. 3221) to enhance telework in the federal government is pending in the 110th Congress.

Keywords
federal employees, emergency, human resource management, public policy, flexibilities

Comments
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Federal Employees: Human Resources Management Flexibilities in Emergency Situations

Barbara L. Schwemle
Analyst in American National Government
Government and Finance Division

Summary

Federal executive branch departments and agencies have available to them various human resources management flexibilities which can be utilized in emergency situations, such as those which resulted from Hurricanes Katrina and Rita and which could occur during a pandemic influenza outbreak. The Office of Personnel Management has issued guidance on these flexibilities, which supplements the basic policies governing staffing, compensation, leave sharing, and telework in Title 5 of the United States Code. Legislation (S. 1000, H.R. 4106, and a provision in H.R. 3221) to enhance telework in the federal government is pending in the 110th Congress.

Over the last several years, federal departments and agencies have received guidance from the Office of Personnel Management (OPM) on the various human resources (HR) flexibilities available to them to facilitate management in emergency situations. Notably, these issuances occurred following the September 11, 2001, terrorist attacks and in the aftermath of the devastation wrought by Hurricanes Katrina and Rita which occurred back-to-back in the Gulf Coast region of the United States in late Summer 2005.¹ Most

recently, OPM reiterated the guidance\(^2\) as part of fulfilling its responsibilities, under the President’s national strategy on pandemic influenza, to provide direction on human capital management and COOP planning criteria, and to update telework documents.\(^3\) The agency also includes a Federal Hiring Flexibilities Resource Center, described as “a toolkit,” on its website.\(^4\) In a December 18, 2006, memorandum, OPM encouraged agencies located in the Gulf Coast region devastated by Hurricane Katrina to evaluate using the various human resources flexibilities, and in particular, recruitment, relocation, and retention incentives, to meet their human capital needs.\(^5\) The HR flexibilities relate to staffing, compensation, leave transfer, and telework.

**Table 1**, below, provides information on selected flexibilities.

<table>
<thead>
<tr>
<th>Flexibility and Authority</th>
<th>Brief Description</th>
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<tbody>
<tr>
<td>Appointments in Remote or Isolated Locations [5 C.F.R. §213.3102(i)(1)]</td>
<td>Agencies can appoint individuals for up to one year to work less than 1040 hours per year. Such appointments can be extended indefinitely in one-year increments. A remote or isolated location is “outside the local commuting area of a population center from which an employee can reasonably be expected to travel on short notice under adverse weather or road conditions which are normal for the area.”</td>
</tr>
<tr>
<td>Excepted Service(^6) Appointment — 30-Day Critical Hiring Need [5 C.F.R. §213.3102(i)(2)]</td>
<td>Agencies can appoint individuals for 30 days and may extend the appointment for up to an additional 30 days if continued employment is essential to the agency’s operations. The same individual may not be employed for more than 60 days in a 12-month period. The agency may determine the qualification requirements. (For both senior-level and lower-level positions.)</td>
</tr>
<tr>
<td>Excepted Service Appointment — Temporary Emergency Need [5 C.F.R. §213.3102(i)(3)]</td>
<td>OPM has authorized agencies to appoint individuals for up to one year to fill positions affected by or needed to respond to the devastation of Hurricane Katrina. (For both senior-level and lower level positions.)</td>
</tr>
</tbody>
</table>


\(^6\) Excepted Service positions are not covered by the procedures governing the competitive service. Qualification standards and requirements for these positions are established by the individual agencies. The Title 5 rules on appointment (except for veterans preference), pay, and classification do not apply. Excepted service agencies include the Central Intelligence Agency, the Defense Intelligence Agency, the Federal Bureau of Investigation, and the National Security Agency.

\(^7\) OPM September 6, 2005, Memorandum.
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| Reemployment Priority List (RPL)<sup>8</sup>  
[5 C.F.R. Part 330, Subpart B] | Agencies can use the RPL as a source of qualified individuals who are available for temporary appointments (generally, one year with up to one additional year), term appointments (more than one year but not more than four years), or permanent appointments in the competitive service. An exception to choosing someone from the RPL may be granted when an individual on the RPL or with a higher ranking cannot assume duties without undue interruption to the agency. |
| Competitive Service<sup>9</sup> Appointment — 120-Day  
[5 C.F.R. Part 330, Subparts F and G] | Agencies can make appointments of 120 days or less without first selecting a surplus or displaced employee who is eligible for appointment under an Agency Career Transition Assistance Plan (CTAP) or an Interagency Career Transition Assistance Plan (ICTAP). For appointments of longer duration, the CTAP and the ICTAP may be used to identify well-qualified federal employees available for immediate employment. |
| Direct-Hire Authority  
[5 U.S.C. §3304; 5 C.F.R. Part 337, Subpart B] | OPM may authorize agencies (government-wide or individually) to appoint candidates directly to positions without regard to 5 U.S.C. §§3309-3318. In approving the direct hire of candidates, OPM must determine that a severe shortage of candidates or a critical hiring need exists. OPM has approved the direct hire of medical officers, nurses, diagnostic radiologic technicians, and pharmacists at all grade levels and in all locations. |
| Senior Executive Service (SES)<sup>10</sup> — Limited Emergency Appointments  
[5 C.F.R. Part 317, Subpart F] | Upon agency request, OPM may authorize agencies to appoint career employees to the SES for up to 18 months to meet a bona-fide, unanticipated, urgent need. The appointment cannot be renewed. |
| Reemploying Annuitants and Waiving Dual Compensation Restrictions  
[5 U.S.C. §5532(g), §8344(1), §8468(f)] | Upon agency request, OPM may authorize agencies to reemploy retirees. OPM, upon request, will grant agency heads the authority to waive the restrictions that prohibit federal retirees from getting the full combined value of their salary and annuity upon reemployment. |
| Reemploying Recipients of Voluntary Separation Incentives (commonly referred to as buyouts)  
[Various statutes authorized buyouts. General authority was provided through December 30, 1997, in P.L. 104-208, §663, Sept. 30, 1996; 110 Stat. 3009-383; 5 U.S.C. 5597 note. This law required full repayment if reemployment occurred within five years after leaving the government.] | Upon agency request, OPM may authorize agencies to rehire federal employees who retired or separated with buyouts. Laws authorizing buyouts may have included a requirement that the buyout be repaid upon government reemployment. Agencies may request that OPM grant a repayment waiver. |
| Premium Pay for Emergency Overtime Work  
[5 U.S.C. §5547(b); 5 C.F.R. §550.106] | Agencies may make exceptions to the biweekly limitation on premium pay. When an agency head determines that an emergencyposing a direct threat to life or property exists, an employee performing overtime work in connection with the emergency will generally be covered by an annual, rather than a biweekly, pay limitation. Under the annual limitation, the total of base premium pay in a calendar year may not exceed the greater of the annual rate of pay for GS-15, step 10 (including any applicable special rate or locality rate), or Level V of the Executive Schedule. |

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<sup>8</sup> The Reemployment Priority List (RPL) is the mechanism agencies use to give reemployment consideration to their former competitive service employees separated by reduction in force (RIF) or fully recovered from a compensable injury after more than one year.

<sup>9</sup> Competitive Service positions require applicants to compete against one another in open competition based on job-related criteria to obtain employment. The positions are subject to the civil service laws codified at Title 5 of the United States Code and to oversight by the Office of Personnel Management. Employees are to be selected from among the best-qualified and without discrimination.

<sup>10</sup> Senior Executive Service (SES) positions are classified above grade 15 of the General Schedule or in level IV or V of the Executive Schedule, or an equivalent position, and are not filled by presidential appointment by and with the advice and consent of the Senate. Members of the SES, among other duties, direct the work of an organizational unit and exercise important policymaking, policy-determining, or other executive functions. (5 U.S.C. §3132(a)(2))
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<tr>
<td>Recruitment Incentives</td>
<td>Agencies may pay recruitment incentives to newly appointed employees (or employees reappointed after a 90-day break-in service) after determining that it is likely to be difficult to fill positions in the absence of such incentives. A service agreement of at least six months is required.</td>
</tr>
<tr>
<td>Relocation Incentives</td>
<td>Agencies may pay relocation incentives to current employees who must permanently or temporarily relocate to accept positions in different geographic areas after determining that it is likely to be difficult to fill positions in the absence of such incentives. Establishment of residency and a service agreement for a specified period are required. Generally, relocation incentives are approved on a case-by-case basis.</td>
</tr>
<tr>
<td>Retention Incentives</td>
<td>Agencies may pay retention incentives to current employees after determining that the employees unusually high or unique qualifications or a special need for the employees services makes it essential to retain the employees who likely would leave federal service in the absence of such incentives. Groups or categories of employees may be authorized to receive retention incentives.</td>
</tr>
<tr>
<td>Emergency Leave Transfer Program</td>
<td>OPM, at the President’s direction, may establish an emergency leave transfer program to assist employees affected by an emergency or major disaster (including floods, earthquakes, tornadoes, and bombings) which severely adversely affects substantial numbers of employees. Under the program, executive agency employees could donate unused annual leave to affected employees in their own or other agencies. The President has authorized OPM to establish such an emergency leave transfer program to assist employees affected by Hurricane Katrina if such is needed. Legislation authorizing emergency leave transfer for the judicial branch was enacted as P.L. 109-229 on May 31, 2006.</td>
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16 In the wake of President Bush’s authorization for emergency leave transfer in the executive branch, the Judicial Conference of the United States requested legislative authority for the same (continued...)
Pending Legislation on Telework

The Telework Enhancement Act of 2007 (S. 1000, as ordered to be reported, and Title VI, Subtitle C of H.R. 3221, as passed by the House of Representatives) and the Telework Improvements Act of 2007 (H.R. 4106, as introduced) are pending in the 110th Congress. The legislation would require executive branch agency heads to establish

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**Flexibility and Authority**

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<tr>
<th>Robert T. Stafford Disaster Relief and Emergency Assistance Act [P.L. 93-288, Title III, §306, May 22, 1974, as amended:] 88 Stat. 149-150; 42 U.S.C. §5149</th>
<th>Authorizes the hiring of temporary staff, experts, and consultants to provide disaster relief during emergencies declared by the President. Authorizes federal agencies to appoint and fix the compensation of temporary personnel without regard to Title 5 of the <em>United States Code</em> provisions on appointments in the competitive service and to employ experts and consultants in accordance with 5 U.S.C. §3109.</th>
</tr>
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<tr>
<td>Telework [P.L. 106-346, §359, Oct. 23, 2000; 114 Stat. 1356, at 1356A-36; 5 U.S.C. §6120 note]</td>
<td>OPM encourages greater use of telework — working at a location other than an employee’s “official duty station” — during emergency situations to ensure continuity of operations and to reduce fuel consumption and traffic congestion. A telework center is one type of alternative worksite housing workstations that can be rented by employers. The General Services Administration operates telework centers in Maryland, Virginia, and West Virginia.</td>
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16 (continued)


19 Senator Ted Stevens, for himself and Senator Mary Landrieu, introduced S. 1000 on March 27, 2007, and it was referred to the Senate Committee on Homeland Security and Governmental Affairs. The Subcommittee on Oversight of Government Management, the Federal Workforce, and the District of Columbia conducted a hearing on the bill on June 12, 2007. The full committee marked up the bill and ordered it to be reported, by voice vote, on November 14, 2007. Representative John Sarbanes offered an amendment on telework (No. 765) as a new subtitle C to Title VI of H.R. 3221, the New Direction for Energy Independence, National Security, and Consumer Protection Act, during House consideration of the bill on August 4, 2007, and it was agreed to by voice vote. H.R. 3221 passed the House on a 241-172 (Roll No. 832) vote the same day. Representative Danny Davis, for himself and Representatives John Sarbanes, Henry (continued...
policies under which employees (with some exceptions) would be eligible to participate in telework. S. 1000 also would cover legislative branch employees. The policies on telework would have to be developed within 180 days after the act’s enactment (S. 1000 and H.R. 4106) or within one year after the act’s enactment (H.R. 3221). Under the legislation, employee participation in telework would be required to the maximum extent possible without diminishing either employee performance or agency operations. In the executive branch, employees not eligible for telework generally would include those whose duties involve the daily handling of secure materials, contact with persons, the use of special equipment, or physical presence.

Each of the bills would require Telework Managing Officers to be appointed, training to be provided to managers, supervisors, and employees, and various reports to be prepared. Under H.R. 3221 and H.R. 4106, the Comptroller General would be directed to evaluate the telework policies in the executive branch. The CG would be required to issue an annual report that would provide, for each executive branch agency, information on the number of employees (1) overall, (2) eligible to telework, (3) who telework regularly, and (4) who telework occasionally. H.R. 3221 and H.R. 4106 also would require the CG to determine the compliance of agencies with the act.

\[\text{19 (continued)}\]

Waxman, Tom Davis, Frank Wolf, and Elijah Cummings, and Delegate Eleanor Holmes Norton, introduced H.R. 4106 on November 7, 2007, and it was referred to the House Committee on Oversight and Government Reform.