

DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY

DEPARTMENTAL PERSONNEL MANUAL SYSTEM

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SUBJECT: Severance Pay - Transfer of Agency
Functions to Private Organizations

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Recently, a number of questions have been raised within our Department regarding the entitlement to severance pay for those employees involuntarily separated as a result of the transfer of agency functions to private organizations. We have directed many of these questions to the Office of Personnel Management (OPM) and have received the attached advisory information. A quick-reference chart has been prepared summarizing many of the more common situations. We believe this guidance will be of general interest to the Department in view of the increased activity in the contracting out of Government functions.

We have requested OPM to review and revise the existing regulations and guidance on severance pay, particularly as they relate to contracting out. There clearly seems to be a consensus that this information is both outdated and confusing to the user. OPM has begun to study these issues and we anticipate that new guidance will be issued in the near future. In the interim, the attached guidance should help to clarify an employee's entitlement to severance pay in contracting-out situations.

This letter supersedes the guidance contained in DPM Bulletin 550-14. Questions may be addressed to Mrs. Gail Batt on 366-9448.


Director of Personnel

Attachment

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SEVERANCE PAY

TRANSFER OF AGENCY FUNCTIONS TO PRIVATE ORGANIZATIONS

1. The acceptance of any employment with a subcontractor does not affect severance pay entitlement, even if the employee is hired to perform the same function as performed for the Federal Government. The Office of Personnel Management (OPM) has long been aware of situations in which employees who are separated as the result of the contracting out of a Federal function accept employment with subcontractors and continue to receive severance pay. Although this situation appears to be inequitable to employees who accept employment with the primary contractor, OPM has found that the restrictions in 5 CFR 550.701(b)(6) apply to only the primary contractor named in the contract. As a basis for this reasoning, OPM pointed out that in many cases an agency is not aware that the primary contractor has subcontracted a portion of the function. In other words, the agency is not involved in the contract between the primary contractor and the subcontractor, nor does the primary contractor have an accurate way of knowing the severance pay status of employees working for the subcontractor.
2. An employee is eligible for severance pay if he/she goes to work for the primary contractor on a function other than the one on which the employee was working while a Federal employee. It makes no difference if the function the employee is working on for the contractor was also previously performed by the same Federal agency for which the employee worked.

OPM has also pointed out that in some instances the contracting out of a Federal function results in a reduction in force and the employee who is ultimately separated is not necessarily the one who performed the transferred function prior to the transfer. Therefore, if the employee who is ultimately separated as the result of the contract did not perform the specific function that was contracted out he or she would be eligible for severance pay, assuming other eligibility criteria are met.

3. An employee who resigns prior to receiving any offer from the contractor is entitled to severance pay, assuming other eligibility criteria are met. The severance pay will continue unless the employee goes to work for the contractor before the 91st day after the date of the transfer of the function to the contractor and works on that same function. Before the employee resigns, however, the employee must have received specific written notice that he or she is to be separated as the direct result of the contracting out of a Federal function.

4. An employee who resigns after declining noncomparable employment with the contractor is entitled to severance pay assuming other eligibility criteria are met. The severance pay will continue unless the employee goes to work for the contractor before the 91st day after the date of the transfer of the employee's function to the contractor and works on that same function. Before the employee resigns, however, the employee must have received specific written notice that he or she is to be separated as the direct result of the contracting out of a Federal function.
5. An employee who resigns after receiving a comparable offer from the contractor, with employment scheduled to begin on or before the date of the transfer of the employee's function to the contractor, is not entitled to severance pay.
6. An employee who accepts comparable or noncomparable employment with the contractor, with employment scheduled to begin on or before the date of the transfer of the employee's function to the contractor, is ineligible for severance pay.
7. An employee who declines comparable employment with the contractor which is to begin on or before the transfer date is not entitled to severance pay.
8. An employee who accepts any employment from the contractor, which is to begin sometime after the transfer but before the 91st day, is entitled to severance pay from the date the employee resigns or is separated until the employment begins.
9. An employee who, before the transfer date, declines comparable employment with the contractor which is to begin sometime after the transfer but before the 91st day, is not entitled to severance pay.
10. An employee who, before or after the transfer date, accepts or declines any employment with the contractor which is to begin on or after the 91st day of the transfer is entitled to severance pay.

Guide to Severance Pay Entitlement
Transfer of Agency Functions to Private Organizations

	Entitled to Severance Pay*	No Entitlement to Severance Pay
1. Before the transfer date, contractor offers employment that begins on or before date of transfer:		
Comparable or noncomparable employment accepted		X
Comparable employment declined		X
Noncomparable offer declined	X	
2. Before the transfer date, contractor offers comparable employment with employment beginning after the transfer date but before the 91st day after the transfer:		
Employment accepted	X (Only for period after resignation or separation by the agency until employment begins)	
Employment declined		X
3. After the transfer, the contractor offers any employment that begins before the 91st day after the transfer:		
Employment accepted	X (Only for period after separation until employment begins)	
Employment declined	X	

***Note:** Employee must have received specific written notice that he or she is to be involuntarily separated as the direct result of the contracting out of the Federal function and meet all other eligibility criteria.

	Entitled to Severance Pay*	No Entitlement to Severance Pay
4. Before or after the transfer date, contractor offers any employment that begins on or after the 91st day of the transfer:		
Employment accepted	X	
Employment declined	X	
5. Contractor offers employment beginning at any time involving different function than that performed as a Federal employee	X	
6. Subcontractor offers any employment, including same function performed as Federal employee	X	

***Note:** Employee must have received specific written notice that he or she is to be involuntarily separated as the direct result of the contracting out of the Federal function and meet all other eligibility criteria.