

**TITLE 5 - GOVERNMENT ORGANIZATION AND EMPLOYEES****PART III - EMPLOYEES****Subpart D - Pay and Allowances****CHAPTER 55 - PAY ADMINISTRATION****SUBCHAPTER V - PREMIUM PAY****§ 5545. Night, standby, irregular, and hazardous duty differential**

(a) Except as provided by subsection (b) of this section, nightwork is regularly scheduled work between the hours of 6:00 p.m. and 6:00 a.m., and includes—

- (1) periods of absence with pay during these hours due to holidays; and
- (2) periods of leave with pay during these hours if the periods of leave with pay during a pay period total less than 8 hours.

Except as otherwise provided by subsection (c) of this section, an employee is entitled to pay for nightwork at his rate of basic pay plus premium pay amounting to 10 percent of that basic rate. This subsection and subsection (b) of this section do not modify section 5141 of title 31, or other statute authorizing additional pay for nightwork.

(b) The head of an agency may designate a time after 6:00 p.m. and a time before 6:00 a.m. as the beginning and end, respectively, of nightwork for the purpose of subsection (a) of this section, at a post outside the United States where the customary hours of business extend into the hours of nightwork provided by subsection (a) of this section.

(c) The head of an agency, with the approval of the Office of Personnel Management, may provide that—

(1) an employee in a position requiring him regularly to remain at, or within the confines of, his station during longer than ordinary periods of duty, a substantial part of which consists of remaining in a standby status rather than performing work, shall receive premium pay for this duty on an annual basis instead of premium pay provided by other provisions of this subchapter, except for irregular, unscheduled overtime duty in excess of his regularly scheduled weekly tour. Premium pay under this paragraph is determined as an appropriate percentage, not in excess of 25 percent, of such part of the rate of basic pay for the position as does not exceed the minimum rate of basic pay for GS-10 (including any applicable locality-based comparability payment under section 5304 or similar provision of law and any applicable special rate of pay under section 5305 or similar provision of law) (or, for a position described in section 5542 (a)(3) of this title, of the basic pay of the position), by taking into consideration the number of hours of actual work required in the position, the number of hours required in a standby status at or within the confines of the station, the extent to which the duties of the position are made more onerous by night, Sunday, or holiday work, or by being extended over periods of more than 40 hours a week, and other relevant factors; or

(2) an employee in a position in which the hours of duty cannot be controlled administratively, and which requires substantial amounts of irregular, unscheduled overtime duty with the employee generally being responsible for recognizing, without supervision, circumstances which require the employee to remain on duty, shall receive premium pay for this duty on an annual basis instead of premium pay provided by other provisions of this subchapter, except for regularly scheduled overtime, night, and Sunday duty, and for holiday duty. Premium pay under this paragraph is an appropriate percentage, not less than 10 percent nor more than 25 percent, of the rate of basic pay for the position, as determined by taking into consideration the frequency and duration of irregular, unscheduled overtime duty required in the position.

(d) The Office shall establish a schedule or schedules of pay differentials for duty involving unusual physical hardship or hazard, and for any hardship or hazard related to asbestos, such differentials shall be determined by applying occupational safety and health standards consistent with the permissible exposure limit promulgated by the Secretary of Labor under the Occupational Safety and Health Act

*NB: This unofficial compilation of the U.S. Code is current as of Jan. 5, 2009 (see <http://www.law.cornell.edu/uscode/uscprint.html>).*

of 1970. Under such regulations as the Office may prescribe, and for such minimum periods as it determines appropriate, an employee to whom chapter 51 and subchapter III of chapter 53 of this title applies is entitled to be paid the appropriate differential for any period in which he is subjected to physical hardship or hazard not usually involved in carrying out the duties of his position. However, the pay differential—

- (1) does not apply to an employee in a position the classification of which takes into account the degree of physical hardship or hazard involved in the performance of the duties thereof, except in such circumstances as the Office may by regulation prescribe; and
- (2) may not exceed an amount equal to 25 percent of the rate of basic pay applicable to the employee.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 487; Pub. L. 90–83, § 1(27), Sept. 11, 1967, 81 Stat. 200; Pub. L. 90–206, title II, § 217, Dec. 16, 1967, 81 Stat. 638; Pub. L. 90–556, § 2, Oct. 10, 1968, 82 Stat. 969; Pub. L. 91–231, § 8, Apr. 15, 1970, 84 Stat. 198; Pub. L. 94–183, § 2(23), Dec. 31, 1975, 89 Stat. 1058; Pub. L. 95–454, title IX, § 906(a)(2), (3), Oct. 13, 1978, 92 Stat. 1224; Pub. L. 96–54, § 2(a)(32), Aug. 14, 1979, 93 Stat. 383; Pub. L. 97–258, § 3(a)(13), Sept. 13, 1982, 96 Stat. 1063; Pub. L. 101–173, § 1(a), Nov. 27, 1989, 103 Stat. 1292; Pub. L. 101–509, title V, § 529 [title I, § 101(b)(3)(E), title II, § 203], Nov. 5, 1990, 104 Stat. 1427, 1439, 1456; Pub. L. 102–378, § 3(2), Oct. 2, 1992, 106 Stat. 1355; Pub. L. 108–136, div. A, title XI, § 1122(b), Nov. 24, 2003, 117 Stat. 1637.)

## Historical and Revision Notes

### 1966 Act

Derivation	U.S. Code	Revised Statutes and Statutes at Large
(a), (b)	5 U.S.C. 921.	June 30, 1945, ch. 212, § 301, 59 Stat. 298.
		May 24, 1946, ch. 270, § 10, 60 Stat. 218.
		Sept. 1, 1954, ch. 1208, § 206, 68 Stat. 1110.
(c)	5 U.S.C. 926.	Sept. 1, 1954, ch. 1208, § 208(a), 68 Stat. 1111.
		July 18, 1958, Pub. L. 85–525, 72 Stat. 363.

In subsection (b), the words “head of an agency” are substituted for “head of any department, independent establishment, or agency, including Government-owned or controlled corporations” because of the definition of “agency” and the application stated in section 5541. The words “the United States” are substituted for “the several States and the District of Columbia”.

In subsection (c), the words “head of an agency” are substituted for “head of any department, independent establishment, or agency, including Government-owned or controlled corporations, or of the municipal government of the District of Columbia” because of the definition of “agency” and the application stated in section 5541. The word “officer” is omitted as included in “employee”. The word “scheduled” is omitted since section 603 of the Act of Oct. 11, 1962, Pub. L. 87–793, 76 Stat. 847, eliminated the necessity of referring to rates as scheduled or longevity. Reference to the “Classification Act of 1949, as amended” is omitted as unnecessary.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

**1967 Act**

<b>Section of title 5</b>	<b>Source (U.S. Code)</b>	<b>Source (Statutes at Large)</b>
5545(c)	5 App.: 926.	July 18, 1966, Pub. L. 89–504 §§ 404(c), 405(d), (e), 80 Stat. 297, 298.
5545(d)	5 App.: 1134.	July 19, 1966, Pub. L. 89–512, § 1, 80 Stat. 318.

In the second sentence of subsection (d), the words “Under such regulations as the Commission may prescribe, and for such minimum periods as it determines appropriate” are substituted for clauses (3) and (4) of the third sentence of 5 App. U.S.C. 1134. That requirement in clause (4) that the Commission prescribe regulations is codified in 5 U.S.C. 5548 (b) by section 1 (32) of this bill. The words “an employee to whom chapter 51 and subchapter III of chapter 53 of this title applies is entitled to be paid the appropriate differential” are substituted for “The appropriate differential shall be paid to any officer or employee to whom this Act applies” to reflect the codification of that act (Classification Act of 1949) in title 5, United States Code, and to conform with the definitions applicable.

In subsection (d)(1), the words “does not apply to an employee” are substituted for “shall not be applicable with respect to any officer or employee.”

In subsection (d)(2), the words “may not . . . applicable to the employee” are substituted for “shall not . . . applicable with respect to such officer or employee”.

**References in Text**

GS–10, referred to in subsec. (c)(1), is contained in the General Schedule which is set out under section 5332 of this title.

The Occupational Safety and Health Act of 1970, referred to in subsec. (d), is Pub. L. 91–596, Dec. 29, 1970, 84 Stat. 1590, as amended, which is classified principally to chapter 15 (§ 651 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 651 of Title 29 and Tables.

**Amendments**

2003—Subsec. (d). Pub. L. 108–136 inserted before period at end of first sentence “, and for any hardship or hazard related to asbestos, such differentials shall be determined by applying occupational safety and health standards consistent with the permissible exposure limit promulgated by the Secretary of Labor under the Occupational Safety and Health Act of 1970”.

1992—Subsec. (d). Pub. L. 102–378 made technical correction to directory language of Pub. L. 101–509, § 529 [title II, § 203]. See 1990 Amendment note below.

1990—Subsec. (c)(1). Pub. L. 101–509, § 529 [title I, § 101(b)(3)(E)], inserted “(including any applicable locality-based comparability payment under section 5304 or similar provision of law and any applicable special rate of pay under section 5305 or similar provision of law)” after “GS–10”.

Subsec. (d). Pub. L. 101–509, § 529 [title II, § 203], as amended by Pub. L. 102–378, struck out “irregular or intermittent” before “duty involving unusual” in first sentence and inserted “, except in such circumstances as the Office may by regulation prescribe” after “thereof” in par. (1).

1989—Subsec. (c)(2). Pub. L. 101–173 amended par. (2) generally. Prior to amendment, par. (2) read as follows: “an employee in a position in which the hours of duty cannot be controlled administratively, and which requires substantial amounts of irregular, unscheduled, overtime duty with the employee generally being responsible for recognizing, without supervision, circumstances which require him to remain on duty, shall receive premium pay for this duty on an annual basis instead of premium pay provided by other provisions of this subchapter, except for regularly scheduled overtime, night, and Sunday duty, and for holiday duty. Premium pay under this paragraph is determined as an appropriate percentage, not less than 10 percent nor more than 25 percent, of such part of the rate of basic pay for the position as does not exceed the minimum rate of basic pay for GS–10, by taking into consideration the frequency and duration of irregular unscheduled overtime duty required in the position.”

1982—Subsec. (a). Pub. L. 97–258 substituted “section 5141” for “section 180”.

1979—Subsec. (c)(2). Pub. L. 96–54 substituted “percent” for “per centum” wherever appearing.

*NB: This unofficial compilation of the U.S. Code is current as of Jan. 5, 2009 (see <http://www.law.cornell.edu/uscode/uscpri.html>).*

1978—Subsecs. (c), (d). Pub. L. 95–454 substituted “Office of Personnel Management” for “Civil Service Commission” and “Office” for “Commission” wherever appearing.

1975—Pub. L. 94–183 struck out “Sunday,” after “Night,” in section catchline.

1970—Subsec. (c)(2). Pub. L. 91–231 corrected the system of premium compensation of employees whose work schedules cannot be administratively controlled by providing for separate treatment for irregular, unscheduled, and overtime duty on one hand and for duty at night, on Sundays, and on holidays on the other.

1968—Subsec. (c)(1). Pub. L. 90–556 inserted “(or, for a position described in section 5542 (a)(3) of this title, of the basic pay of the position)” after “GS–10”.

1967—Subsec. (e)(2). Pub. L. 90–206 substituted “not less than 10 percent nor more than 25 percent” for “not in excess of 15 percent”.

### **Effective Date of 2003 Amendment**

Subject to any vested constitutional property rights, any administrative or judicial determination after Nov. 24, 2003, concerning backpay for a differential established under subsec. (d) of this section to be based on occupational safety and health standards described in the amendments made by subsections (a) and (b) of section 1122 of Pub. L. 108–136, amending this section and section 5343 of this title, see section 1122(c) of Pub. L. 108–136, set out as a note under section 5343 of this title.

### **Effective Date of 1990 Amendment**

Amendment by Pub. L. 101–509 effective on such date as the President shall determine, but not earlier than 90 days, and not later than 180 days, after Nov. 5, 1990, see section 529 [title III, § 305] of Pub. L. 101–509, set out as a note under section 5301 of this title.

### **Effective Date of 1989 Amendment**

Section 1(b) of Pub. L. 101–173 provided that: “The amendment made by subsection (a) [amending this section] shall apply with respect to overtime duty performed on or after the first day of the first applicable pay period beginning after September 30, 1990.”

### **Effective Date of 1979 Amendment**

Amendment by Pub. L. 96–54 effective July 12, 1979, see section 2(b) of Pub. L. 96–54, set out as a note under section 305 of this title.

### **Effective Date of 1978 Amendment**

Amendment by Pub. L. 95–454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as a note under section 1101 of this title.

### **Effective Date of 1970 Amendment**

Amendment by Pub. L. 91–231 effective Apr. 15, 1970, see section 9(b) of Pub. L. 91–231, formerly set out in a 1970 Increase in Pay Rates note under section 5332 of this title.

### **Effective Date of 1968 Amendment**

Amendment by Pub. L. 90–556 effective on first day of first pay period beginning on or after thirtieth day after Oct. 10, 1968, see section 3 of Pub. L. 90–556, set out as a note under section 5542 of this title.

### **Effective Date of 1967 Amendment**

Amendment by Pub. L. 90–206 effective at beginning of first pay period which begins on or after Dec. 16, 1967, see section 220(a)(3) of Pub. L. 90–206, set out as a note under section 603 of Title 28, Judiciary and Judicial Procedure.