



Federal Employees: Human Resources Management Flexibilities in Emergency Situations

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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 proposed amendments to S. 3268) to enhance telework in the federal government is pending in the 110th Congress.

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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 guidance² 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 1. HR Flexibilities for Emergency Situations

Flexibility and Authority	Brief Description
Appointments in Remote or Isolated Locations [5 C.F.R. §213.3102(i)(1)]	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.”

¹ U.S. Office of Personnel Management, Memorandum for Heads of Executive Departments and Agencies, “Excused Absence and Assistance to Federal Employees Affected by the Attacks at the World Trade Center and the Pentagon,” from Kay Coles James, Director, September 13, 2001, available at <http://www.opm.gov/oca/COMPMEMO/2001/2001-08.asp>. U.S. Office of Personnel Management, Memorandum for Heads of Executive Departments and Agencies, “Emergency Hiring Situation Resulting from Hurricane Katrina,” from Linda M. Springer, Director, September 6, 2005, available at <http://www.chcoc.gov/Transmittals/TransmittalDetails.aspx?TransmittalID=663>. (Hereafter referred to as OPM September 6, 2005, Memorandum.) See also U.S. Office of Personnel Management, Memorandum for Heads of Executive Departments and Agencies, “HR Flexibilities Available to Assist Federal Employees Affected by Severe Weather Conditions or Other Emergency Situations,” from Linda M. Springer, Director, June 17, 2008, available at <http://www.opm.gov/oca/compmemo/2008/2008-09.asp>.

² U.S. Office of Personnel Management, *Human Capital Planning for Pandemic Influenza; Information for Agencies and Departments*, August 3, 2006 and updated September 12, 2006, available at <http://www.opm.gov/pandemic/index.asp>.

³ U.S., The White House, Homeland Security Council, *National Strategy for Pandemic Influenza*, November 2005, available at <http://www.whitehouse.gov/homeland/pandemic-influenza.html>.

⁴ The Federal Hiring Flexibilities Resource Center is available at http://www.opm.gov/Strategic_Management_of_Human_Capital/fhfrc/default.asp.

⁵ U.S. Office of Personnel Management, Memorandum for Chief Human Capital Officers, “Recruitment and Retention Flexibilities for Gulf Coast Employees,” from Linda M. Springer, Director, December 18, 2006, available at <http://www.opm.gov/oca/compmemo/2006/2006-21.asp>.

Flexibility and Authority	Brief Description
Excepted Service ^a Appointment—30-Day Critical Hiring Need [5 C.F.R. §213.3102(i)(2)]	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.)
Excepted Service Appointment—Temporary Emergency Need [5 C.F.R. §213.3102(i)(3)]	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.) ^b
Appointment of Faculty Members [5 C.F.R. §213.3102(o)]	Agencies can appoint faculty members to scientific, professional, or analytical positions. Appointees must be bona fide faculty members from accredited colleges and universities, have special qualifications for the position, and not work more than 130 days per year.
Use of Private Sector Temporary Help Service Firms [5 C.F.R. Part 300, Subpart E] (Conditions for using private sector temporaries are at 5 C.F.R. §300.503.)	Agencies can contract for up to 120 workdays with private sector temporary help service firms to quickly provide specific services (but not for the SES, managerial, or supervisory positions). A contract may be extended for an additional 120 workdays. The firm is the legally responsible employer for all aspects of employment.
Reemployment Priority List (RPL) ^c [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 ^d 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.

Flexibility and Authority	Brief Description
Senior Executive Service (SES) ^e — 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(l), §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 emergency posing 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 basic and 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.
Recruitment Incentives [5 U.S.C. §5753; 5 C.F.R. Part 575, Subpart A]	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. ^f
Relocation Incentives [5 U.S.C. §5753; 5 C.F.R. Part 575, Subpart B]	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. ^g
Retention Incentives [5 U.S.C. §5754; 5 C.F.R. Part 575, Subpart C]	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. ^h

Flexibility and Authority	Brief Description
Emergency Leave Transfer Program ⁱ [5 U.S.C. §6391; 5 C.F.R. Part 630, Subpart K]	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. ^j Legislation authorizing emergency leave transfer for the judicial branch was enacted as P.L. 109-229 on May 31, 2006. ^k
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]	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 <i>United States Code</i> provisions on appointments in the competitive service and to employ experts and consultants in accordance with 5 U.S.C. §3109.
Telework [P.L. 106-346, §359, Oct. 23, 2000; 114 Stat. 1356, at 1356A-36; 5 U.S.C. §6120 note]	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. ^l A telework center is one type of alternative worksite housing workstations that can be rented by employers. The General Services Administration (GSA) operates telework centers in Maryland, Virginia, and West Virginia. ^m

- a. 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.
- b. OPM September 6, 2005, Memorandum.
- c. 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.
- d. 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.
- e. 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 policy-making, policy-determining, or other executive functions. (5 U.S.C. §3132(a)(2)).
- f. U.S. Office of Personnel Management, *Recruitment Incentives*, available at <http://www.opm.gov/oca/PAY/HTML/RECBONFS.asp>. By law, OPM must report to Congress on agency use of recruitment, relocation, and retention incentives in each year, 2005-2009 (P.L. 108-411, October 30, 2004, 118 Stat. 2305, at 2309-2310).

- g. Ibid., *Relocation Incentives*, available at <http://www.opm.gov/oca/PAY/HTML/RELBNFS.asp>.
- h. Ibid., *Retention Incentives*, available at <http://www.opm.gov/oca/PAY/HTML/RETALLFS.asp>.
- i. For OPM's guidance on the emergency leave transfer program, see U.S. Office of Personnel Management, *Emergency Leave Transfer Program*, available at <http://www.opm.gov/oca/leave/HTML/emerg.asp>. A sample agency plan on emergency leave transfer is available at http://www.opm.gov/oca/leave/HTML/ELTP_sample.asp.
- j. Memorandum on Assistance to Federal Employees Affected by Hurricane Katrina," September 1, 2005, *Weekly Compilation of Presidential Documents*, vol. 41, September 2005, p. 1338. U.S. Office of Personnel Management, Memorandum for Heads of Executive Departments and Agencies, "Emergency Leave Transfer for Federal Employees Affected by Hurricane Katrina," from Linda M. Springer, Director, September 2, 2005, available at <http://www.opm.gov/oca/compmemo/2005/2005-17.asp>. The memorandum authorizes agencies with employees affected by the hurricane to (1) determine whether, and how much, donated annual leave is needed by affected employees; (2) as appropriate, approve leave donors and leave recipients in their agencies; (3) facilitate the distribution of donated annual leave from approved leave donors to approved leave recipients within their agencies; and (4) determine the period of time for which donated annual leave may be accepted for distribution to approved leave recipients. OPM issued guidance on the leave transfer program on September 14, 2006. (U.S. Office of Personnel Management, Memorandum for Human Resources Directors, "Governmentwide Transfer of Donated Annual Leave for Employees Affected by Hurricane Katrina," from Nancy H. Kichak, Associate Director, September 14, 2006, available at <http://www.opm.gov/oca/compmemo/2006/2006-08.asp>.)
- k. 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 in the judicial branch. Senator Susan Collins introduced legislation (S. 1736) to provide such on September 20, 2005. The bill passed the Senate, without amendment, by unanimous consent on October 19, 2005. The next day the Senate committee's report accompanying the legislation was published. U.S. Congress, Senate Committee on Homeland Security and Governmental Affairs, *Providing for the Participation of Employees in the Judicial Branch in the Federal Leave Transfer Program for Disasters and Emergencies*, report to accompany S. 1736, 109th Cong. 1st sess., S.Rept. 109-158 (Washington: GPO, 2005). The bill was referred to the House Committee on Government Reform on October 20, 2005, and it was marked-up and ordered to be reported by voice vote on March 9, 2006. The committee reported the bill on May 2, 2006. U.S. Congress, House Committee on Government Reform, *Authority to Include Judicial Branch Employees in Federal Leave Transfer Program for Disasters and Emergencies*, report to accompany S. 1736, 109th Cong. 2nd sess., H.Rept. 109-449 (Washington: GPO, 2006). S. 1736 passed the House of Representatives under suspension of the rules by voice vote on May 22, 2006. President George W. Bush signed the bill on May 31, 2006, and it became P.L. 109-229 (120 Stat. 390).
- l. U.S. Office of Personnel Management, Memorandum for Heads of Departments and Agencies, "Human Capital Flexibilities to Reduce Fuel Consumption," from Linda M. Springer, Director, September 2, 2005, available at <http://www.chcoc.gov/Transmittals/TransmittalDetails.aspx?TransmittalID=662>.
- m. U.S. General Services Administration, *Telework Centers*, available at <http://www.telework.gov>. For an analysis of the centers, see CRS Report RL33352, *Telework Centers and Federal Continuity of Operations Planning*, by nae reacte.

Pending Legislation on Telework

The Telework Enhancement Act of 2007 (S. 1000, as ordered to be reported) and the Telework Improvements Act of 2008 (H.R. 4106, as passed by the House of Representatives) are pending in the 110th Congress.⁶ Two Senate amendments that include provisions to enhance telework were

⁶ 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 Danny Davis, for himself and Representatives John Sarbanes, Henry Waxman, Tom Davis, Frank Wolf, and Elijah Cummings, and Delegate Eleanor Holmes Norton, introduced H.R. 4106 on November 7, 2007, and it was (continued...)

offered to S. 3268, the Stop Excessive Energy Speculation Act of 2008, and also are pending.⁷ The legislation and amendments would require executive branch agency heads to establish policies under which employees (with some exceptions) could be eligible to participate in telework. S. 1000 also would cover legislative branch employees. The policies would have to be developed within 180 days after the act's enactment. 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. The bills could require Telework Managing Officers to be appointed; training to be provided to managers, supervisors, and employees; and various reports to be prepared.

H.R. 4106 would require the Comptroller General (CG) to evaluate the telework policies in the executive branch. The CG would be required to issue an annual report that would provide, for each agency, information on the number of employees overall, and the number and percentage of employees, (1) eligible to telework; (2) who teleworked an average of at least once a week on a regular basis, determined based on time spent actually teleworking; and (3) who teleworked an average of at least 20% of the hours that they worked in every two administrative workweeks, determined based on time spent teleworking. In addition, the report would include information on the number and percentage of employees who teleworked at least once a month on a regular basis, determined based on time spent teleworking; the number and percentage of employees who were not authorized to telework and the reasons why not; the number and percentage of employees who were authorized to telework and then later stopped teleworking, including the reasons why they stopped and whether stopping was voluntary or due to other factors, such as office coverage needs or productivity; and the extent to which barriers to telework have been identified and eliminated. Information on telework's impact (if any) on an agency's recruitment and retention of employees and on the performance of an agency's employees, and the level of employee satisfaction with an agency's telework policies, based on feedback, would be included in the report. H.R. 4106 also would require the CG to determine the compliance of agencies with the act and identify best practices in telework programs.

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referred to the House Committee on Oversight and Government Reform. A day before the bill's introduction, on November 6, 2007, the House Subcommittee on Federal Workforce, Postal Service, and the District of Columbia conducted a hearing on telework. The subcommittee marked up H.R. 4106 and forwarded it to the full committee, as amended, by voice vote on February 28, 2008. The House Committee on Oversight and Government Reform marked up the bill on March 13, 2008, and ordered it to be reported as amended. The committee reported the bill on May 21, 2008 (U.S. Congress, House Committee on Oversight and Government Reform, *Telework Improvements Act of 2008*, report to accompany H.R. 4106, 110th Cong., 2nd sess., H.Rept. 110-663 (Washington: GPO, 2008)). The House passed H.R. 4106 by voice vote under suspension of the rules on June 3, 2008.

⁷ Senator Ted Stevens and Senator Jeff Bingaman offered similar amendments to S. 3268 (S.Amdt. 5160 and S.Amdt. 5135) on July 24, 2008. In addition, the Bingaman amendment includes provisions that would require federal agencies to actively promote incentive programs that encourage federal employees and contractors to reduce petroleum usage through practices such as telecommuting, public transit, carpooling, and bicycling. The Administrator of GSA, the Director of OPM, and the Secretary of Energy would monitor and provide support to the agency programs. Such sums as are necessary would be authorized to implement the provisions for FY2009 through FY2015. (See CRS Report RL34516, *Telework Legislation Considered in the 110th Congress: A Side-by-Side Comparison of Provisions*, by (name redacted).)

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