



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, Attachments, and Appendices, establish Transportation Security Administration (TSA) policy and must be applied accordingly.

REVISION: This revised directive supersedes TSA MD 1100.55-10, *Back Pay*, dated October 29, 2014.

SUMMARY OF CHANGES: Section 4, Definitions, moved to [TSA Handbook 1100.55-10, Back Pay](#); Section 5, Responsibilities, updated, added TSA Back Pay Advisory Board; Section 6, Policy, revised; Section 8, Approval and Effective Date, updated; removed references to unjustified or unwarranted personnel actions throughout the directive.

1. **PURPOSE:** This directive provides TSA policy and procedures for authorizing the payment of back pay and reasonable attorney fees, when applicable, 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 are eligible to request pay back following a qualifying personnel action as defined under Section 6.J. of this directive.

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 back pay implications of corrections of mistakes or errors, or changes in policy. Information on non-discretionary pay appeals may be found in [TSA MD 1100.55-11, Non-Discretionary Pay Appeals](#).

3. AUTHORITIES:

A. The Aviation and Transportation Security Act, Pub. L. 107-71 (ATSA)

4. DEFINITIONS: See [TSA Handbook 1100.55-10, Back Pay](#).

5. RESPONSIBILITIES:

A. The Assistant Administrator for Human Capital (AA/OHC) is responsible for:

- (1) Making the final determination regarding the payment of discretionary back pay after review and consideration of any recommendations provided by the TSA Back Pay Advisory Board. A determination regarding discretionary back pay results from circumstances in which an employee was cleared to return to duty following a suspension without pay, but remained in a non-pay status while awaiting reinstatement of a security clearance;

- (2) Ensuring that provisions of settlement agreements and/or decisions rendered by an appropriate authority regarding the payment of back pay are implemented in a timely manner in accordance with this directive;
- (3) Ensuring that advice and guidance is provided to managers and employees concerning back pay and reinstatement of benefits;
- (4) Ensuring that [TSA Form 1155-1A, Back Pay Notification and Benefits Option Checklist - Separation](#), or [TSA Form 1155-1B, Back Pay Notification and Benefits Option Checklist - Suspension](#), as appropriate, is distributed to employees subject to restoration of pay and benefits; and
- (5) Administering this directive and ensuring that it supports the mission of the agency.

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 personnel actions resulting in the payment of back pay;
- (2) Negotiating and drafting settlement agreements, when appropriate; and
- (3) Providing advice and guidance to the Back Pay Advisory Board.

C. The TSA Back Pay Advisory Board is responsible for:

- (1) Reviewing employee requests for discretionary back pay due to qualifying personnel actions as described in Section 6.J. of this directive;
- (2) Providing recommendations to the AA/OHC to grant or deny employee requests for discretionary back pay; and
- (3) Operating within the scope of, and according to provisions established in, Appendix A: TSA Back Pay Advisory Board Standard Operating Procedures in [TSA Handbook 1100.55-10, Back Pay](#).

D. A current or former employee or applicant who is requesting back pay is responsible for:

- (1) Providing information to TSA, such as wages earned during the period the employee/applicant was separated or unable to work due to a qualifying personnel actions, as stated under Section 6.J. of this directive, to help TSA make appropriate back pay calculations; and
- (2) Completing and submitting [TSA Form 1155-1A](#) or [TSA Form 1155-1B](#), as appropriate, and other applicable federal forms, within time limits specified under Section 6.K. of this

directive. 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 adversely affected by a personnel action that resulted in a loss of all or part of the pay or incentives to which the employee was entitled.
- B. TSA shall provide appropriate discretionary back pay following a determination by the AA/OHC that such back pay is appropriate under the conditions set forth in Section 6.J.
- C. In the event the TSA Back Pay Advisory Board recommends, and the AA/OHC concurs, that a current or former employee's access to classified information was suspended or restricted based on false information, and the employee's own actions or misconduct did not contribute to the clearance suspension or revocation action, the employee shall be entitled to back pay for the period approved by the AA/OHC.
- D. 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 should be treated as if they worked their regular tour of duty for the agency during the back pay period.
- E. 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 6.A., 6.B., and 6.C. The employee's program office will identify the funding source for payments.
- F. An applicant for TSA employment may be eligible to receive back pay in accordance with an Equal Employment Opportunity Commission (EEOC) determination or a decision by the Secretary, Department of Homeland Security (DHS) or designee. TSA funds may be used to pay an applicant for employment as provided by an EEOC or DHS Secretary determination.
- G. 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.
- H. 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.
- I. No employee will be entitled to receive greater pay or incentives than he or she would have been entitled to receive if the personnel action resulting in the loss of pay had not occurred.

J. Determining Entitlement to Back Pay:

- (1) Back pay shall be paid when the AA/OHC or other 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 a suspension without pay that was subsequently reversed, an administrative error, or based on the provisions of a settlement agreement;
- (2) All requests for discretionary back pay, to include those arising from placement on indefinite suspension without pay following the suspension or revocation of access to classified information, must be made to the AA/OHC through the employee's program office;
- (3) Upon request from the AA/OHC, the TSA Back Pay Advisory Board shall review the request for back pay to determine whether it meets the criteria for eligibility and make a recommendation to the AA/OHC. Back pay shall be paid when the AA/OHC determines, after considering recommendations from the TSA Back Pay Advisory Board, that back pay is warranted;
- (4) Requirement for a Timely Appeal: The employee or the employee's representative must initiate a claim, as noted below, in a timely manner as required by Section 6.K. of this directive:
 - (a) An appeal or grievance in accordance with TSA policies;
 - (b) A claim against the United States Government; or
 - (c) A discrimination complaint.
- (5) 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 a qualifying personnel action; and
- (6) 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.

K. 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; and

- (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 2-year time limitation on claims. A three-year time limitation will apply for willful violations of TSA premium pay provisions. See [TSA MD 1100.55-8, *Premium Pay*](#).

L. 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 1100.55-10, *Back Pay*](#); and
- (2) For decisions involving a removal or any suspension action, the time period covered by the back pay award ends on the date OHC processes the personnel action cancelling the removal or suspension action.
 - (a) When the employee is returned to TSA's rolls, he or she will be placed on administrative leave pending completion of any required background investigations and issuance of the security clearance required 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 (i.e. Monday – Friday, 8:00 a.m. – 4:30 p.m.);
 - (c) A part-time employee will receive earnings based on the number of hours in the official tour of duty, as documented on the SF-50, *Notification of Personnel Action*, that is in effect prior to the personnel action that is being corrected; and
 - (d) With the excepted noted in 6.L.(2)(d)(i) below, while on administrative leave, the employee will receive no premium pay or differential pay.
 - (i) In accordance with [TSA MD 1100.88-2, *Law Enforcement Availability Pay Certification*](#), Law Enforcement Availability Pay will continue during periods in which a Law Enforcement Officer is on administrative leave.

M. 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; and
- (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 a finding of prohibited discrimination is the basis for correcting an unjustified or unwarranted personnel action.

7. **PROCEDURES:** See [TSA Handbook 1100.55-10, Back Pay](#).
8. **APPROVAL AND EFFECTIVE DATE:** This policy is approved and effective the date of signature unless otherwise specified.

APPROVAL

Signed

November 3, 2017

Karen Shelton Waters
Assistant Administrator for Human Capital

Date

EFFECTIVE

November 18, 2017

Date

Distribution: Administrator, Deputy Administrator, Chief of Staff, Chief of Operations, Chief of Mission Support, Chief Counsel, Assistant Administrators, Regional Directors, Federal Security Directors, Supervisory Air Marshals in Charge, Business Management Division Directors, Administrative Officers, and Human Resources Specialists

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