

BACK PAY ACT

5 U.S.C. § 5596

**TITLE 5 OF THE UNITED STATES CODE
GOVERNMENT ORGANIZATION AND
EMPLOYEES
PART III--EMPLOYEES
SUBPART D--PAY AND ALLOWANCES
CHAPTER 55
PAY ADMINISTRATION**

SUBCHAPTER IX--SEVERANCE PAY AND BACK PAY

Sec.

- 5595. Severance pay. (not included here)**
5596. Back pay due to unjustified personnel action.
5597. Separation pay. (not included here)

§ 5596. Back pay due to unjustified personnel action

- (a) For the purpose of this section, "agency" means - -
- (1) an executive agency;
 - (2) the Administrative Office of the United States Courts, the Federal Judicial Center, and the courts named by section 610 of title 28;
 - (3) the Library of Congress;
 - (4) the Government Printing Office; and
 - (5) the government of the District of Columbia.
- (b)(1) An employee of an agency who, on the basis of a timely appeal or an administrative determination (including a decision relating to an unfair labor practice or a grievance) is found by appropriate authority under applicable law, rule, regulation, or collective bargaining agreement, to have been affected by an unjustified or unwarranted personnel action which has resulted in the withdrawal or reduction of all or part of the pay, allowances, or differentials of the employee - -
- (A) is entitled, on correction of the personnel action, to receive for the period for which the personnel action was in effect - -
- (i) an amount equal to all or any part of the pay, allowances, or differentials, as applicable which the employee normally would have earned or received during the period if the personnel action had not occurred, less any amounts earned by the employee through other employment during that period; and
 - (ii) reasonable attorney fees related to the personnel action which, with respect to any decision relating to an unfair labor practice or a grievance processed under a procedure negotiated in accordance with chapter 71 of this title, or under chapter 11 of title I of the Foreign Service Act of 1980, shall be awarded in accordance with standards established under section 7701(g) of this title; and
- (B) for all purposes, is deemed to have performed service for the agency during that period, except that - -
- (i) annual leave restored under this paragraph which is in excess of the maximum leave accumulation permitted by law shall be credited to a separate leave account for the employee and shall be available for use by the employee within the time limits prescribed by regulations of the Office of Personnel Management, and
 - (ii) annual leave credited under clause (i) of this subparagraph but unused and still available to the employee under regulations prescribed by the Office shall be included in the lump-sum payment under section 5551 or 5552(1) of this title but may not be retained to the credit of the employee under section 5552(2) of this title.
- (2)(A) An amount payable under paragraph (1)(A)(i) of this subsection shall be payable with interest.
- (B) Such interest - -
- (i) shall be computed for the period beginning on the effective date of the withdrawal or reduction involved and ending on a date not more than 30 days before the date on which payment is made;

(ii) shall be computed at the rate or rates in effect under section 6621(a)(1) of the Internal Revenue Code of 1986 during the period described in clause (i); and (iii) shall be compounded daily.

(C) Interest under this paragraph shall be paid out of amounts available for payments under paragraph (1) of this subsection.

(3) This subsection does not apply to any reclassification action nor authorize the setting aside of an otherwise proper promotion by a selecting official from a group of properly ranked and certified candidates.

(4) The pay, allowances, or differentials granted under this section for the period for which an unjustified or unwarranted personnel action was in effect shall not exceed that authorized by the applicable law, rule, regulations, or collective bargaining agreement under which the unjustified or unwarranted personnel action is found, except that in no case may pay, allowances, or differentials be granted under this section for a period beginning more than 6 years before the date of the filing of a timely appeal or, absent such filing, the date of the administrative determination.

(5) For the purpose of this subsection, "grievance" and "collective bargaining agreement" have the meanings set forth in section 7103 of this title and (with respect to members of the Foreign Service) in sections 101 and 1002 of the Foreign Service Act of 1980, "unfair labor practice" means an unfair labor practice described in section 7116 of this title and (with respect to members of the Foreign Service) in section 1015 of the Foreign Service Act of 1980, and "personnel action" includes the omission or failure to take an action or confer a benefit.

(c) The Office of Personnel Management shall prescribe regulations to carry out this section. However, the regulations are not applicable to the Tennessee Valley Authority and its employees, or to the agencies specified in subsection (a)(2) of this section.