



*To enhance mission performance, TSA is committed to promoting a culture founded on its values of Integrity, Innovation and Team Spirit.*

*NOTE: Pursuant to Section 101 of the Aviation and Transportation Security Act (49 U.S.C. 114 (n)), this directive and all related handbooks and attachments establish Transportation Security Administration (TSA) policy and supersedes the Federal Aviation Administration (FAA) orders, policies, guidance, and bulletins regarding back pay issued under the FAA Personnel Management System. This directive is TSA policy and must be applied accordingly.*

1. **PURPOSE:** This directive provides TSA policy and procedures for authorizing the payment of back pay and reasonable attorney fees based on the specific provisions described in this policy.
2. **SCOPE:** This directive applies to current and former TSA employees and applicants for TSA employment who were determined by an appropriate authority to have been subjected to an unjustified or unwarranted personnel action resulting in withdrawal or reduction of all or part of the pay and incentives to which the employee was otherwise due. This directive may also apply to settlement agreements (please see [TSA MD 1100.55-9, Settlement Agreements](#), for additional information) between TSA and a current or former employee or applicant for TSA employment. Similarly, this directive may apply to the pay implications of corrections to mistakes or errors, or changes in policy.
3. **AUTHORITY:** The Aviation and Transportation Security Act, Pub. L. 107-71 (ATSA)
4. **DEFINITIONS:**
  - A. **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.
  - B. **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 in 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 designee, the Disciplinary Review Board (DRB), the Assistant Secretary of the TSA, or other TSA component or official to whom such authority is delegated.
  - C. **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.
  - D. **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 TSA during periods of TSA employment.
  - E. **Employee:** An individual who is or has been employed by TSA to perform specified duties and responsibilities assigned to a position.

- F. 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.

## 5. RESPONSIBILITIES:

- A. The Office of Human Capital (OHC) is responsible for:
- (1) Ensuring that provisions of settlement agreements and/or decisions rendered by an appropriate authority which correct or direct the correction of unjustified or unwarranted personnel actions are implemented in a timely manner in accordance with this policy.
  - (2) Providing advice and guidance to employees concerning back pay and reinstatement of benefits.
  - (3) Furnishing [TSA Form 1155-1, Employee Back Pay Notification and Benefits Option Checklist](#) to employees subject to restoration of pay and benefits.
- B. The Office of Chief Counsel is responsible for:
- (1) Providing advice and guidance to affected TSA managers and OHC concerning:
    - (a) implementing the terms of settlement agreements, and
    - (b) implementing decisions rendered by an appropriate authority which correct or direct the correction of unjustified or unwarranted personnel actions.
  - (2) Negotiating and drafting settlement agreements, when appropriate.
- C. An affected employee/applicant is responsible for:
- (1) Providing to TSA information, such as wages earned during the period the employee/applicant was separated or unable to work due to unjustified or unwarranted personnel actions, to help TSA make appropriate back pay calculations.
  - (2) Completing and submitting [TSA Form 1155-1](#), and other applicable Federal forms, within time limits specified by the determination awarding back pay, or by the agency. Failure to provide information requested will delay payment of any back pay due the employee. An employee's failure to provide information needed to properly compute back pay may result in a claim of enforcement being denied by the appropriate authority.

## 6. POLICY:

- A. TSA shall provide appropriate back pay based on a determination made by an appropriate authority that an employee was affected by an unjustified or unwarranted personnel action

which resulted in a loss of all or part of the pay or incentives to which the employee was entitled.

- B. TSA shall compute, for the period covered by the determination (back pay period), the pay and incentives the employee would have received if the subject personnel action had not occurred. For purposes of computing back pay, the employee is considered to have performed service for the agency during the back pay period.
- C. TSA funds may be used to provide back pay to a TSA employee or former employee when an appropriate authority issues a decision as described in Sections 6A and 6B. The employee's program office will identify the funding source for payments.
- D. An applicant for TSA employment may be eligible to receive back pay in accordance with an EEOC determination or a decision by the Secretary for DHS or designee. TSA funds may be used to pay an applicant for employment as provided by an EEOC or DHS Secretary determination.
- E. The provisions of this directive and the accompanying Handbook may apply in matters for which TSA enters into a settlement agreement with a current or former employee or an applicant for employment with TSA. TSA funds may be used to provide back pay granted under the terms of a settlement agreement. Back pay will be calculated in accordance with the provisions of this directive unless the settlement agreement contains specific provisions dealing with such calculations.
- F. Attorney fees will be paid only if a determination to do so was made in writing by an appropriate authority or specifically called for by the terms of the settlement agreement. The employee's program office will identify the funding source for payment of attorney fees and costs.
- G. No employee will be entitled to receive greater pay or incentives than he or she would have been entitled to receive if the unjustified or unwarranted personnel action had not occurred.
- H. Determining Entitlement to Back Pay
  - (1) Back pay shall be paid when an appropriate authority determines, based on provisions of applicable law, rule, regulation, or TSA policy, that an employee experienced withdrawal, reduction, or denial of pay or incentives because of an unjustified or unwarranted personnel action.
  - (2) Requirement for a Timely Appeal: The employee or the employee's representative must initiate a claim, as noted below, in a timely manner:
    - (a) an appeal or grievance in accordance with TSA policies,
    - (b) a claim against the United States Government, or
    - (c) a discrimination complaint.

- (3) Requirement for a Determination by an Appropriate Authority: The appropriate authority's determination must be in writing and must conclude that the employee's pay or incentives were withdrawn, reduced, or denied due to an unjustified or unwarranted personnel action.
- (4) Requirement for Correction of the Personnel Action: The written determination by the appropriate authority must correct or direct the agency to correct the personnel action which caused the loss of the employee's pay or incentives.

#### H. Time Limitations Affecting Back Pay

- (1) TSA will not authorize back pay for a period beginning more than six years from 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, consistent with this directive.
- (2) When a determination that the employee is entitled to back pay is based on a complaint filed by way of the EEO process, the time limitation for the back pay is two years prior to the date the complaint was originally filed.
- (3) Where a claim for back pay is based on an employee's exempt or nonexempt status with regard to premium pay, TSA will apply a two-year time limitation on claims. A three-year time limitation will apply for willful violations of TSA premium pay provisions. See [TSA MD 1100.55-5, \*Premium Pay for Exempt Employees\*](#), and [TSA MD 1100.55-7, \*Premium Pay for Nonexempt Employees\*](#).

#### I. Calculating a Back Pay Award

- (1) Where the requirements for entitlement to back pay are met, the amount of back pay will be calculated consistent with the provisions of this directive and the [TSA Handbook to MD 1100.55-10, \*Back Pay\*](#).
- (2) For decisions involving a removal action, the time period covered by the back pay award ends on the date OHC processes the personnel action cancelling the removal action, restoring the employee to TSA's rolls. Alternatively, if the employee fails to follow instructions regarding the timely return of documents necessary to process the back pay award, the back pay award time period will end.
  - (a) When the employee is returned to TSA's rolls, he or she will be placed on excused absence (administrative leave), pending completion of any required background investigations and/or training needed to return the employee fully to duty.
  - (b) The employee's earnings while on administrative leave will be based on a straight 40-hour work week for a full time employee.
  - (c) A part-time employee will receive earnings based on the number of hours in the official tour of duty in effect prior to the personnel action that is being corrected.

(d) While on administrative leave, the employee will receive no premium pay or differential pay.

J. Payment of Reasonable Attorney Fees and Costs:

- (1) Attorney fees and costs shall only be allowed for the services of an 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 services of law clerks, paralegals, or law students who are assisting members of a Bar. No payment may be made for the services of any TSA employee, other Federal government employee, or non-attorney union representatives.)
- (2) If an employee satisfies the requirements for back pay entitlement, reasonable attorney fees and costs may be paid when the appropriate authority determines in writing that their payment is justified and in the interest of justice.
- (3) In accordance with section 706(k) of the Civil Rights Act of 1964, as amended, attorney fees and costs are payable as prescribed when an EEOC finding of prohibited discrimination is the basis for correcting an unjustified or unwarranted personnel action.

7. **PROCEDURES:** See [TSA Handbook to MD 1100.55-10, Back Pay](#).

8. **EFFECTIVE DATE AND IMPLEMENTATION:** This policy is effective immediately upon signature. The provisions of this MD apply only to determinations issued by an appropriate authority, and settlements effective after the effective date of the MD.

**APPROVAL**

*Signed*

*3/30/2009*

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Richard A. Whitford  
Assistant Administrator for Human Capital

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Date

Distribution: Assistant Secretary, Deputy Assistant Secretary, Associate Administrator, Assistant Administrators, Area Directors, Senior Field Executives, Federal Security Directors, Special Agents in Charge, Administrative Officers, and TSA Affiliated HR Offices

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