



## REFERENCE GUIDE

### BEEPERS AND STANDBY TIME

#### DISCUSSION

Standby duty is defined in 5 CFR Section 551.431 which states:

- a) An employee will be considered on duty and time spent on standby duty shall be considered hours of work if:
  - 1. The employee is restricted to an agency's premises, or so close thereto that the employee cannot use the time effectively for his or her own purposes; or
  - 2. The employee, although not restricted to the agency's premises:
    - i). Is restricted to his or her living quarters or designated post of duty;
    - ii). Has his or her activities substantially limited; and
    - iii). Is required to remain in a state of readiness to perform work.
- b) An employee will be considered off duty and time spent in an on-call status shall not be considered hours of work if:
  - 1. The employee is allowed to leave a telephone number or to carry an electronic device for the purpose of being contacted, even though the employee is required to remain within a reasonable call-back radius; or
  - 2. The employee is allowed to make arrangements such that any work which may arise during the on-call period will be performed by another person.

The regulation distinguishes between off-duty employees who are on standby status and those who are on-call. Standby employees are entitled to compensation; on-call employees are not.

There is no question that the employer has the right either to place employees on standby duty or to require them to carry a beeper. The gray area is whether the employees are entitled to compensation because they are restricted to a certain location, have their activities substantially limited, or are required to remain in a state of readiness to perform work.

#### COMPTROLLER GENERAL DECISIONS





In Comptroller General decision B-217490, Gary R. Clarke vs. Air Force, Mr. Clarke filed for compensation for standby duty. During his off duty time Mr. Clarke was required to call in daily at 1630 hours and at 0900 hours on weekends. He was given a beeper with a 12-15 mile range which he was required to carry if he left his home. If he had to leave the area he was permitted to arrange for another person to carry out his duties.

The Comptroller's decision stated that the work duties described above would be considered "on-call" and compensation would not be allowed. Although his activities were restricted and he was required to remain in a state of readiness to perform work, he was not restricted to his living quarters or designated post of duty; but was allowed to carry a pager for the purpose of being contacted and was allowed to arrange for a replacement.

The same decision was reached concerning pay for standby duty in Charles F. Callis, B-205118, March 22, 1982. In that case, the claimants were expected to be available by telephone or to carry an electronic beeper during off-duty hours so as to be able to respond within 15-20 minutes. The decision stated that the restrictions placed on these employees while on standby duty during the period in question did not qualify them for compensation under 5 CFR 551.431.

### **FEDERAL LABOR RELATIONS AUTHORITY DECISION**

In AFGE Council of Marine Corps Locals and Dept. of Navy, U.S. Marine Corps, Washington, 39 FLRA 773 (1991), enf'd., U.S. Dept. of Navy v. FLRA, 962 F.2d 1066 (D.C. Cir. 1992), the union offered the following proposal:

*"Employees will not be required to carry or respond to 'beeper' unless they are in a duty and pay status."*

The Authority found the proposal negotiable. The D.C. circuit later affirmed the Authority's decision stating that the issue was not the requirement to wear a beeper. Rather, the issue was the requirement to pay the employee if the employee was required to wear a beeper during time spent in a standby duty status. Wearing the beeper, in and of itself, does not warrant compensation. If the proposal was to be incorporated into the collective bargaining agreement, the employer would have but two options: place the required restrictions on these employees thereby qualifying them for standby pay; or drop the beeper plan altogether. 5 CFR 551.431 does not bar the Marine Corps from agreeing





to the union's proposal, it just requires the Marine Corps to impose whatever restrictions are necessary to qualify them for compensation.

### **FEDERAL SERVICE IMPASSES PANEL DECISION**

In *AFGE vs. DOD, Headquarters, U.S. Marine Corps, Washington DC, 93 FSIP 72*, the Panel concluded that the Union's proposal provides the more reasonable resolution to the dispute. The Panel based this decision on comparability data submitted by the parties. The Panel found that the data submitted demonstrated that there is a common practice among private and public sector employers of providing some form of extra compensation in such circumstances. The Panel stated that the adoption of the Union's proposal may leave the Employer with a Hobson's choice where it might discontinue its previous requirement concerning the use of beepers, rather than incur the unacceptably high costs of the available alternatives.

There is very specific language in 5 CFR Section 551.431 which defines and differentiates standby duty and on-call duty. If management agrees to language that requires compensation for the wearing of beepers, the required restrictions must be placed on the employees to allow for compensation. When bargaining on such a proposal the union must be made aware of the additional requirements that will be placed on the employees. If the employees know that they will be able to have a little more freedom of movement in an on-call status, there may be some compromise possible on the issue of compensation being linked to the wearing of a beeper.

If you have any questions, please contact the Labor Relations Team, at (703) 696-6301 or DSN 426-6301, press menu selection number 3.

### **REFERENCES**

5 CFR § 551.431  
Federal Labor Relations Authority Decisions  
Federal Agency Decisions

