

Management Instruction

Back Pay

This management instruction (MI) provides:

1. A brief overview of the back pay compensation process,
2. Information about organizational responsibilities, and
3. The procedures for processing a claim.

For a full discussion of the Postal Service’s policy on back pay compensation, see *Employee and Labor Relations Manual* (ELM) 436, Back Pay.

Overview

Definition

Back pay compensation is the retroactive restoration of pay, benefits, or both. The Postal Service provides back pay compensation for:

1. Periods in which compensation is reduced, denied, or terminated due to personnel or hiring actions that are subsequently reversed; or
2. Retirement applications that are denied by the Office of Personnel Management (OPM).

Back pay compensation does *not* include compensation for non-compensation-related claims, such as those found in Article 27 of the collective bargaining agreements or in ELM 640, Employee Claims.

Authorization

Back pay compensation is authorized in one of the following ways:

- By a settlement or decision from a recognized authority that reverses or modifies a personnel action. This includes, but is not limited to:
 - A settlement or decision negotiated under or rendered by:
 - The Equal Employment Opportunity Commission (EEOC),
 - The Merit Systems Protection Board (MSPB),
 - Federal district courts, or
 - Arbitrators and others operating within the auspices of Article 15 of the collective bargaining agreements.
 - A rescission
- By Retirement Program management approval in an erroneous retirement case.

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Definitions

Decision — a document that memorializes an official determination made by a third party (such as a federal judge, administrative law judge, arbitrator, or hearing officer) regarding the appropriateness of a personnel action.

Erroneous retirement — when the Office of Personnel Management (OPM) finds that the eligibility requirements for retirement have not been fulfilled.

Personnel action — an action that modifies the employment status or employment eligibility of an individual. Personnel actions that may result in back pay if reversed include adverse actions such as suspension without pay, removal, or involuntary reassignment (including demotion) as well as status modifications that are not necessarily adverse but result in pay adjustment.

Rescission — a unilateral determination by the Postal Service regarding a personnel action.

Settlement agreement — a document that memorializes an agreement between an individual or his or her representative and the U.S. Postal Service. A settlement represents a negotiated solution to a disagreement outside of, or in lieu of, the official decision-making process by a third party.

Types of Back Pay Compensation

Lump Sum

A *lump sum* is back pay compensation in the form of a single payment of a known amount of money.

A lump sum award does not affect the compensation history used by OPM to calculate retirement annuities or other employment-related benefits such as:

- Sick or annual leave,
- Health or life insurance, or
- Thrift Savings Plan participation.

A back pay lump sum award is *always* subject to:

- Federal, state, and local income tax withholding, and
- Social Security and Medicare deductions, where applicable.

See Attachment A, Back Pay Lump Sum Inclusions, Deductions, and Withholdings, for the application of lump sum calculations to different kinds of settlements, decisions, rulings, and determinations.

Hours Calculation

An *hours calculation* is back pay compensation that is based on a hypothetical schedule (i.e., the schedule that the claimant would have worked if not for the personnel action that was subsequently reversed or the retirement action that was denied).

This computation method requires determining:

1. The relevant time period;
2. The appropriate basic rate of pay; and
3. The hours the employee would have worked during the back pay period.

The resulting calculation may take into account the claimant's regular work schedule and premium pay attached to that regular schedule or the claimant's work history.

A back pay award that calls for an employee to be **"made whole" must be submitted as an hours calculation**. This type of compensation makes the employee whole because:

1. Unlike a lump sum payment, it includes most employment-related benefits such as:
 - a. Sick and annual leave,
 - b. Health and life insurance,
 - c. Thrift Savings Plan, and
 - d. Retirement benefits.
2. It also requires correction of an individual's personnel history, and that change may affect the annuity calculations performed by OPM if and when the individual retires.

An hours calculation may take the form of a *pay differential* adjustment.

1. This calculation takes an individual's existing compensation history and compares it to an alternative that would have occurred under different circumstances.

2. The difference in pay, if any, results in a payroll adjustment to the employee.

An hours calculation payment is *always* subject to:

1. Federal, state, and local income tax withholding, and
2. Social Security and Medicare deductions, where applicable.

See Attachments B and C for more information regarding the application of hours calculations to different kinds of settlements, decisions, rulings, and determinations.

Interest

See ELM 436.7, Interest on Back Pay, for policy regarding when and how interest is calculated for back pay awards.

Erroneous Retirement

Explanation

An individual is considered erroneously retired if he or she voluntarily retires before meeting the requirements for both age and service. In such cases, OPM usually:

- Disallows the retirement application, and
- Requests the Postal Service to retroactively restore the employee to the active rolls as of the date of the erroneous retirement.

If the date on which the applicant would attain the age and/or service requirements has already passed and the time span for attaining eligibility is short, e.g., 30 days or less, the Headquarters Compensation Retirement Program manager *may* decide to administratively place the employee in leave without pay (LWOP) status from the date of the erroneous retirement to the date on which the minimum service or age requirement is attained.

Corrective Action

OPM's letter requesting the Postal Service to restore the employee to the rolls will indicate that the employee "may be entitled to back pay covering the period from the date of the erroneous retirement to the date the employee is restored to the rolls."

Before any action is taken on OPM's letter, the Postal Service must verify the employee's service record.

- If the reason for the erroneous retirement is based on age, records must be verified to ascertain the employee's correct date of birth.
- After the retirement separation is established as erroneous, the employee must be contacted promptly and action taken to restore him or her to the rolls.

In erroneous retirement cases, back pay is calculated so that an employee is compensated as if he or she had worked during the period of erroneous retirement.

Approval of Back Pay in Erroneous Retirement Cases

Back pay must be approved by Headquarters Compensation if an erroneous retirement is the result of a Postal Service eligibility determination error. If an employee was in LWOP status immediately

before the effective date of separation, back pay may be denied for the erroneous retirement period.

Mitigating Damages

As detailed in ELM 436, an employee who files an appeal challenging a personnel action involving separation, indefinite suspension, or denial of employment is required to mitigate damages during the period necessary to adjudicate his or her appeal. To mitigate damages, the employee is expected to earn income from:

- New employment,
- Expanded part-time employment, or
- Self-employment.

The employing office must provide information concerning efforts made to mitigate damages on PS Form 8039, *Back Pay Decision/Settlement Worksheet*, Section C.

Separation or Indefinite Suspension

If the original action resulted in separation or indefinite suspension and no outside employment was obtained for all or any part of the back pay period, the employee must supply the following:

- **Back pay period of 45 days or less** — the employee is not required to certify or to provide documentation showing his or her efforts to secure other employment during this period.
- **Back pay period of more than 45 days and up to 6 months** — the employee must provide a **statement certifying the reasons that outside employment was not obtained** for all parts of the back pay period that exceeded the first 45 days. These periods are excluded from the back pay computation if the employee:
 - Fails to provide a certified statement, or
 - Indicates that he or she did not make a reasonable effort to secure outside employment for the periods in question.
- **Back pay period of more than 6 months (e.g., 6 months and 1 day)** — the employee must provide **documentation detailing his or her efforts to secure other employment** for all parts of the back pay period that exceeded the first 45 days. If the employee fails to provide such documentation for the periods in question, these periods are excluded from back pay computation.

Denial of Employment

If the original action resulted in denial of employment with the Postal Service, the individual must provide documentation in support of his or her efforts to secure other employment for all parts of the back pay period.

If the individual fails to provide such documentation for all parts of the back pay period, these periods are excluded from the back pay computation.

If these periods are excluded from a back pay computation, the employing office must document the reasons on PS Form 8039. This documentation becomes part of the back pay file. See Attachments B and C for more information about mitigation of damages.

Compliance Requirements

Merit Systems Protection Board

The MSPB requires that compliance action for back pay be completed within 60 days of its final decision.

- Generally, an initial decision is final 35 days after it is dated if a petition for review is not filed.
- Decisions of the full board are final on the date set forth in the decision.

If there is any delay in this process caused by administrative problems or the employee's failure to provide the necessary documentation, the employee's manager or district back pay coordinator must:

- Notify the MSPB regional office, in writing, of the reasons for the delay, and
- Provide an estimated date when the back pay check will be issued.

Equal Employment Opportunity Commission

The EEOC requires that evidence of compliance with its decisions be submitted within 60 days of the decision.

If there is any delay in this process caused by administrative problems or by the employee's failure to provide the necessary documentation, the employee's manager or district back pay coordinator must:

- Notify the EEOC district office with jurisdiction over the case, and
- Provide the reasons for the delay and an estimated date when the back pay check will be issued.

Arbitration and Court Awards

If an arbitrator or court awards back pay, the postmaster or installation head should attempt to comply with the award within a reasonable time period or within the time period set by the arbitrator or court.

If there is any delay in the process caused by administrative problems or the employee's failure to provide the necessary documentation, the employee's manager or district back pay coordinator should contact the advocate who represented the Postal Service for advice on how to proceed.

Privacy Act Considerations

Back Pay records are private information about individuals and are personal in nature. These records are to be treated as confidential, sensitive, or sensitive-enhanced information. To protect against unauthorized disclosure these records are to be given the same measure of security as other personnel record systems (i.e., storage in locked desk or file cabinets, with access restricted to those with an official need to know). Requirements to protect sensitive or sensitive-enhanced information are derived from law, regulation, policy, the law enforcement and judicial process, the payment card industry (PCI), and the Privacy Act of 1974. These records must be handled and disclosed only in accordance with Privacy and Records Management considerations (see Handbook AS-353, *Guide to Privacy, the Freedom of Information Act, and Records Management*).

Responsibilities

The responsibilities of Postal Service personnel for managing the back pay compensation process are listed in the table below.

Headquarters

This person or organization...	Is responsible for...
Compensation	<ul style="list-style-type: none"> ■ Developing back pay compensation policy and updating ELM 436 when required. ■ Providing guidance to Headquarters Payroll and others concerning the application of federal statutes, regulations, and case precedent to the payment of claims. ■ Maintaining the list of back pay coordinators on the Postal Service intranet. ■ Determining whether back pay is warranted in erroneous retirement cases.
Manager, Human Resources (HQ)	<ul style="list-style-type: none"> ■ Administering all aspects of back pay policy for Headquarters and Headquarters field unit employees.

Human Resources – All Levels

This person or organization...	Is responsible for...
Human Resources Shared Services Center (HRSSC): <ul style="list-style-type: none"> ■ Personnel Processing Specialist; or ■ Human Resources Generalist 	<ul style="list-style-type: none"> ■ In reversed personnel action cases: <ul style="list-style-type: none"> – Ensuring that the claimant’s benefits package is current and correct. – Helping with any correction to the employee’s personnel history made necessary by a settlement or decision. – Interacting as needed with back pay coordinators, payroll specialists at Accounting Services, and local certifying officials. ■ In erroneous retirement cases: <ul style="list-style-type: none"> – Verifying the validity of any OPM rejection of a retirement application. – Forwarding the case to the back pay coordinator for further action.
Manager, Human Resources (Area)	<ul style="list-style-type: none"> ■ Determining whether an eligible employee may participate during the back pay period in any variable pay program (i.e., Pay for Performance (PFP) payments). This determination is required only if the decision, negotiated settlement, or rescission does not specifically address variable pay programs. ■ Ensuring that districts and area office personnel within the manager’s area comply with all rules and regulations regarding back pay processing as defined in this and other official documents.

This person or organization...	Is responsible for...
Manager, Human Resources (District)	<ul style="list-style-type: none"> ■ Designating a management employee, typically a labor relations manager or specialist, as the district back pay coordinator and updating the list of back pay coordinators when necessary by informing the manager, Pay and Performance Programs (Headquarters Compensation), of any changes. ■ In erroneous retirement cases, contacting the program manager, Benefits (Headquarters Compensation), for authorization to pay back pay compensation. ■ Ensuring that the district complies with all rules and regulations regarding back pay processing as defined in this and other official documents. ■ Acting as the final approving authority for all back pay cases.

Districts

This person or organization...	Is responsible for...
Manager, Labor Relations	<ul style="list-style-type: none"> ■ Informing claimants of their responsibility to mitigate damages (see ELM 436.2). Attachments E and F provide sample letters to be used as guides for this purpose. ■ Determining whether a claimant who is required to mitigate damages by seeking other employment has done so satisfactorily. ■ In reversed personnel action cases, reviewing required back pay forms and documentation before they are submitted to the manager, Human Resources for final approval.

This person or organization...	Is responsible for...
Back Pay Coordinator (Certifying Official)	<ul style="list-style-type: none"> ■ Reviewing and coordinating the back pay claim process. This may include either of the following: <ul style="list-style-type: none"> – Personally completing or submitting the necessary back pay forms. – Monitoring the actions of other management personnel assigned this responsibility. ■ Verifying the claimant’s efforts to mitigate damages. Attachment G provides a sample letter to use when verifying a claimant’s attempts to mitigate damages. ■ Noting other sources of income received by the claimant, such as unemployment insurance and Office of Workers’ Compensation Programs awards, during the back pay period. ■ Ensuring that mitigation efforts and income are reported correctly on PS Form 8038, <i>Employee Statement to Recover Back Pay</i>, and PS Form 8039, <i>Back Pay Decision/ Settlement Worksheet</i>. ■ Working with personnel processing specialists at HRSSC or the district Human Resources (HR) generalist, as needed, to ensure that: <ul style="list-style-type: none"> – Any necessary service and salary history corrections are processed correctly. – All other employee benefits are correct and current. ■ Documenting any delays caused by employees, claimants, or others in submitting the information required to process the back pay claim. (See Compliance Requirements on page 5 for more information.) ■ Promptly verifying with OPM the amount of retirement deposits refunded or annuity payments received, if any, during the back pay period.

This person or organization...	Is responsible for...
Back Pay Coordinator (Certifying Official) (continued)	<ul style="list-style-type: none"> ■ Certifying that the back pay claim is complete and accurate by signing PS Form 8039, obtaining the signature of the manager, Human Resources (District), or their designee (final approving authority), and submitting the back pay package to Accounting Services. ■ Establishing and maintaining a back pay file for each back pay case. The file should be identified by the employee's or claimant's name, and contain the following: <ul style="list-style-type: none"> – Decision, award or settlement agreement. – Notification of the claimant's obligation to mitigate damages during the back pay period (see Attachments E and F). – Copies of any documented evidence submitted by the claimant in support of his or her efforts to secure outside employment during the back pay period. – Copies of letters sent to employer contacts made by the employee during the back pay period (see Attachment G). – Copy of PS Form 8038 and any documented evidence submitted by the employee in support of the information provided on PS Form 8038. – Copy of PS Form 8039 and any supporting documentation provided to Accounting Services as part of the PS Form 8039 submission. – Copy of PS Form 8041, <i>Pre-arbitration or Agency Settlement Worksheet</i>, for lump sum awards. – Copy of PS Form 2240, <i>Pay, Leave, or Other Hours Pay Adjustment Request</i>, if required. – Copies of all correspondence between the Postal Service and the claimant concerning the claimant's back pay claim. – Copies of letters sent to or received from an appropriate authority concerning the processing delays or compliance actions involving the case at hand, including notification from OPM of annuity payments received or employee contributions withdrawn. – Documents on any administrative or judicial action filed by the claimant concerning the Postal Service's final decision on the claimant's back pay claim. – Any other pertinent forms, letters, or other documents related to the back pay case.

This person or organization...	Is responsible for...
Back Pay Coordinator (Certifying Official) (continued)	<ul style="list-style-type: none"> ■ Retaining the back pay file in the final approving official's organization for 3 years after the effective date of the decision, award or settlement agreement, unless an audit, investigation, or appeal is pending that would require a longer period of retention.

Accounting Services

This person or organization...	Is responsible for...
Accounting Services	<ul style="list-style-type: none"> ■ Processing back pay claims on a first-in, first-out basis as quickly as possible, based on the information contained in the back pay package. ■ Returning to the submission office packages that do not contain the required forms, documents, information, and signatures of the claimant, the back pay coordinator (the certifying official), and the final approving official.

Managers and Claimants

This person or organization...	Is responsible for...
Managers of Employees Submitting Back Pay Claims	<ul style="list-style-type: none"> ■ Providing the claimant with the necessary forms and instructions, including, but not limited to, PS Form 8038. ■ In all types of back pay awards, assisting district, area, Headquarters, and Accounting Services staff in gathering and disseminating information and completing required forms concerning the case for prompt and accurate processing of the claim. ■ Documenting any delays caused by employees or claimants in submitting the information required to process their back pay claims. ■ Providing reasonable assistance to employees in obtaining information and completing required forms and documentation. ■ In cases involving a rescission, providing written documentation of the terms of the requested payment or adjustment.

This person or organization...	Is responsible for...
Back Pay Claimants	<ul style="list-style-type: none"> ■ If required by statutory and regulatory requirements as detailed in ELM 436, mitigating damages by seeking other employment or increasing existing secondary employment during the back pay period. ■ Completing in full and signing PS Form 8038 including documenting their efforts to mitigate damages and the income they received. ■ Submitting PS Form 8038 and any related documentation to the responsible management official as soon as possible after a settlement or decision has been reached. <p>Note: The claimant or his or her authorized agent must submit a back pay claim within 6 years following the date of the action resulting in the claim.</p>

Procedures

This section lists the steps Postal Service personnel take to process a back pay claim.

Back Pay Coordinator

As soon as possible after receiving the authorizing decision, settlement, rescission, or approval by Headquarters Compensation of back pay in an erroneous retirement case, **review** the checklist in Attachment D, Back Pay Documentation Requirements, to determine the appropriate documentation and submission procedures required by the authorization for back pay.

Coordinate with Labor Relations to ensure the employee is notified of the requirement to mitigate damages during the back pay period, if applicable (see section on Mitigating Damages on page 4).

1. For Lump Sum Awards

- a. You must use GATS to process:
 - i. Wage-related lump sum payments less than \$100,000 that are grievances, pre-arbitration settlements, and arbitration awards.

For more information on GATS, go to Labor Relations Systems and Resources at <http://blue.usps.gov/humanresources/professionalportal/laborrelations/lr/lrsr.shtml>.

- b. You must complete PS Form 8041, obtain signature of the certifying official, and submit to the address on the form if the payment cannot be processed through GATS (refer to Attachment D) because the payment:
 - i. Is not wage-related;
 - ii. Is equal to or greater than \$100,000; or
 - iii. Is not the result of a grievance or arbitration process.

2. **For Hours Calculation Awards (Less than one full pay period and no requirement to make employee whole)**

- a. You must use GATS for Article 15 grievance-arbitration related hours calculations involving:
- i. Less than one full pay period of lost earnings;
 - ii. No requirement to make the claimant “whole”; and
 - iii. At least 1 paid hour (work or leave) in the relevant pay period was previously paid to the claimant.

For more information on GATS, go to Labor Relations Systems and Resources at <http://blue.usps.gov/humanresources/professionalportal/laborrelations/lr/lrsr.shtml>.

- b. If the payment cannot be processed through GATS (refer to Attachment D), then you must:
- i. Complete the required document:
 - (a) PS Form 2240, *Pay, Leave, or Other Hours Adjustment*; or
 - (b) PS Form 8039, *Back Pay Decision/Settlement Worksheet*.
 - ii. Obtain the necessary signatures and submit the required form(s) and documentation as directed in Attachment D.

3. **For Hours Calculation Awards (One full pay period or more or any period that requires employee to be made whole)**

- a. For all back pay authorizations that require an **hours calculation** including (1) one full Postal Service pay period or more (i.e., at least one Postal Service pay period with **no** previously paid leave or work hours), (2) a provision of back pay to make the employee whole, or (3) a decision rendered by an authorizing agency or third party:
- i. **Direct** the employee to **complete** and **sign** PS Form 8038, *Employee Statement to Recover Back Pay*. **Advise** the employee to include all applicable information on:
 - (a) Mitigating damages and/or receipt of unemployment compensation;
 - (b) Voluntary refunds of retirement plan contributions;
 - (c) Participation in the Thrift Savings Plan (TSP) and/or Health Insurance; and
 - (d) Receipt of annuity payments from OPM.
 - ii. **Inform** employees or claimants that prompt, thorough, and accurate completion of PS Form 8038 allows management to complete PS Form 8039 in a timely and accurate manner that reflects compliance with statutory and regulatory requirements and case law precedent. Failure by the claimant to complete PS Form 8038 in a timely manner will delay payment of the award.

- b. **Complete** PS Form 8039.
- i. **Use** the information provided by the claimant on PS Form 8038, resolving any discrepancies or omissions.
 - ii. **Consult** with HR local services or HRSSC, as necessary, to determine service or salary history corrections required by the back pay award.
 - iii. **Complete** Part G, Work Schedule, of the form describing what the employee's regular schedule would have been during the back pay period, as follows:
 - (a) For an employee **with a regular schedule**, **check** the regular schedule assigned to the employee's position. **Estimate** any overtime or other premiums, such as night differential, Sunday premium, or higher-level pay, to which the claimant might be entitled for the back pay period.
 - (b) For an employee **without a regular schedule** (e.g., a part-time flexible schedule or non-career employee), **review** the employee's actual work schedule during the 13 pay periods before the suspension, separation, or retirement to arrive at a **fair estimation** of what the employee would have worked if not for the disputed personnel action.
 - 1) If 13 pay periods of history are not available, review all those **available** before the suspension, separation, or retirement.
 - 2) If the employee was on LWOP before separation or suspension, **use** the schedule in effect immediately before the LWOP period began.
 - 3) To evaluate the work history of an employee without a regular schedule, use payroll journals and/or Time and Attendance Collection System (TACS) reports. If you have trouble accessing this information, **contact your district TACS coordinator**. TACS coordinators are listed on the Postal Service intranet at <http://blue.usps.gov/tacs>.
 - (c) For an individual with **no work history** available (such as a claimant who was initially denied employment):
 - 1) Select up to three **comparable employees** and use their work histories to determine the hypothetical hours for which the claimant should be compensated.

- 2) If three comparable employees are not available, use as many as can be identified.
- iv. **If the employee received any distributions of funds from OPM** during the separation period, these payments are considered overpayments, i.e., debts owed to the federal retirement system.
- (a) If, during a contested separation, the employee received from OPM a **lump sum refund** of his or her retirement contributions, deposits, voluntary contributions, and interest (as shown in Question 8b of PS Form 8038):
 - 1) **Verify** the amount of the refund by faxing a request to the OPM office in Boyer, PA, at 724-794-6633 or 724-794-4668.
 - 2) **Include** the claimant's:
 - (a) Name and any other names by which the claimant may be known or may have been known in the past;
 - (b) CSRS retirement claim number or FERS annuity claim number (CSA), if known;
 - (c) Social Security number if the CSA is not known; and
 - (d) Date of birth.
 - 3) **Include** a fax number to which the reply should be sent.

Note: It may take OPM up to 3 weeks to respond, so this action should be taken immediately upon receipt. If there is a discrepancy between the amounts reported by the claimant and those provided by OPM, reconcile the difference. The claimant may attach a signed statement, advising that they feel there is a discrepancy in the amounts.
 - 4) **Write** in Section I, Special Instructions, on PS Form 8039: "Deduct OPM retirement refund and return to OPM."
 - (b) If, during the back pay period, the employee received **annuity payments** from the federal government (as shown in Question 8a of PS Form 8038 or OPM correspondence), **write** in Section I, Special Instructions, on PS Form 8039: "Deduct OPM retirement refund and return to OPM."
- v. **If the claimant is eligible for variable pay program compensation during the back pay period**, and the back pay authorization is a third-party decision or

negotiated settlement involving disciplinary action that was upheld or modified:

- (a) **Determine** whether the decision or settlement specifically addresses any variable pay program compensation (i.e., PFP payments).
 - 1) If so, **follow** the instructions in the decision or negotiated settlement.
 - 2) If not, **contact** the area HR manager for a decision. The area HR manager has the authority to exclude a claimant from program eligibility provided the exclusion does not violate the plain language of the decision or settlement.
- (b) **Use** PS Form 8039, Section I, Special Instructions, to document the decision, negotiated settlement, or area HR manager's instructions regarding PFP processing.
- vi. If the back pay authorization is a **rescission**, annotate Section I, Special Instructions, of PS Form 8039 to document the manager's instructions.
- c. **Request** that the HRSSC make appropriate cancellations, corrections, and reactivations, by sending the following information:
 - i. Copy of the relevant authorization for back pay (negotiated settlement, third-party decision, OPM determination, rescission, etc.).
 - ii. Copies of PS Forms 8038 and 8039.
 - iii. An explanation of the personnel actions that must be performed.
- d. **Send** the information using one of these methods:
 - i. Email to:
HRSSC BENEFITS/COMPENSATION
Subject Line: Field Back Pay
 - ii. Fax to:
651-994-3543
Attn: Field Back Pay
 - iii. Mail to:
HRSSC Benefits & Compensation
Attn: Field Back Pay
P.O. Box 970400
Greensboro, NC 27497-0400

Personnel Processing Specialists at HRSSC

- 4. **Perform** the cancellations, corrections, and reactivations requested and fax a screen print of the updated service history to the back pay coordinator.
- 5. **Communicate** any benefits-related issues the claimant should be aware of to the back pay coordinator.

Back Pay Coordinator

6. Once the HCES actions — cancellation, correction, and/or reactivation — have been performed, and PS Form 8038 and PS Form 8039 have been completed, **certify** that the back pay claim is accurate and complete by signing PS Form 8039 in the space provided.
7. Present the back pay package to the manager, Labor Relations, for review.

Manager, Labor Relations

8. **Review** the completeness and accuracy of the back pay claim paperwork completed by the back pay coordinator.
9. For reversed personnel action cases, determine whether the claimant has satisfied the requirement to mitigate damages by seeking other employment, as detailed in ELM 436.

Note: In making this determination, the responsible manager, Labor Relations, should take into consideration not only the number of prospective employer contacts that were made by the employee or claimant, but also several other factors, such as the job market and the unemployment rate in the local commuting area.

- If the local economy is depressed, the job opportunities will not be as readily available as in an area that is realizing substantial growth.
 - The employment opportunities advertised in the local newspaper and the jobs available through the state job service provide good measures not only of the availability of jobs but also of the level of activity that could reasonably be expected from the employee.
10. **Return** the form to the back pay coordinator to make any corrections deemed necessary.

Back Pay Coordinator

11. Present the corrected back pay file to the manager, Human Resources, for review and **final approving signature**.
12. After approval by the manager, Human Resources, **mail** the following items to the address indicated in Attachment D:
 - a. PS Form 8038, PS Form 8039, and a copy of the third party settlement or decision, if applicable.
 - b. A screen print of the updated service history.
 - c. In **erroneous retirement** cases, approval from the manager, Retirement Program (Headquarters Compensation), of the back pay and a copy of the official letter from OPM (1) denying the retirement application and (2) stating any overpayment (debt) owed to the federal retirement system.
 - d. For cases that involve a **rescission**, a copy of the manager's written documentation of the terms of the back pay request.

13. **Arrange** for copies of all forms and documents relevant to the back pay package to be kept on file at the final approving official's organization for 3 years.

Accounting Services

14. **Receive** the back pay package filled out with the information required by statutory, regulatory, and case law authority.
15. Within 60 days of receipt of the **completed** package, **disburse** the funds due to the employee according to calculations based on the information in the back pay claim.

Attachment A

Back Pay Lump Sum Inclusions, Deductions, and Withholdings

Note: Inclusions in this table are considered normal inclusions for a lump sum award if the settlement or decision is otherwise silent.

Lump Sum Inclusions	YES/NO
Wages, Night Differential, Overtime, Additional Straight Time Pay, Sunday Premium, and Holiday Leave (according to the regular schedule and tour of duty at the time of incident or personnel action)	NO
Interest	See ELM 436.7, Interest on Back Pay.
Annual Leave	NO
Sick Leave	NO
Variable Pay Programs Compensation (e.g., PFP)	NO
Thrift Savings Plan (TSP) Employer Contributions	NO
Retirement Credit	NO
Lump Sum Deductions and Withholdings	YES/NO
Earnings from New Employment or Expanded Part-Time Employment	
■ Required to certify or document efforts to mitigate damages?	NO
■ Deduct from back pay award?	NO
Unemployment Compensation	NO
Welfare or Public Assistance Payments	NO
Workers' Compensation (OWCP) (except scheduled awards)	NO
Automatic redeposit of refunded retirement contributions for CSRS and CSRS offset employees	NO
Retirement Contributions	NO
Social Security¹	YES
Medicare¹	YES
Federal Income Tax¹	YES
State Income Tax¹	YES
Local Income Tax¹	YES
Indebtedness to USPS (only if employee is terminated)	YES
Other Agency Debts²	YES
Child Support²	YES
IRS Levies²	YES
Garnishments²	YES
Health Insurance Premiums	NO
Life Insurance Premiums	NO
Charity	NO
Union-Sponsored Insurance	NO
TSP Loan Repayment	NO
TSP Employee Contributions	NO
TSP Catch-Up	NO
Allotments	NO
Military Buyback	NO
Union Dues	NO
Other Involuntary Deductions (such as alimony, state tax levies, and bankruptcy ²)	YES

¹ The Postal Service may not enter into settlement agreements that require it not to withhold income taxes, Medicare or Social Security deductions or to report any payments as income to the Internal Revenue Service (IRS), or to state and local taxing authorities. A clause in the settlement agreement providing that the claimant will be responsible for any tax liability arising from the payment will not shield the Postal Service from its obligation to appropriately withhold from or report the payment.

² Deducted in dollar or percentage amounts in accordance with court order or legal directive.

Back Pay Hours Calculation Inclusions, Deductions, and Withholdings:**Less Than One Full Pay Period¹** (page 1 of 3)

Note: Inclusions in this table are considered normal inclusions for an hours calculation if the settlement or decision is otherwise silent.

Inclusions	MSPB Decisions or Settlement Agreements		EEOC Decisions or Settlement Agreements	Arbitration and Court Decisions	Settlement Agreements	Retirement Program Approval in Erroneous Retirement Cases	Rescissions
	Recipients Eligible for Veterans' Preference	Recipients Not Eligible for Veterans' Preference	All Recipients	All Recipients	All Recipients	All Recipients	All Recipients
Wages, Night Differential, Overtime, Additional Straight Time Pay, Sunday Premium, and Holiday Leave (according to the regular schedule and tour of duty at the time of incident or personnel action)	YES	YES	YES	YES	YES	YES	Management discretion
Interest	See ELM 436.7, Interest on Back Pay.					NO	NO
Annual Leave (if not already credited)	YES	YES	YES	YES	YES	YES	Management discretion
Sick Leave (if not already credited)	YES	YES	YES	YES	YES	YES	Management discretion
Variable Pay Programs Compensation (e.g., PFP)	Management discretion ²	Management discretion ²	Management discretion ²	Management discretion ²	Management discretion ²	YES	Management discretion
Retirement Credit	YES	YES	YES	YES	YES	YES	Management discretion
TSP Employer Contributions	YES	YES	YES	YES	YES	YES	Management discretion

**Back Pay Hours Calculation Inclusions, Deductions, and Withholdings:
Less Than One Full Pay Period¹** (page 2 of 3)

Deductions and Withholdings	MSPB Decisions and Settlement Agreements		EEOC Decisions or Settlement Agreements	Arbitration and Court Decisions and Settlement Agreements	Retirement Program Approval in Erroneous Retirement Cases	Rescissions
	Recipients Eligible for Veterans' Preference	Recipients Not Eligible for Veterans' Preference	All Recipients	All Recipients	All Recipients	All Recipients
Earnings from New Employment or Expanded Part-Time Employment						
■ Required to mitigate damages?						
- Employee (current or former USPS employee)	NO	NO	NO	NO	NO	NO
- Applicant (individual who was initially denied USPS employment)	NO	NO	NO	NO	N/A	NO
■ Required to certify or document efforts to mitigate damages?	NO	NO	NO	NO	NO	NO
■ Deduct from back pay award?	NO	NO	NO	NO	NO	NO
Unemployment Compensation	NO	NO	NO	NO	NO	NO
Welfare or Public Assistance Payments	NO	NO	NO	NO	NO	NO
Workers' Compensation (OWCP), except scheduled awards³	NO	NO	NO	NO	NO	NO
Automatic redeposit of refunded retirement contributions for CSRS and CSRS offset employees	NO	NO	NO	NO	NO	NO
Retirement Contributions	YES	YES	YES	YES	YES	YES
Annuity payments received from OPM	NO	NO	NO	NO	NO	NO
Social Security⁴	YES	YES	YES	YES	YES	YES
Medicare⁴	YES	YES	YES	YES	YES	YES
Federal Income Tax⁴	YES	YES	YES	YES	YES	YES
State Income Tax⁴	YES	YES	YES	YES	YES	YES
Local Income Tax⁴	YES	YES	YES	YES	YES	YES
Indebtedness to USPS, only if employee is terminated	YES	YES	YES	YES	YES	YES

**Back Pay Hours Calculation Inclusions, Deductions, and Withholdings:
Less Than One Full Pay Period¹** (page 3 of 3)

Deductions and Withholdings	MSPB Decisions and Settlement Agreements		EEOC Decisions or Settlement Agreements	Arbitration and Court Decisions and Settlement Agreements	Retirement Program Approval in Erroneous Retirement Cases	Rescissions
	Recipients Eligible for Veterans' Preference	Recipients Not Eligible for Veterans' Preference	All Recipients	All Recipients	All Recipients	All Recipients
Other Agency Debts	NO	NO	NO	NO	NO	NO
Child Support	NO	NO	NO	NO	NO	NO
IRS Levies	NO	NO	NO	NO	NO	NO
Garnishments	NO	NO	NO	NO	NO	NO
Health Insurance Premiums ⁵	YES	YES	YES	YES	YES	YES
Life Insurance Premiums ⁶	NO	NO	NO	NO	NO	NO
Charity	NO	NO	NO	NO	NO	NO
Union-Sponsored Insurance	NO	NO	NO	NO	NO	NO
TSP Loan Repayment	NO	NO	NO	NO	NO	NO
TSP Employee Contributions	YES	YES	YES	YES	YES	YES
TSP Catch-Up	NO	NO	NO	NO	NO	NO
Allotment	NO	NO	NO	NO	NO	NO
Military Buyback	NO	NO	NO	NO	NO	NO
Union Dues	NO	NO	NO	NO	NO	NO
Other Involuntary Deductions, such as alimony, state tax levies, and bankruptcy	NO	NO	NO	NO	NO	NO

¹ The back pay period contains only pay periods for which the claimant already received some compensation for work or paid leave.

² Provided the plain language of the third party decision or negotiated settlement is not violated.

³ If claimant was working less than full time, and receiving OWCP payments for remainder of scheduled tour, back pay compensation will be provided for the hours previously charged to OWCP, and OWCP payments will be deducted from the award.

⁴ The Postal Service may not enter into settlement agreements that require it not to withhold income taxes, Medicare or Social Security deductions or to report any payments as income to the Internal Revenue Service (IRS), or to state and local taxing authorities. A clause in the settlement agreement providing that the claimant will be responsible for any tax liability arising from the payment will not shield the Postal Service from its obligation to appropriately withhold from or report the payment.

⁵ Health Insurance premiums will be invoiced and deducted from employee's next regular pay check.

⁶ If awarded back pay after being separated or suspended erroneously, no withholdings are made for life insurance unless death or accidental dismemberment occurs during the period between removal and the finding that the agency action was erroneous. In such cases, insurance benefits are paid, and premiums are withheld from the back pay award.

Back Pay Hours Calculation Inclusions, Deductions, and Withholdings:**One Full Pay Period or More¹** (page 1 of 3)**Note:** Inclusions in this table are considered normal inclusions if the settlement or decision is otherwise silent.

Inclusions	MSPB Decisions or Settlement Agreements		EEOC Decisions or Settlement Agreements	Arbitration and Court Decisions	Settlement Agreements	Retirement Program Approval in Erroneous Retirement Cases	Rescissions
	Recipients Eligible for Veterans' Preference	Recipients Not Eligible for Veterans' Preference	All Recipients	All Recipients	All Recipients	All Recipients	All Recipients
Wages, Night Differential, Overtime, Additional Straight Time pay, Sunday Premium, and Holiday Leave (according to the regular schedule and tour of duty at the time of incident or personnel action)	YES	YES	YES	YES	YES	YES	Management discretion
Interest	See ELM 436.7, Interest on Back Pay					NO	NO
Annual Leave (if not already credited)	YES	YES	YES	YES	YES	YES	Management discretion
Sick Leave (if not already credited)	YES	YES	YES	YES	YES	YES	Management discretion
Variable Pay Programs Compensation (e.g., PFP)	Management discretion ²	Management discretion ²	Management discretion ²	Management discretion ²	Management discretion ²	YES	Management discretion
Retirement Credit	YES	YES	YES	YES	YES	YES	Management discretion
TSP Employer Contributions	YES	YES	YES	YES	YES	YES	Management discretion

**Back Pay Hours Calculation Inclusions, Deductions, and Withholdings:
One Full Pay Period or More (page 2 of 3)**

Deductions and Withholdings	MSPB Decisions and Settlement Agreements		EEOC Decisions and Settlement Agreements	Arbitration and Court Decisions and Settlement Agreements	Retirement Program Approval in Erroneous Retirement Cases	Rescissions
	Recipients Eligible for Veterans' Preference	Recipients Not Eligible for Veterans' Preference	All Recipients	All Recipients	All Recipients	All Recipients
Earnings from New Employment or Expanded Part-Time Employment						
■ Required to mitigate damages?						
- Employee (current or former USPS employee)	NO	YES, after 45 days	YES, after 45 days	YES, after 45 days	NO	YES, after 45 days
- Applicant (individual who was initially denied USPS employment)	NO	YES, from first day	YES, from first day	YES, from first day	N/A	N/A
■ Required to certify or document efforts to mitigate damages?	NO	YES	YES	YES	NO	YES, if over 45 days
■ Deduct from back pay award?	YES, as stated on PS Form 8039	YES, as stated on PS Form 8039	YES, as stated on PS Form 8039	YES, as stated on PS Form 8039	NO	YES, as stated on PS Form 8039
Unemployment Compensation	When authorized by state law	When authorized by state law	NO	When authorized by state law	N/A	When authorized by state law
Welfare or Public Assistance Payments	NO	NO	NO	NO	NO	NO
Workers' Compensation (OWCP), except scheduled awards	YES	YES	YES	YES	N/A	YES
Automatic redeposit of refunded retirement contributions for CSRS and CSRS offset employees	YES	YES	YES	YES	N/A	YES
Retirement Contributions	YES	YES	YES	YES	YES	YES
Annuity payments received from OPM	YES	YES	YES	YES	YES	YES
Social Security³	YES	YES	YES	YES	YES	YES
Medicare³	YES	YES	YES	YES	YES	YES
Federal Income Tax³	YES	YES	YES	YES	YES	YES
State Income Tax³	YES	YES	YES	YES	YES	YES
Local Income Tax³	YES	YES	YES	YES	YES	YES
Indebtedness to USPS, only if employee is terminated	YES	YES	YES	YES	N/A	YES

**Back Pay Hours Calculation Inclusions, Deductions, and Withholdings:
One Full Pay Period or More (page 3 of 3)**

Deductions and Withholdings	MSPB Decisions and Settlement Agreements		EEOC Decisions and Settlement Agreements	Arbitration and Court Decisions and Settlement Agreements	Retirement Program Approval in Erroneous Retirement Cases	Rescissions
	Recipients Eligible for Veterans' Preference	Recipients Not Eligible for Veterans' Preference	All Recipients	All Recipients	All Recipients	All Recipients
Other Agency Debts ⁴	YES	YES	YES	YES	YES	YES
Child Support ⁴	YES	YES	YES	YES	YES	YES
IRS Levies ⁴	YES	YES	YES	YES	YES	YES
Garnishments ⁴	YES	YES	YES	YES	YES	YES
Other Involuntary Deductions, such as alimony, state tax levies, and bankruptcy ⁴	YES	YES	YES	YES	YES	YES
Health Insurance Premiums ⁵	YES	YES	YES	YES	YES	YES
Life Insurance Premiums ⁶	NO	NO	NO	NO	NO	NO
Charity	NO	NO	NO	NO	NO	NO
Union-Sponsored Insurance	NO	NO	NO	NO	NO	NO
TSP Loan Repayment	NO	NO	NO	NO	NO	NO
TSP Employee Contributions ⁷	YES	YES	YES	YES	YES	YES
TSP Catch-Up ⁸	YES	YES	YES	YES	YES	YES
Allotment	NO	NO	NO	NO	NO	NO
Military Buyback	NO	NO	NO	NO	NO	NO
Union Dues ⁹	YES	YES	YES	YES	YES	YES

1 The back pay period contains one or more pay periods with no previously paid work or leave hours.

2 Provided the plain language of the third party decision or negotiated settlement is not violated.

3 The Postal Service may not enter into settlement agreements that require it not to withhold income taxes, Medicare or Social Security deductions or to report any payments as income to the Internal Revenue Service (IRS), or to state and local taxing authorities. A clause in the settlement agreement providing that the claimant will be responsible for any tax liability arising from the payment will not shield the Postal Service from its obligation to appropriately withhold from or report the payment.

4 Deducted in dollar or percentage amounts in accordance with court order or legal directive.

5 If elected by employee on PS Form 8038, Employee Statement to Recover Back Pay.

6 If awarded back pay after being fired or suspended erroneously, no withholdings are made for life insurance unless death or accidental dismemberment occurs during the period between removal and the finding that the agency action was erroneous. In such cases, insurance benefits are paid, and premiums are withheld from the back pay awarded.

7 Employee must submit a TSP-1 Form, Election Form, for each election change.

8 Employee must submit TSP-1-C Form, Catch-Up Contribution Election, for TSP Catch-Up Contribution elections.

9 Precedent established through *Samuels v. Postal Service*, MSPB Docket No. DE-0752-99-0260-R-1 (Feb. 24, 2004); reconsideration of *Samuels v. Postal Service*, 95 M.S.P.R. 30 (2003).

Back Pay Documentation Requirements

Authority by Which Award was Granted	Lump Sum Awards and Documents Required				
	Less than \$100,000.00			\$100,000.00 or more	
	GATS	PS Form 8041	Copy of Award	PS Form 8041	Copy of Award
Grievance-Arbitration	X ¹	X ¹	X	X	X
EEOC, MSPB, OPM, Other		X	X	X	X
Rescission		X	X	X	X

¹ Wage-related lump sum grievance and pre-arbitration settlements and arbitration awards less than \$100,000 must be processed via GATS. If payment cannot be made via GATS (because the payment is not wage-related or is \$100,000.00 or more), submit PS Form 8041 to the address below.

Submit PS Form 8041 and copy of award to the following mailing address:

ACCOUNTING SERVICES
 FINANCIAL PROCESSING — PAY LOCATION 9616
 2825 LONE OAK PKWY
 EAGAN MN 55121-9616

Authority by Which Award was Granted	Hours Calculation Awards and Documents Required									
	Less than one full pay period ¹						One full pay period or more ²			
	GATS	PS Form			Copy of Award or Rescission	Address	PS Form		Copy of Award or Rescission	Address
2240		8038	8039	8038			8039			
Grievance-Arbitration	X ³	X ⁴			X		X	X	X	B
EEOC, MSPB, Court, Other				X	X	B	X	X	X	B
Erroneous Separation for Retirement ⁵			X	X	X	B	X	X	X	B
Rescission		X			X	A	X	X	X	B

¹ These documents are required when the Back Pay adjustment **does not require payment for a full pay period**. The claimant must have been on USPS rolls and there must have been some previous payment for work or leave for the relevant pay period(s) involved.

² These documents are required when the Back Pay adjustment **does require payment for a full pay period (or more)** for which there has been no previous payment for work or leave and/or pay periods when the claimant was not on USPS rolls (no payroll history exists).

³ Use GATS for Article 15 grievance-arbitration related hours calculations involving less than one full pay period of lost earnings where there is no requirement to make the grievant whole.

⁴ For hours adjustments that you cannot process in GATS, covering time that is less than one full pay period, submit PS Form(s) 2240 via the eIWS OnLine Forms (eOLF) (<https://olf.usps.gov/OLF/>) module. Accounting services will notify you if additional information is needed.

⁵ The program manager, Benefits, HQ Compensation, must approve back pay for erroneous retirement cases.

Addresses:

A) eIWS OnLine Forms (eOLF):

<https://olf.usps.gov/OLF/>

B) ACCOUNTING SERVICES

FINANCIAL PROCESSING - PAY LOCATION 9616

2825 LONE OAK PKWY

EAGAN MN 55121-9616

Notice of Mitigation of Damages Requirement for Current or Former Employee

Human Resources



[date]

Certified Mail Number
Restricted Delivery
Return Receipt Requested

[claimant name]
[street address]
[city/state/ZIP]

Dear [name]:

This letter is to advise you that throughout the period necessary for adjudication of your appeal except for the first 45 days, you are required to make a reasonable effort to secure outside employment in order to be eligible for back pay in the event your appeal should be sustained.

Pursuant to *Employee and Labor Relations Manual* 436.42d (copy enclosed), if the back pay period exceeds 6 months and no outside employment is secured during all or any part of that period except for the first 45 days, you will be required to document your efforts to secure outside employment during such periods. Therefore, you should maintain documented evidence of each employer contact, including the following information:

1. The date, or approximate date, you made each contact.
2. The business name, address, and telephone number.
3. Whether the contact was in person, by phone, or by mail.
4. The name of the person whom you contacted or who conducted the interview.
5. Whether or not you filed an application for employment.
6. The reason you were not offered employment, if you know.

Failure to make a reasonable effort to secure outside employment or failure to document your efforts may result in your being denied back pay should you be the prevailing party in this appeal.

Sincerely,

[name]
[title]

Enclosure

Notice of Mitigation of Damages Requirement for Individual Denied Employment

Human Resources



[date]

Certified Mail Number
Restricted Delivery
Return Receipt Requested

[claimant name]
[street address]
[city/state/ZIP]

Dear [name]:

This letter is to advise you that throughout the period necessary for adjudication of your appeal you are required to make a reasonable effort to secure outside employment in order to be eligible for back pay in the event your appeal should be sustained.

Pursuant to *Employee and Labor Relations Manual* 436.42f (copy enclosed), you will be required to furnish a resume of your efforts to secure outside employment during the period necessary for adjudication of your appeal. Therefore, you should maintain documented evidence of each employer contact, including the following information:

1. The date, or approximate date, you made each contact.
2. The business name, address, and telephone number.
3. Whether the contact was in person, by phone, or by mail.
4. The name of the person whom you contacted or who conducted the interview.
5. Whether or not you filed an application for employment.
6. The reason you were not offered employment, if you know.

Failure to make a reasonable effort to secure outside employment or failure to document your efforts may result in your being denied back pay should you be the prevailing party in this appeal.

Sincerely,

[name]
[title]

Enclosure

Attachment G
Verification of Claimant's Attempt to Seek Outside Employment

Human Resources



[date]

[Company name]
[street address]
[city/state/ZIP]

Dear [name]:

I would appreciate any assistance you can provide regarding an employee of the U.S. Postal Service.

[Name of claimant, street address, city] claims to have contacted your business during [month and year] seeking employment. [She/He] has advised us the person she/he spoke to was [name of contact, if applicable].

Would you kindly check your records and let me know whether you have any documentation regarding [name of employee]? It would be helpful to know the manner of contact (i.e., by phone, by mail, or in person) and whether or not [she/he] filed an application for employment with you.

I have enclosed a self-addressed envelope for you to use. A prompt response would be most beneficial.

Sincerely,

[name]
[title]

Enclosure