



TSA Office of
**Human
Capital**

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Handbook



TSA MD 1100.55-10 Handbook

Back Pay

Effective: March 30, 2009



Transportation
Security
Administration



TSA Office of
**Human
Capital**

**TSA HANDBOOK TO
MANAGEMENT DIRECTIVE No. 1100.55-10**

This Handbook and all related Attachments and/ or Appendices contain requirements for implementing the provisions of TSA MD 1100.55-10, Back Pay. Until such time as TSA MD 1100.55-10 is rescinded, the Management Directive, Handbook, and any Attachments or Appendices are considered TSA policy, and must be applied accordingly.

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A. Definitions:

1. Applicant: An individual who submitted a resume or other similar documentation of work experience and education in anticipation of consideration for selection or placement in a vacant TSA position.
2. Appropriate Authority: A person or an entity having authority in the case at issue to correct or direct the correction of an unjustified or unwarranted personnel action, or to enter into a settlement agreement on behalf of the agency, including a court, the Merit Systems Protection Board (MSPB), the Equal Employment Opportunity Commission (EEOC), the Secretary of the Department of Homeland Security (DHS) or his designee, the Disciplinary Review Board (DRB), the Assistant Secretary of the TSA, or other TSA component or official to whom such authority is delegated.
3. Back pay: Payment awarded by an appropriate authority for pay and incentives lost by an employee due to an unwarranted or unjustified personnel action, or to resolve a matter in a settlement agreement.
4. Pay or incentives: The pay, leave, and other monetary employment benefits an employee is entitled to by statute, regulation, or TSA policy and which are payable by the TSA during periods of TSA employment.
5. Employee: An individual who is or has been employed by TSA to perform specified duties and responsibilities assigned to a position.
6. Unjustified or unwarranted personnel action: An act of commission or omission (i.e., failure to take an action or confer a benefit) that an appropriate authority subsequently determines was unjustified or unwarranted under applicable law, rule, regulations or TSA policy. Such actions include personnel actions and pay actions (alone or in combination). No unjustified or unwarranted personnel action is deemed to have occurred where a back pay term is provided in a settlement agreement.

B. General Requirements: When an appropriate authority issues a decision which corrects or orders the correction of an unjustified or unwarranted personnel action, and which finds that the unjustified or unwarranted personnel action resulted in the withdrawal, reduction, or denial of all or part of the pay or incentives due an employee, entitlement to back pay must be determined and calculated.

1. The employee shall be deemed to have performed services for TSA for which compensation is due during the period covered by the corrective action.
2. TSA shall compute for the period covered by the corrective action the pay and incentives the employee would have received if the unjustified or unwarranted personnel action had not occurred. To provide information needed by TSA to determine entitlement to back pay and benefits, an employee must complete and submit **TSA Form 1155-1, Back Pay Notification and Benefits Option Checklist**.
3. Depending on the situation, an employee may also be required to submit some or all of the following documentation, as applicable:
 - a. TSP-1, *Thrift Savings Plan Election Form*
 - b. SF-2809, *Employee Health Benefits Election Form*
 - c. SF-2817, *Life Insurance Election Form*
 - d. SF-1199A, *Direct Deposit Sign-Up Form*, including a copy of a voided check

C. Requirement for an Administrative Determination: The requirement for an administrative determination is met when an appropriate authority issues a written determination that an employee has been affected by an unjustified or unwarranted personnel action which resulted in the withdrawal, reduction, or denial of all or part of the pay and incentives otherwise due to the employee.

D. Requirement for Correction of Personnel Action: The requirement for correction of a personnel action is met when an appropriate authority, upon review and consistent with law, Executive Order, rule, regulation, or TSA policy, corrects or directs the correction of an unjustified or unwarranted personnel action which resulted in the withdrawal, reduction, or denial of all or part of the pay and incentives otherwise due to the employee.

E. Time Limitations Affecting Back Pay:

1. TSA will not authorize pay and incentives in any case for a period beginning more than six years before the date of the filing of a timely appeal, or, absent such filing, the date of the administrative determination that the employee is entitled to back pay.
2. TSA will apply a two-year limitation for back pay claims dealing with an employee's exempt or non-exempt status (three-year limitation for willful violations). See [TSA MD 1100.55-5, Premium Pay for Exempt Employees](#) and [TSA MD 1100.55-7, Premium Pay for Non-Exempt Employees](#).

F. Calculating Back Pay Awards:

1. No employee shall be granted more pay and incentives than he or she would have been entitled to receive if the unjustified or unwarranted personnel action had not occurred.
2. No back pay shall be awarded for:
 - (a) Any period during which the employee was not ready, willing, and able to perform his or her duties because of an incapacitating illness or injury. However, upon written request, an employee may be granted any sick or annual leave available to him or her for a period of incapacitation if the employee can establish that the period of incapacitation was the result of illness or injury.
 - (b) Any period during which the employee was unavailable to perform his or her duties for reasons other than those related to the unjustified or unwarranted personnel action.
 - (c) Any time period after failure to submit required checklists and forms.
3. The following amounts shall be included when computing a back pay award:
 - (a) Any gross pay (i.e., before any deductions) to which the employee would have been entitled including any non-competitive promotion(s) that may have been received by employees occupying similar positions during the period of back pay, such as promotions granted to employees assigned as Transportation Security Officer (TSO) positions from the D band to the E band.
 - (b) Any Comparability Equivalent Increase, Transportation Success Increase, Performance Accountability and Standards System Increase (based on the rating the employee would have received, if supportable; otherwise, based on a presumed rating of Achieves Standards), and locality-based increase paid to employees occupying similar positions.
 - (c) Any incentive, such as a retention incentive approved for payment to employees occupying TSO positions at certain airports, as long as the official duty station for the employee was the airport for which the incentive was approved.
4. The following amounts shall be deducted from any amount of back pay award:
 - (a) Any amounts earned by an employee from other employment (including self-employment) undertaken during the time the employee was separated or

unable to perform duties because of the unjustified or unwarranted personnel action (calculate gross earnings less any associated business losses and ordinary and necessary business expenses);

- (b) Any amounts earned by an employee from expansion of a “moonlighting” position the employee held while employed by TSA prior to the unjustified or unwarranted personnel action (only earnings received for expanded hours worked in the “moonlighting” employment which would have exceeded the hours worked prior to the separation);
- (c) Any payments received from the Government as a result of the unjustified or unwarranted personnel action which, in the case of payments received from a Federal employee retirement system, shall be returned to the appropriate system. The following payments shall be recovered from the back pay award prior to payment:
 - i. Retirement annuity payments (except health benefits and life insurance premiums);
 - ii. Refunds of retirement contributions;
 - iii. Severance pay;
 - iv. Lump sum payments for unused annual leave;
 - v. Mandatory employee retirement contributions to FERS or CSRS, as appropriate;
 - vi. Social Security taxes and Medicare taxes;
 - vii. Health benefits and life insurance premiums, if coverage continued during the period of erroneous separation;
 - viii. Life insurance premiums if coverage continued during a period of erroneous retirement; coverage was stopped during an erroneous separation and the employee suffered death or accidental dismemberment during that period; or additional premiums are owed due to a retroactive pay increase;
 - ix. Federal income tax withholdings; and
 - x. Other authorized deductions

NOTE: In general, there will be no deductions from back pay awards for unemployment benefits. States will generally seek reimbursement directly from the employee for unemployment compensation payments based on the

cancellation of the separation action. However, if TSA is billed by the appropriate state for such funds, TSA will in turn bill the employee.

G. Correcting Leave Balances:

1. Annual Leave

- (a) Annual leave restored to an employee in excess of the maximum leave accumulation authorized by law shall be credited to a separate leave account for use by the employee, and must be used in accordance with the following standards:
 - i. A full-time employee must schedule and use excess annual leave of 416 hours or less by the end of the leave year in progress two years after the date on which the annual leave is credited to the separate account. TSA shall extend this period by one leave year for each additional 208 hours of excess annual leave or any portion thereof.
 - ii. A part-time employee must schedule and use excess annual leave in an amount equal to or less than 20 percent of the employee's scheduled tour of duty over a period of 52 calendar weeks, by the end of the leave year in progress two years after the date on which the annual leave is credited to a separate account. TSA shall extend this period by one leave year for each additional number of hours of excess annual leave, or any portion thereof, equal to 10 percent of the employee's scheduled tour of duty over a period of 52 calendar weeks.

NOTE: The time to schedule and use excess annual leave will be determined based on the date an employee returns to his or her duty station.

2. Sick Leave

- (a) Sick leave shall be restored to the balance held prior to the unjustified or unwarranted personnel action.
- (b) The restored sick leave balance shall be increased by the amount of sick leave which would have been earned during the period of separation from TSA.
- (c) Any sick leave which may have been used during the period of separation from TSA will be subtracted from the sick leave balance.

H. Correcting Thrift Savings Plan (TSP): Errors that affect an employee's TSP account must be corrected consistent with regulations prescribed by the Federal Retirement Thrift Investment Board.

1. Employees may choose to make retroactive TSP contributions covering the period of separation due to the unjustified or unwarranted personnel action. (NOTE: For employees covered under FERS, matching contributions will be made by the agency, as appropriate.)
 - (a) Employees will be given the option to have the contribution election they had on file at the time of the unjustified or unwarranted personnel action reinstated for purposes of retroactive TSP contributions, or to submit a new TSP-1, *Thrift Savings Plan Election Form*.
 - (b) Any employee retroactive TSP contributions will be deducted from the amount of the back pay award.
2. Employees may choose to make current TSP contributions by submitting a current TSP-1, *Thrift Savings Plan Election Form*.

I. Health Insurance and Life Insurance:

1. Health Insurance

- (a) An employee may elect to have prior enrollment reinstated retroactive to the date it was terminated, with appropriate adjustments made in contributions and claims, to the same extent and effect as though the unjustified or unwarranted personnel action had not taken place; or
- (b) An employee may elect to enroll in the same manner as a new employee, by submitting a new SF-2809, *Employee Health Benefits Election Form*.
- (c) An employee who converted to an individual health insurance contract during the period of an unjustified or unwarranted personnel action may receive a refund of the premiums paid for that coverage if proof of premiums can be provided to TSA.

NOTE: Item (b) does not apply when an employee was erroneously separated via a retirement personnel action under conditions which entitle him or her to continued enrollment. In such cases, there is no need to restore health benefits coverage; it was transferred to the retirement system and automatically continued.

2. Life Insurance

- (a) An employee who is retroactively restored to duty with pay will have life insurance coverage as though the erroneous action never occurred. However, retroactive salary deductions for life insurance shall not be withheld from any back pay awarded for the period of the unwarranted or unjustified personnel action.

- (b) If death or accidental dismemberment occurs during the period between the employee's removal and the finding that the personnel action was unjustified or unwarranted, insurance proceeds will be paid and premiums will be withheld from the back pay award for the period of the unjustified or unwarranted personnel action.
- (c) An employee who had no life insurance coverage prior to the unjustified or unwarranted personnel action is allowed to elect life insurance coverage, as permitted during an open season. Additional life insurance coverage may also be elected by the employee if he or she is restored to duty after the life insurance open season has closed. The effective date of the coverage is generally the first day in a pay and duty status on or after the date a SF-2817, *Life Insurance Election Form*, is received by TSA.
- (d) An employee who opted to participate in Temporary Continuation of Coverage may request a refund of premiums if appropriate payment statements for the period of the coverage are provided to TSA.

J. Interest Computations: (applies only if interest is awarded by an appropriate authority).

1. Interest begins to accrue on the date or dates (usually one or more pay dates) on which the employee would have received the pay and incentives if the unwarranted or unjustified personnel action had not occurred.
2. Interest accrual ends at a time selected by TSA that is no more than 30 days before the date of the back pay interest payment. No interest is payable if a complete back pay payment is made within 30 days after any erroneous withdrawal, reduction, or denial of a payment, and the interest accrual ending date is set to coincide with the interest accrual starting date.
3. When computing the amount of interest due, TSA will utilize an Office of Personnel Management (OPM) automated interest rate calculator or similar tool.
4. TSA shall compute interest on the amount of back pay calculated before making any deductions for erroneous payments.
5. Rate(s) of interest used to compute the interest payment shall be the annual percentage rate or rates established by the Secretary of the Treasury for the period or periods of time for which interest is payable (these rates are published at <http://www.OPM.gov>).
6. Interest shall be compounded daily.
7. TSA shall compute the amount of interest due, and shall issue the interest payment within 30 days of the date on which accrual of interest ends.

8. To the extent feasible, TSA shall issue payments of back pay and interest simultaneously. If all or part of the payment of back pay is issued on or before the date on which accrual of interest ends, and the interest payment is issued after the payment of back pay is issued, the amount of the back pay paid shall be subtracted from the accrued amount of back pay and interest, effective with the date the payment of back pay was issued. Interest shall continue to accrue on the remaining unpaid amount of back pay (if any) and interest until the date on which accrual of interest ends.

K. Payment of Reasonable Attorney Fees:

1. An employee or an employee's personal representative may submit a request for payment of reasonable attorney fees and costs to the appropriate authority who decided that an unjustified or unwarranted personnel action was taken which resulted in the withdrawal, reduction, or denial of all or part of the pay and incentives otherwise due the employee.
 - (a) Such a request may only be presented to the appropriate authority which corrected or directed the correction of the unjustified or unwarranted personnel action.
 - (b) The appropriate authority to which a request for payment of attorney fees and costs is made usually provides TSA the opportunity to respond to such a request.

NOTE: Attorney fees and costs will not be paid in connection with cases involving TSA's Disciplinary Review Board (DRB).

2. When an appropriate authority corrects or directs the correction of an unjustified or unwarranted personnel action that resulted in the withdrawal, reduction or denial of all or part of the pay and incentives otherwise due an employee, the payment of reasonable attorney fees shall be deemed warranted only if:
 - (a) Such payment is in the interests of justice, as determined by the appropriate authority.
 - (b) There is a specific finding by the appropriate authority setting forth in writing the reasons such payment is in the interest of justice.
3. When an appropriate authority determines that such payment is warranted, it shall require payment of attorney fees and costs in an amount determined to be reasonable by the appropriate authority. When an appropriate authority determines that such payment is not warranted, no such payment shall be required.

4. When an appropriate authority determines that an employee has been affected by an unjustified or unwarranted personnel action that resulted in the withdrawal, reduction, or denial of all or part of the pay and incentives otherwise due the employee based on a finding of discrimination prohibited under law, the payment of attorney fees and costs shall be in accordance with the standards prescribed under section 706(k) of the Civil Rights act of 1964, as amended.
5. Payment of reasonable attorney fees and costs shall be allowed only for the services of and active member in good standing of the Bar of a state, the District of Columbia, the Commonwealth of Puerto Rico, or a territory of the United States, and for the services of law clerks, paralegals, or law students, when assisting members of a Bar. No fees may be paid for the services of any employee of TSA or the Federal government.
6. Payment of reasonable attorney fees and costs may be a negotiated term of a settlement agreement and processed accordingly.